

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
JUSTICE AAMER FAROOQ
JUSTICE SYED ARSHAD HUSSAIN SHAH

C.P.L.A. No.544-P/2025
*(Against judgment dated 10.04.2025 passed by the Peshawar High Court,
Mingora Bench (Dar-ul-Qaza), Swat in W.P.No.90-M/2024)*

Government of Khyber ...Petitioner(s)
Pakhtunkhwa through Chief
Secretary, Civil Secretariat,
Peshawar and others

Versus

Ihsan Khan and others ...Respondent(s)

For the Petitioner(s) : Mr. Shah Faisal Ilyas, AAG, KPK along
with Naeem Hussain, DSP-Legal, Swat
For the Respondent(s) : Mr. Sabir Shah, ASC
Date of Hearing : 04.06.2026

JUDGMENT OF THE COURT

JUSTICE AAMER FAROOQ:

INTRODUCTION

The instant petition for leave to appeal calls in question judgment dated 10.04.2025 passed by the learned Peshawar High Court in W.P. No.90-M/2024, whereby writ petition filed by the respondents, was allowed and the petitioners were directed to extend the benefit of Risk Allowance (**the Allowance**) to the respondents in the same manner as was being extended to the uniformed police officials.

QUESTION OF LAW FOR THIS COURT

2. The question of law, which this Court faces, is whether the respondents are “police officials” and are entitled to the Allowance as per the relevant law or there is a distinction between “uniformed police personnel” and “administrative/ministerial staff”. We hold that the law establishes a clear distinction between the two, hence the respondents are not entitled to the benefit of the Allowance.

FACTS

3. Brief facts, giving rise to the present proceedings, are that the respondents are employees of Police Establishment of the Province of Khyber Pakhtunkhwa (KPK). They claimed entitlement to the Allowance on the premise that the said Allowance is being paid to certain other employees/staff of the Police Department, and that denial of the same benefit to them amounts to discriminatory treatment in violation of Article 25 of the Islamic Republic of Pakistan, 1973 (**the Constitution**), which guarantees equality. The respondents claimed Risk Allowance and upon denial by the Department to the grant the said Allowance, the respondents agitated the matter before the learned Peshawar High Court by way of a petition under Article 199 of the Constitution, which was allowed in the terms mentioned hereinabove vide the aforementioned impugned judgment.

SUBMISSIONS

4. Learned Additional Advocate General KPK, appearing for the petitioners, contended that learned High Court failed to appreciate the distinction between respondents and the personnel who are actually entitled to the Allowance. It is argued that respondents are ministerial staff and do not perform active operational or uniformed police duties. The Allowance, according to the learned Additional Advocate General, is compensatory in character and is intended for the employees whose duties expose them to particular risks and hazards resulting in active policing, therefore, the respondents cannot claim parity, merely because they are serving in the same Department.

5. Conversely, learned counsel for the respondents has supported the impugned judgment. It is submitted that respondents are employees of the Police Department and that denial of the Allowance to them, while granting it to other employees working in the same administrative establishment, constitutes discrimination. Learned counsel argued that respondents perform their duties in the Police Department, therefore, ought not have been excluded from the benefit.

DISCUSSION

6. We have heard the learned counsel for the parties and examined the record with their able assistance.

7. The controversy essentially turns upon the question whether the respondents, merely for the reason of being employees of the Police Establishment, are entitled to the claim of the Allowance, which has been sanctioned for the police personnel performing active and operational duties. As noted above, this question, in our considered view, must be answered in the 'negative'.

8. In order to address the law involved on the subject by way of reiteration of the same and the stance taken by both the parties, it is stated that the consistent position of the petitioners was that respondents do not constitute 'uniformed police personnel' and are not entrusted with active police duties having risks and hazards. According to the Department, respondents form part of the ministerial office establishment and their duties are essentially administrative and clerical in nature. The Allowance, it was contended, is attached to the nature of the duties performed by the employees and not merely for the reason of their placement in the police department. Learned Additional Advocate General KPK, in substantiating the referred stance of the Department, drew our attention towards the definition of 'Police Officer' and/or 'Police Administration' as provided in section 2(1)(s)(t) of the Khyber Pakhtunkhwa Police Act, 2017 (the Act). In terms of the definition of the referred concepts in law, 'Police Officer' means a member of the police, who is subject to this Act and 'Police or Police Establishment' means the police referred to in section 6 of this Act and includes (a) all persons appointed as special police officers or additional police officers under this Act and (b) all other employees of the police. Section 4 of the Act provides the duties of the police and sections 6 & 7 stipulates 'Police Establishment for the Province' and 'Constitution of the Police Establishment' respectively. As per section 7 *ibid*, 'Police Establishment' constitutes all senior and junior rank police officers and officials and other employees which the Government may determine from time to time. Section 44 of the Act empowers the provincial police officer to appoint ministerial staff and other employees to assist the police. Likewise, reference was made, during the course of arguments, to the Khyber Pakhtunkhwa Police Department Ministerial Service Rules, 1974 (the Rules) to highlight the distinction between 'ministerial staff' and the 'police officer'. The administrative/ministerial staff has its own set of rules to determine terms and conditions of service. Under

Rule 2 (n) of the Rules, 'service' means KPK Police Department Ministerial Service. Under the scheme of law (the Rules), they have their own method of recruitment, eligibility and constitution and composition of service. Nowhere, it is provided that a person appointed under the Rules as ministerial staff, shall be expected to perform active police service.

09. The Allowance was granted to the members of the police force as per the notifications issued by the Government of Khyber Pakhtunkhwa from time to time. In this regard, the seminal notification issued is dated 30.04.2009, by virtue of which, it was provided that all uniformed police personnel will be granted one initial pay per month as Risk Allowance. The examination of the law, on the subject, makes it clear that there is a distinction between uniformed police personnel performing active police duties and the ones who work as ministerial or support staff.

10. It is a settled constitutional principle that guarantee of equality does not mean that all persons invariably be treated alike irrespective of the nature of their duties, responsibilities, classifications or conditions of service. Article 25 of the Constitution prohibits discrimination but does not prevent reasonable classification founded upon intelligible differentia having rational nexus to the object.¹ In the matter before us, there exists a clear distinction between uniformed police personnel performing active and operational duties and employees forming part of ministerial establishment. The former may be required to perform duties involving physical danger, law and order operations, arrests, raids, security assignments, crime control and other functions associated with active policing. The latter, on other hand, perform administrative, clerical and ministerial functions. The fact that both the categories are administratively associated with the police department does not obliterate material distinction in the nature of their duties. The Allowance, which is sanctioned on account of nature, character and hazards of a particular duty, cannot automatically be claimed by every employee serving in the same Department.

11. The principle of 'equal pay for equal work' or a broader constitutional guarantee of equality cannot be invoked, without first establishing that persons claiming parity, are similarly placed in all

¹ I.A Sharwani and others vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041)

material respects; mere commonality of Department, establishment or employer, is not sufficient. The nature of work, degree responsibility, working conditions and risks attached to the duties, are relevant and ultimate consideration for determining, whether two classes of employees are similarly placed. In the present case, respondents have not been able to demonstrate that they perform duties of the same nature and in the same conditions, as those uniformed police personnel for whom the Allowance has been sanctioned. The record indicates that respondents are members of ministerial establishment and are not performing active police duties. The classification, therefore, is not founded upon arbitrary or irrelevant consideration; it directly relates to the nature and hazards of the duties performed.

12. The learned High Court appears to have proceeded primarily on the fact that both categories of employees are serving with the police department. Such approach does not adequately address the material distinction in their relevant service functions. The relevant question was not whether the respondents belonged to the police department but was that whether they belong to the class of employees for whom the Allowance has been sanctioned. The Allowance of this nature is not by its very character and automatic incident of employment in a particular department. Whether the competent authority has sanctioned an allowance with reference to a particular nature of duties or occupational risks, the employee seeking its extension to him, must establish that he or she falls within the prescribed class. The court cannot enlarge the scope of such Allowance merely on the basis of departmental affiliation, particularly where the classification has rational connection with the performance, for which, the allowance was introduced. It is also important to appreciate that determination of conditions of service including grant, withdrawal or extension of allowance, ordinarily falls within the domain of the competent authority subject of cost to constitutional and statutory limitations. The courts may interfere where a classification is shown to be arbitrary, discriminatory or without rational basis, however, where the government has identified a distinction based upon nature of duties and occupational risks, judicial interference is not warranted, merely because another category of employee considers itself entitled to the same benefit.

13. The respondents have essentially sought parity on the basis of departmental affiliation; such a claim cannot succeed unless basis requirement of similarity of duties and service conditions is established. The constitutional prohibition against discrimination does not require the State to treat the dis-similar classes although they were identical. The learned High Court, therefore, fell into error in allowing the writ petition, merely on the basis of alleged discrimination without examining whether the respondents were similarly placed with the employees who are being paid the Allowance and whether the classification made by the Government had a rational basis. The impugned judgment, consequently, cannot be sustained. We are, therefore, of the considered view that the petitioners were justified in distinguishing between uniformed police personnel and the respondents belonging to the ministerial establishment. The denial of the Allowance to the respondents, under these circumstances, does not constitute hostile discrimination or offend constitutional guarantees of equality.

14. For what has been discussed above, instant petition for leave to appeal is converted into appeal which is allowed and impugned judgment dated 10.04.2025 is set aside; consequently, writ petition filed by the respondents, stands dismissed.

Judge

Judge

Islamabad
04.06.2026
Zawar

APPROVED FOR REPORTING

Announced in Open Court on: 09.10.2026

Judge