

Stereo. HCJDA 38.

**Judgment Sheet**

**IN THE LAHORE HIGH COURT, LAHORE**

**(JUDICIAL DEPARTMENT)**

.....

**W.P. No. 62298/2024**

Syed Muhammad Ali Raza Shah.

**Versus**

Govt. of Punjab, etc.

**JUDGMENT**

Date of hearing	18.12.2024
For petitioners	M/s Allah Nawaz Khan Khosa, Muhammad Akbar Warraich, Muhammad Amin Sandhila, Nadeem Shaukat Minhas, Arif Hussain Cheema, Andaz Jillani Khan, Malik Muhammad Ashfaq, Muhammad Akhtar, Rana Shahzad Khalid, Shafiq Ahmad, Rana Khalid Ishaq, Muhammad Arshad Naseer, Habib Ullah, Shahzad Farooq, Umer Draz, Naveed Khalid, Syed Mujahid Naqvi, Falak Sher Khan, Inzamam Aslam, Malik Rizwan Khalid Awan, Aliza Mukhtar, Najum Saqib, Syed Ali Raza, Ch. Zeeshan Afzaal Hashmi, Sajid Hussain Qureshi, Muhammad Nafees Shad, Saeed-ur-Rehman, Syed Alamdar Hussain, Mian Abdul Sattar Ijaz, Zafar Iqbal Chohan, Ghulam Farid Sanotra, Gulzar Hussain, Farrukh Shahzad Kamboh, Advocates.
For the Respondents	Ms. Shazeen Abdullah, Additional Advocate General Punjab. Mr. Muhammad Tayyab Gill, Advocate for respondent No.3/Fatima Jinnah Medical University. Muhammad Abrar Khan, Law officer, D.G., HS, Punjab Muhammad Haseeb Amjad, S.D.O., Buildings Kamalia.

**ASIM HAFEEZ, J.** Petitioners through this and connected constitutional petitions (detailed in the annexed Schedule-A) claim entitlement and seek enforcement of right to be considered for the purposes of appointment under Rule 17-A of the Punjab Civil

Servants (Appointment & Conditions of Service) Rules, 1974, (the 'Rules, 1974') notwithstanding the omission of Rule 17-A of the Rules 1974 vide Notification dated 24.07.2024. It is alleged that right to be considered for appointment accrued before the Notification of omission of Rule 17-A, *ibid*, was issued.

2. This Court had earlier interpreted the scope of the Notification dated 24.07.2024 textually, observing that since the Government had not extended retrospective effect to the omission of the Rule, 17-A of the Rules, 1974, therefore same would apply prospectively, and rights accrued, to be considered for appointment, be given due effect. Decisions in cases of "Syed Noor-ul-Hadi Shah Vs. Government of Punjab, etc." (W.P. No. 13444/2024) and "Muhammad Zaman Vs. Government of Punjab, etc." (W.P. No. 12771/2024) are the references to the context. In latter decision the ratio and effect of the decision by Hon'ble Supreme Court of Pakistan in "General Post Office, Islamabad & others Vs. Muhammad Jalal" (Civil Petition No. 3390/2021) was considered - [Referred Civil Petition was heard on 26.09.2024, converted into appeal and allowed vide order dated 18.10.2024].

3. Learned Law Officer submits that in terms of the decision by the Apex Court Rule 17-A of the Rules 1974 was declared unconstitutional and *ultra vires*; being violative of the constitutional principles of equality of citizens and lacking in transparency. Adds that declaration of invalidity would take effect from the date of introduction / insertion of Rule 17-A, *ibid*, but same would not affect the appointments already made, since the appointments were

protected. Learned Law Officer placed reliance on following cases, reported as Pir Bakhsh & others vs. Chairman Allotment Committee & others (PLD 1987 SC 145), Malik Asad Ali & others Vs. Federation of Pakistan & others (PLD 1998 SC 161), Ali Azhar Khan Baloch & others vs. Province of Sindh & others (2015 SCMR 456), Mir Muhammad Khan & others Vs. Haider & others (PLD 2020 SC 233) and Shahid Pervaiz vs. Ejaz Ahmad & others (2017 SCMR 206). Learned law officer further argues that decisions, in the context of Rule 17-A, already handed down by this Court and mentioned supra are distinguishable, wherein simplicitor issue of retrospectivity of the omission of Rule 17-A was decided without dilating upon the scope and effect of the protection extended to the appointments already made, in the case of General Post Office, Islamabad & others (supra).

4. Conversely, learned counsel for the petitioners contend that declaration qua Rule 17-A of the Rules 1974 was not made in the case of General Police Office, Islamabad & others (supra), therefore same does not extend to include Rule 17-A, *ibid*, which was already omitted before the decision.

5. Heard. It is appropriate to reproduce relevant part of the decision in the case of General Post Office, Islamabad & others (supra) to facilitate understanding the context and breadth of the arguments by learned law officer, which relevant paragraph reads as,

25. Any law, policy or rule which is manifestly inconsistent with the Constitutional commands, retrogressive in nature and discriminatory inter se the citizens is subject to judicial review. In the case of *Government of Khyber Pakhtunkhwa through Secretary Agriculture v. Tahir Mushtaq and others*, while dismissing the claim of the son of a retired civil servant of the Agriculture Department of Khyber Pakhtunkhwa who sought appointment in BPS-5 on the

basis of employee's son quota policy, it was held by a four member Bench of this Court that:

*"The Constitution of the Islamic Republic of Pakistan prohibits discrimination as stated in Article 25 and further stipulates and entrenches the principle in respect of service of Pakistan in Article 27. In preferring the children of a government servant or reserving seats for them offends the Constitution. The same also detracts from a merit based system of employment. The taxpayers hard earned monies pay for the salaries, benefits and pensions of government servants. The people's interest lies in having the best person for the job, and not to suffer those who secure employment on the basis of a filial relationship. The stated instructions undermine transparency and good governance, therefore, the government of Khyber Pakhtunkhwa will be advised to withdraw all such instructions/notifications."*

*For the above reasons, while granting leave, Civil Petition No. 3390 of 2021 is converted into an appeal and is allowed. The impugned order dated 13 April 2021 passed by the Peshawar High Court in favour of the respondent is set aside. Policies, office memorandums, employment under the Package of the Prime Minister, the Financial Assistance Package, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, Rule 10 (4) of the Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989, Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 or any other rule, policy, memorandum, etc. whereunder appointments without open advertisement, competition and merit, of the widow/widower, wife/husband or child of civil servants in different grades, who die during service or become permanently disabled/invalidated/incapacitated for further service and take retirement from service, are declared to be discriminatory and ultra vires Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution. The prescribed Federal and Provincial authorities are directed to withdraw the same. However, it is clarified that the instant judgment shall not affect the appointments already made of the widow/widower, wife/husband or child of deceased or retired civil servants. It is further clarified that this judgment shall not affect the policies, rules or compensation packages of the Federal and Provincial Governments for the benefit of the legal heirs of martyred personnel of the law enforcement agencies and of civil servants who die on account of terrorist activities."*

*[Emphasis supplied]*

6. In the case of General Post Office, Islamabad & others (supra), Hon'ble three-member Bench of the Supreme Court of Pakistan, converted Civil Petition into appeal and allowed it by setting-aside the impugned order dated 13 April 2021, of the Peshawar High Court and recorded declaration, context and extent thereof is relevant for the purposes of deciding the matters at hand – text of the declaration recorded in the case of General Post Office, Islamabad & others (supra) is highlighted by providing emphasis.

Rule 17-A of the Rules 1974 did not exist when decision in the case of General Post Office, Islamabad & others (supra) was passed, and Rule 17-A, *ibid*, was omitted by Government of Punjab through Notification dated 24.07.2024. Submissions by learned Advocate General Punjab in the case of General Post Office, Islamabad & others (supra) are relevant and reproduced hereunder,

*14. Learned Advocate-General, Punjab informed that the policy for appointing one child/wife/widow in BPS-1 to BPS-11 (including the post of Patwari and Junior Clerk) of a civil servant who dies in service or is declared invalidated/incapacitated for further service in pursuance of the provisos to the above rule 17-A was discontinued with effect from 21 November 2023 vide notification dated 7 December 2023. Thereafter, vide notification dated 26 July 2024 rule 17-A was omitted. He further stated that the Government of Punjab has approved a Financial Assistance Package with effect from 22 February 2017 for the families of the civil servants who die while in service, with different rates of compensation for different pay scales and the rate of compensation has been revised from time to time. The Financial Assistance Package in the Province of Punjab does not contain any provision to provide a Government job, either on contract or regular basis, in any grade, to a child/wife/widow of a civil servant who dies in service or is declared invalidated/incapacitated for further service."*

7. Whether, in the facts and circumstances, declarations made in the case of General Post Office, Islamabad & others (supra) could be read to extend to or cover Rule 17-A of the Rules 1974 when said rule ceased to exist and acknowledged as a non-existent rule. Learned law officer insisted that declaration issued may also be stretched to cover Rule 17-A, *ibid*, without appreciating the scope of the decision in the case of General Post Office, Islamabad & others (supra) and manifest jurisprudential consistency with respect to the principle that Courts refrain from making decisions / declarations having bare academic value. Since Rule 17-A of the Rules, 1974 had been withdrawn / omitted before the Judgment therefore reference thereto was conspicuous by its absence in the decision cited. I am afraid that nothing could be added or read into the judgment in the context of the mandate of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973. It is pertinent to mention that in the case of “General Post Office, Islamabad & others (supra), Hon’ble Supreme Court had excluded Rule 12-A of the Baluchistan Civil Servants (Appointment, Promotion and Transfer) Rules 2009 (Rules 2009), which provided for appointment(s) without open advertisement, from the ambit of the declaration. Learned Advocate General Baluchistan informed Hon’ble Supreme Court that Rule 12-A of the Rules 2009 was omitted vide notification of 9 May 2003 –[rule 12 of the Rules 2009 existed till decision was handed down in the case of General Post Office, Islamabad & others (supra). Now, upon reading the declaration made in the case of General Post Office, Islamabad & others (supra) no reference is found regarding Rule 12-A of the Rules, 2009, which is indicative of the fact that Rule(s) omitted were not part of the

declaration – and same analogy is drawn with reference to Rule 17-A of the Rules 1974. Judgments referred by the law officer have had elucidated the principle of retrospectively or otherwise, but they are silent with respect to legal issue that had gripped controversy, i.e., applicability and effect of the declaration with respect to the law / policy / rule, that did not exist at the time of the declaration. There is no cavil that in certain cases / instances declarations were sought and granted with respect to alleged vested rights claimed to have had accrued before the omission / repeal of the law, but then such declarations exhibit specificity.

8. In view of the aforesaid, I find no reason to revisit the decisions rendered in cases of “Syed Noor-ul-Hadi Shah” and “Muhammad Zaman” (supra), wherein the scope, effect and extent of Notification of 24.07.2024 was interpreted already and no aberration(s) are found in the context of declaration(s) made in the case of General Post Office, Islamabad & others (supra). There is no information that Government of Punjab had sought review of the judgment in the case of General Post Office, Islamabad & others (supra), seeking incorporation of Rule 17-A of the Rules, 1974 as part of the declaration. Consequently, objection to the maintainability of these petitions stands dismissed and no retrospective effect could be extended to the omission of Rule 17-A by offending the settled jurisprudence.

9. These petitions are disposed of by observing that department(s) / authorities / officers concerned shall examine the rights of the petitioners, to be considered for purposes of appointment, subject to

the limitations provided under Rule 17-A of the Rules, 1974, provided that the right to consider, in each case, had arisen and obviously intimated / claimed by the petitioner(s) within reasonable time of the accrual of the cause – triggering event.

**(Asim Hafeez)**  
**Judge**

*Approved for reporting.*

**Judge**

*M. Nadeem/\**