

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

ICA No.431 of 2016

Federation of Pakistan through V/S Khalid Mahmood and another
Secretary Establishment Division Islamabad.

JUDGMENT

Date of Hearing:	06.04.2023
Appellant by:	Mr. Muhammad Zain Qazi, Assistant Attorney General along with Mr. Mehmood Khan Lakho, Section Officer
Respondents by:	Barrister Munawar-us-Salam, ASC along with Barrister Waleed Khalid, ASC for Respondent No.1. Nemo for the Respondent No.2.

JAWAD HASSAN, J. Through this Appeal under Section 3 of the Law Reforms Ordinance, 1972 (*the “Ordinance”*), the Appellant has challenged the judgment dated 03.03.2016 (*the “Impugned Judgment”*) passed by the learned Single Judge-in-Chamber whereby the prayer made by the Writ Petitioner (present Respondent No.1) for allotting him an additional plot was allowed in terms of the Package dated 20.07.2006, announced by the Prime Minister which was later elaborated vide letter dated 01.08.2006.

(I) BRIEF BACKGROUND

2. Khalid Mehmood/the Respondent No.1 joined Government Service in 1968 and after having been promoted as Secretary to the Government of Pakistan (BS-22) vide Notification dated 18.10.2001, issued by the Cabinet Secretariat, Establishment Division, Islamabad, was posted as Director General, Civil Services Academy and thereafter as the Principal, Pakistan Administrative Staff College, Lahore, vide Notification dated 08.08.2003, issued by the same aforesaid Authority. Later on, his services were placed at the disposal of the Government of the Punjab, vide Notification

dated 10.12.2004 and on deputation he was appointed as Chairman of the Punjab Technical Education and Vocational Training Authority (TEVTA) by Government of the Punjab. He was retired on 31.08.2005, however, continued his services as Chairman TEVTA on contract basis. On issuance of letter dated 20.07.2006, by the Principal Secretary to the Prime Minister mentioning that the Prime Minister had approved a Residential Plot on payment in addition to the plot being given on turn through the FGEH Scheme, when available, the Respondent No.1 applied but the same was refused vide letter dated 14.11.2007, issued by the Section Officer (E-I), Government of Pakistan, Cabinet Secretariat, Establishment Division, Islamabad.

(II) **CONTENTIONS-ARGUMENTS OF LEARNED COUNSEL FOR THE APPELLANT/ASSISTANT ATTORNEY GENERAL.**

3. It is contended by the leaned Law Officer that the Respondent No.1 applied for an additional plot on the ground of claiming himself to be a Federal Secretary which he wasn't, as he did not fulfill the condition of posting as Federal Secretary during the initial criteria approved by the Prime Minister, which remained operative from 02.08.2006 to 02.01.2007 and later on that was substituted by a modified criteria remained operative from 03.01.2007, which makes the contract employees ineligible for allotment of an additional plot, as sought for, by the Respondent No.1. In addition to this, the claim of the Respondent No.1 was also against the norms settled by the Rules of Business, 1973, which defines a post of 'Secretary' as under:-

“2(xviii) “Secretary” means the [Secretary General], [Principal Secretary], Secretary or Acting Secretary to the Government of Pakistan in charge of a Division or a Ministry, and where there is no Secretary, the Additional Secretary or Joint Secretary in charge of the Division or the Ministry.”

4. It is further contended by the learned Law Officer that according to the approved Package by the Prime Minister a Federal Secretary should have completed at least one year 'in an office' as a Federal Secretary/Special Secretary/Secretary General and that the period of re-employment as a Federal

Secretary/Special Secretary/Secretary General will be counted towards the eligibility tenure of one year. Adds that criteria for allotment of a plot to the Federal Secretaries was further revised in 2007 by the Prime Minister's Secretariat according to clauses (i), (ii) and (iii) of which all BS-22 serving officers of the regularly constituted groups shall be eligible for allotment of a residential plot provided that the allotment shall be made when the remaining service of the officer does not exceed two years; Officers serving on contract/secondment from the armed forces shall not be eligible and officers serving as contract employees or on MP Scales shall not be eligible. Further adds that, at the time of initial criteria, the Respondent No.1 was not an employee of the Federal Government and thus not posted as a Federal Secretary and after having been re-employed after his superannuation he had rightly been excluded from eligibility in terms of letter dated 01.08.2006. Regarding stance of the Respondent No.1 qua discrimination he elucidates that four officers namely Syed Tariq Ali Bokhari, M/S Nawid Ahsan, Vakil Ahmad Khan and Tariq Aziz had been allotted plots, as amongst the said ones first three remained posted as Federal Secretary while the fourth one as Principal Secretary/Secretary General entitling them all four for allotment of an additional plot to each one. Therefore, no discrimination was done with the Respondent No.1, as his case was entirely different than that of said four officers. Places reliance on **Maqsood Ahmad Toor and 4 others** versus **Federation of Pakistan Ministry of housing and Works, Islamabad and others** (2000 SCMR 928). Lastly, prays for setting aside of judgment dated 03.03.2016 on the above taken grounds.

(III) **CONTENTIONS OF LEARNED COUNSEL FOR RESPONDENTS NO.1.**

5. Barrister Munawar-us-Salam, ASC contended that the Respondent No.1 joined Government Service in the year 1968 and after having rendered unblemished service was promoted vide Notification No. 5/7/93-E.I. Government of Pakistan Cabinet Secretariat Establishment Division, Islamabad on 18.10.2001 and was posted as Director General, Civil Services Academy, Lahore. Thereafter, vide Notification dated 08.08.2003 had been

posted Principal, Pakistan Administrative Staff College, Lahore and thereafter vide Notification dated 10.12.2004 his services were placed at the disposal of Government of the Punjab and was posted as Chairman, Punjab Technical Education and Vocational Training Authority (TEVTA). He was retired on 31.08.2005 and remained in service as such on contract basis after his retirement. Adds that on approval of a Package by the Prime Minister including allotment of an additional plot to the Federal Secretaries, he applied for the same facility on account of his case being identical to that of Mr. Tariq Aziz, Mr. Nawid Ahsan, Syed Tariq Ali Bukhari and Mr. Vakil Ahmed Khan whose dates of retirement were 26.05.2002, 09.04.2004, 04.03.2005 and 05.06.2005 respectively who had been promoted as Secretaries, Government of Pakistan and were also re-employed after their superannuation, as he was. And all/each four of them had been allotted an additional plot as per Package announced by the Prime Minister but his request was denied by the concerned Authority with the observation that he/the Respondent No.1 did not meet the condition of posting as Federal Secretary during the currency of the initial criteria for a period of one year and that after his superannuation having been re-employed on 01.09.2005, he stood excluded from eligibility in terms of letter dated 01.08.2006, issued by Principal Secretary to the Prime Minister.

6. The comments submitted on behalf the Respondent No.2 also mentioned that no recommendation was made by the Establishment Division for allotment of an additional plot to the Respondent No.1 due to which he was not allotted the plot under the Prime Minister's Scheme.

7. We have heard learned counsel for the parties and also perused the record.

8. The main grievance of the Appellant is that while passing the impugned Judgment dated 03.03.2016, the learned Single Judge did not take into account that the Respondent No.1 had been retired from Government service on 01.09.2005 and was re-employed as Chairman, Technical Education and Vocational Training Authority (TEVTA) under Government of the Punjab and that at the time of initial criteria announced by the Prime Minister, the Respondent No.1 had not been an employee of the Federal

Government and thus was not meeting the condition of posting as a Federal Secretary during the currency of initial criteria and that even otherwise, after having been reemployed after his superannuation with effect from 01.09.2005, he had become ineligible for winning an additional plot in terms of above referred letter dated 01.08.2006. Moreover it also remained out of consideration by the learned Single Judge that case of the Respondent No.1 was entirely different from that of the four officers namely (1) Syed Tariq Ali Bukhari, (2) M/s Vakil Ahmad, (3) Nawid Ahsan and (4) Tariq Aziz, as amongst them Nos. 1 to 3 had been posted as Federal Secretaries while the 4th one as a Principal Secretary/Secretary General and thus, the Respondent No.1 was not discriminated in any manner neither this act of the Appellant was unconstitutional.

9. When we put the said illegalities, as pointed out by the Appellant from the impugned judgment, in juxtaposition with the stance, references and criteria discussed above holding a Secretary (BS-22) to be entitled to allotment of an additional plot, it becomes crystal clear that admittedly the Respondent No.1 had been promoted as Secretary to the Government of Pakistan, vide Notification dated 18.10.2001 and retired as such on 01.09.2005, therefore, in this state of affairs, there is no doubt that he did have one year service at his credit, as a Secretary. As for holding of an office as a Federal Secretary is concerned, it is the prerogative of the Prime Minister that he placed services of a Secretary BS-22 where does he want or think appropriate; therefore the postings of the Respondent No.1 at different Provincial departments cannot snatch the rank and status of a Secretary BS-22 because of it being awarded to him by Government of Pakistan, Cabinet Secretariat, Establishment Division/a Federal department. Rule 4 of the Rules of Business, 1973 envisages that each Division shall consist of a Secretary to the Government and of such other officials subordinate to him as the Government may determine and the Secretary will be the official head of the Division. Further regarding question of discrimination alleged by the Respondent No.1, while hearing learned Assistant Attorney General, the same was confronted to him that amongst the afore-referred Secretaries, Mr. Tariq

Aziz was stated to remain posted as Secretary National Security Council and retired on 26.05.2002, Mr. Nawid Ahsan remained posted as Secretary General Finance and retired on 09.04.2004 while Syed Tariq Ali Bukhari, remained posted as Secretary Establishment and retired on 04.03.2005, these all after having been promoted as Secretaries to Government of Pakistan were reemployed after their superannuation and were allowed the Package but the Respondent No.1 was refused. According to Schedule I read with Schedule II of the Rules *ibid*. National Security Council is not listed as a Division where reportedly Mr. Tariq Aziz served and retired on 26.05.2002, yet he was allotted an additional plot. Similarly, Mr. Nawid Ahsan, Syed Tariq Ali Bukhari and Vakil Ahmad Khan though had been working as Secretaries but whether they served as head of the Divisions had not been disclosed. Therefore, this very allotment made to the above four ones is a visible discrimination with the Respondent No.1.

10. It is by now well settled law that although Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification, yet it is also equally settled that in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia that has a rational nexus with the object being sought to be achieved. This means that any distinct treatment meted out to a class of persons can only be sustained under Article 25 if the aforesaid test is satisfied. Reliance is placed upon **Hadayat Ullah and others v. Federation of Pakistan and others** (2022 SCMR 1691). Similarly, it is also well settled that in order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping for specific purpose causing injustice to other similarly placed individuals. It was further held in **Syed Azam Shah v. Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another** (2022 SCMR 201) that the concept of reasonableness is rationally a fundamental component of equality or non-arbitrariness. This very question is further elaborated in the case of **Dr.**

Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265), wherein the Supreme Court held that intelligible differentia distinguishes persons or things from the other persons or things, who have been left out. The Court held that the definition of classification "intelligible differentia" means differentiating between two sets of the people or objects, all such differentiations should be easily understood and should not be artificial. Similarly in the case of **Secretary Economic Affairs Division, Islamabad and others v. Anwarul Haq Ahmed and others** (2013 SCMR 1687), the Supreme Court further held that by now it is well settled that equality clause does not prohibit classification for those differently circumstanced provided a rational standard is laid down. The Supreme Court further held in the case of **Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad and another** (1997 SCMR 1026), that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25.

11. It has been further elucidated in **Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Syed Sadiq Shah and others** (2021 SCMR 747) that it must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the authority. The Court further held that Article 25 forbids class legislation but it does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The classification however must not be arbitrary, artificial or evasive but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. The Court also held that in order to pass the test of reasonableness there must be a substantial basis for making the classification and there should be a nexus between the basis of classification and the object of action under consideration based upon justiciable reasoning. Besides, the word "reasonable" has been defined in Black's Law Dictionary (Ninth Edition)

as “Fair, proper, or moderate under the circumstances”. The term was further interpreted in **Muhammad Nasir Mahmood and another v. Federation of Pakistan through Secretary Ministry of Law, Justice and Human Rights Division, Islamabad** (PLD 2009 Supreme Court 107) wherein the august Supreme Court while elaborating the dictionary meaning of the term observed that the dictionary meaning of the word ‘reasonable’ is just, proper, fair, equitable, and that which is acceptable to a man of common prudence and that of the word ‘unreasonable’ i.e. unjust, unfair and that which is not acceptable to a man of ordinary prudence. In the instant case, there is no reasonable distinction between the Respondent No.1 and other individuals mentioned above and there is no justified reason to isolate the case of the respondent from the said other similarly placed individuals because the posting of officers of same rank to different posts solely rests upon the choice and selection of the competent authority. Therefore carving out any criteria to exclude certain officers and accommodate others of the same rank would tantamount to creation of artificial grouping causing injustice to the first mentioned officers hence any such classification cannot be excluded from the mischief of Article 25 of the Constitution.

12. The upshot of the above discussion is that persons might be classified into groups and such groups might be treated differently, if there was a reasonable basis for such difference. However having carefully considered the matter in hand, in our view there were no intelligible differentiae that distinguished the case of the Respondent No.1 from the other similarly placed individuals mentioned and discussed above. Therefore, summing up the matter and on finding that the Respondent No.1 after having been promoted and posted as Secretary (BS-22) under the order of competent authority, ‘becomes eligible’ for allotment of an additional plot and that as additional plots were granted to the Secretaries names of whom are mentioned above, therefore, their case being on a par with that of the Respondent No.1, it would not be justifiable to deprive him from a facility/benefit which had been awarded to those standing on the same footings. We do not see any illegality in the impugned judgment passed by the

learned Single Judge calling for interference by the Division Bench.
Consequently, this Appeal stands dismissed.

(Muhammad Sajid Mehmood Sethi)
Judge

(Jawad Hassan)
Judge

Approved for reporting.

Judge

Judge