

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
JUDGMENT

F.A.O No.80183/2021

Usama Bin Maalik **VS.** Federal Public Service
Commission through its
Chairman etc.

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| Date of hearing | 08.11.2023 |
| Appellants by | Mr. Junaid Jabbar Khan, Advocate for the appellants in F.A.O No.80183/2021 & F.A.O No.802568/2021 Mr. Abid Saqi, Mudassar Farooq and Syed Ayaz-ul-Hassan Shah, Advocates for the appellant in F.A.O No.69092/2022 |
| Respondents by | Mr. Khalid Parvez Warraich, Deputy Attorney General alongwith Abu Bakar Tayyab, ANA, FPSC, Lahore |

Ch. Muhammad Iqbal, J:- Through this single judgment I intend to decide the titled appeal [F.A.O No.80183/2021] as well as F.A.O No.80268/2021 and F.A.O No.69092/2022 as common questions of law and facts are involved in these cases.

2. Through these appeals under Section 7(3)(d) of Federal Public Service Commission Ordinance, 1977 the appellants have challenged the validity of Memorandums dated 15.10.2021 whereby the Federal Public Service Commission rejected the representation of the appellants and Memorandums on 26.11.2021 whereby the review filed by the appellants were rejected by the Federal Public Service Commission.

3. Brief facts of the case are that the Federal Public Service Commission [hereinafter referred to as the “FPSC”] through advertisement invited applications from the aspirant candidates for post of BS-17 against total 166 seats out of which 105 seats

are of open merit, 13 seats of women quota and 48 seats for minority quota through CSS Competitive Examination falling the year 2020. The appellants Usama Bin Maalik, Awais Ahmad Brar and Kamran Ahmad Dev participated in the examination, passed the test and interview, physical and psychological as well as viva voce test and accordingly they were placed at Sr. No.161, 165 and 163 of the merit list among the total 364 successful candidates. But the FPSC instead of issuing appointment offer to the appellants, appointed four women from Punjab Quota who were below merit list falling at Sr. No.167, 170, 171 & 172. Besides above, two selected candidates at Sr. No.88 & 140 did not join the service thus further two seats of Punjab Open Merit remained vacant which were also filled by appointing female candidates falling at Sr. No.177 & 178 of the merit list. The appellants being dissatisfied with above modus of appointment, filed representations which were rejected by the competent authority (FPSC) vide Memorandums dated 15.10.2021, 15.10.2011 & 08.09.2022, respectively on the basis of order dated 03.06.2010 passed by the Supreme Court of Pakistan in Civil Petition No.941 of 2010 titled as *Federal Public Service Commission etc. Vs. Nergis Shazia Chaudhry*. Against the above decision, the appellants preferred review petitions which were also rejected by the authority vide Memorandums dated 26.11.2021, 26.11.2022 & 04.10.2022 respectively. Hence, these appeals.

4. I have heard learned counsels for the parties and have gone through the record.

5. The FPSC conducted CSS Competitive Examination-2020 [hereinafter referred to as “Examination”] and after completion of the recruitment process through Press Note dated 05.05.2021 announced the number of vacancies, including carried over

vacancies, to be filled on the basis of final result of the said Competitive Examination & announced the seats in accordance with the government policy on Merit/ Provincial/ Regional/ Women and Minorities Quota and the detail whereof is as under:

| Quota | | Fresh Vacancies | Carried Over Vacancies | Total | Grand Total |
|------------|------------|--|---|-----------|-------------|
| Punjab 50% | Open Merit | PAAS=12, PCS=6, PAS=15, FSP=10, IRS=19, IG=13, MLCG=2, OMG=6, PSP=14, POSTG=6, RECTG=1 | IG=1 | 104+1=105 | 166 |
| | Women | PAAS=2, PCS=1, PAS=2, FSP=1, IRS=2, IG=2, OMG=1, PSP=2 | NIL | 13+0=13 | |
| | Minorities | PAAS=1, FSP=1, IRS=2, IG=1, PSP=1 | PAAS=4, CTG=2, PCS=4, IRS=10, IG=2, MLCG=1, OMG=12, PSP=4, POSTG=2, RECTG=1 | 6+42=48 | |

As per order of the merit list the appellants’ names were reflected at Sr. No.161, 165 and 163, respectively of the merit among 364 qualified candidates and last in serial recommendee was picked from Sr. No.151 of the merit list. In the Memorandum dated 22.05.2007, the Federal Government across the board allocated 10% quota to Women and under paragraph No.3(i) whereof the said percentage/allocation does not apply to the vacancies reserved for recruitment on the basis of open merit. For ready reference, paragraph No.3 (i) of Memorandum dated 22.05.2007 is as under:-

The percentage of vacancies reserved for recruitment on the basis of merit;

Out of the successful candidates of Punjab Quota, 13 female candidates were to be selected under Women Quota, whereas during scrutiny of the criteria, 11 female candidates secured higher marks and fell within the Open Merit Quota therefore these 11 women candidates who secured a higher position in the Open Merit were adjusted/upgraded in higher group compared to a

lower group in the Open merit. Due to this adjustment, as the aforesaid 11 female candidates who secured higher marks were adjusted in the Open Merit Quota. As 11 seats of successful women on merit were fell vacant in a lower group of women Quota which seats were then transferred to Women Quota by the FPSC while relying upon an order dated 03.06.2010 passed by the Supreme Court of Pakistan in Civil Petition No.941 of 2010. Under paragraph No.2 of the advertisement for Examination, the number of vacancies to be filled on the final result of CSS as per the aforementioned schedule. Total 105 vacancies were reserved for Punjab Open Merit and last recommended candidate was picked from Sr. No.151 of the Merit List whereas all the appellants fell below to the above said serial i.e. at Sr. No.161, 163 and 165, respectively.

6. Further, as per the record, 13 female candidates were to be picked from the successful candidates in Women Quota. Eleven (11) women candidates secured higher marks and fell within the Open Merit list i.e. within Sr. No.151, the detail whereof is as under:

| Sr. No. | Roll No. | Merit No. | Name of Candidates | Group/Service Allocated |
|---------|----------|-----------|-----------------------|-------------------------------------|
| 1 | 24512 | 24 | Muntha Azhar | PAS |
| 2 | 26731 | 25 | Sobia Falak | PAS |
| 3 | 24770 | 49 | Nayab Ramzan | PSP |
| 4 | 29683 | 53 | Noor ul Ain Ali | PSP |
| 5 | 21096 | 62 | Hira Fatima | FSP |
| 6 | 26723 | 63 | Simrah Azhar | PCS |
| 7 | 8832 | 94 | Fatima Tuz Zahra Khan | Issue notice to the respondents for |
| 8 | 20326 | 100 | Fatima Tariq | Issue notice to the respondents for |
| 9 | 7943 | 125 | Amna Mujahid | OMG |
| 10 | 18975 | 136 | Anam Wajeeha Awan | PAAS |
| 11 | 25987 | 138 | Samia Niazi | PAAS |

Thus, the aforementioned female candidates were adjusted in higher group in the Open Merit Quota, hence 11 vacancies of Women Quota fell vacant and the said seats of Women Quota were to be adjusted / filled from the candidates below to Sr. No.151, as under:

| Sr. No. | Roll No. | Merit No. | Name | Group/ Service | Remarks |
|---------|----------|-----------|-------------------|----------------|--|
| 1 | 19049 | 152 | Anum Aslam | POSTG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.24 by getting the benefit of 10% women quota. |
| 2 | 1243 | 153 | Iqra | IG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.25 by getting the benefit of 10% women quota. |
| 3 | 26019 | 154 | Samra Nazir | POSTG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.49 by getting the benefit of 10% women quota. |
| 4 | 25783 | 155 | Sahar Sarwar | IG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.53 by getting the benefit of 10% women quota. |
| 5 | 27356 | 156 | Tehreem Siddique | POSTG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.62 by getting the benefit of 10% women quota. |
| 6 | 26107 | 157 | Sania Safdar | IG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.63 by getting the benefit of 10% women quota. |
| 7 | 38669 | 167 | Saadia Aslam | IG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.94 by getting the benefit of 10% women quota. |
| 8 | 24657 | 170 | Naila Nazar | IG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.100 by getting the benefit of 10% women quota. |
| 9 | 25613 | 171 | Saba Jawid | IG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.125 by getting the benefit of 10% women quota. |
| 10 | 19149 | 172 | Arfa Abdul Razzaq | IG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.136 by getting the benefit of 10% women quota. |

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|----|-------|-----|--------------|----|--|
| 11 | 18709 | 177 | Allah Rakhi | IG | Allocated against open merit seat of Punjab pursuant to trickle-down effect in lieu of merit No.138 by getting the benefit of 10% women quota. |
| 12 | 30205 | 178 | Zimara Afzal | IG | Allocated against women quota |
| 13 | 19109 | 185 | Aqsa Imtiaz | IG | |

7. It would be beneficial to have a glance on an identical matter of one, Mst. Nergis Shazia Chaudhry who participated in the Examination but despite qualifying the test, interview etc., she was not recommended for the appointment. Against the above non-recommendation, her representation was dismissed by the FPSC and the said order was assailed before this Court through F.A.O No.1/2010, which was allowed vide reported judgment titled as *Nergis Shazia Chaudhry Vs. Federal Public Service Commission and others* [2010 PLC (C.S.) 1035] on the ground that said lady be appointed/adjusted against the Women Quota as she has successfully qualified the Examination. The said order was challenged by the FPSC before the Supreme Court of Pakistan through Civil Petition No.941 of 2010 which was dismissed by the Apex Court vide order dated 03.06.2010 with the following observation:

“4. It is to be noted that as far as the criteria laid down in the above rules are concerned those are not coming in the way of respondent since she had also passed her examination and was amongst those who had qualified to be considered against reserved seats for females as per criteria. Problem started when she was not accommodated and instead a female candidate from general/open seats preferred for DMG group on account of her higher merit, statedly, was accommodated against a seat available in similar group in reserved quota for females and in open merit seats a male candidate was accommodated. Actually it should have been other way round, such as, to recognize the higher merit of female candidate she must have been accommodated against the seat meant for DMG group in a reserved quota but, at the same time the seat which, statedly, fell vacant in next available group in open merit on account of her adjustment should have been transferred to the female quota to ensure availability of 19 vacancies in order to achieve the objective of reserved quota. It is, thus, evident that by changing the form, in essence, the substance was changed with the result that on one hand a male candidate was

accommodated in open merit seats and on the other a seat of females in reserved quota was cut down. The learned High Court, therefore, having taken into consideration these aspects of the case as well as the rules which have been heavily relied by the learned counsel for the petitioner had rightly granted the writ in favour of the respondent.”

The view rendered in the judgment (supra) was reiterated by the Apex Court in a judgment titled as Abdullah Nawaz Cheema Vs. Federal Public Service Commission (FPSC), Islamabad and another (2019 SCMR 622) the relevant portion whereof is reproduced as under:

“8.... As a result of the above, if a female candidate secures sufficient merit to be allocated a group on the Open Merit, she may opt for a better group, if that is available in the Women Quota. Once she has opted for a better group, the one she had previously been allocated in Open Merit will be left vacant. This vacant group seat is then transferred to the Women Quota which was short a seat when the candidate had opted for the then available better seat. This allows for there to be a constant number of reserved seats in the Women Quota without depriving Female Candidates, higher on the merit list, better group seats.

9. The submission of the Petitioner that the vacated seats ought to be allocated to available candidates is misconceived. It ignores the fact that this Court held in the aforementioned case, that male candidates otherwise not qualifying for allocation on open merit cannot be given the benefit of allocation in the result of upgradation permissible to Open Merit female candidates. As the record shows, the Petitioner secured a Merit Position of 673 whereas the Merit closed at 661. Irrespective of the quota seats, he could not be allocated to any group considering his merit position.”

The FPSC adjusted the women candidates from open merit list in the light of the judgments (supra) passed by the Supreme Court of Pakistan and compliance of the said decisions is mandatory for all the organs of the state as enshrined in Article 189 of the Constitution of the Islamic Republic of Pakistan. Reliance in this regard is placed on the cases cited as Muhammad Sharif Vs. Settlement Commissioner and others (2007 SCMR 707), Iffat Jabeen Vs. District Education Officer (M.E.E), Lahore and

another (2011 SCMR 437) and Dr. Iqrar Ahmad Khan Vs. Dr. Muhammad Ashraf and others (2021 SCMR 1509).

8. The appellants were the competitors against 105 seats reserved for Open Merit. The last allocated candidate against the Open Merit quota stood at merit position No.151 as per final merit list whereas the appellants stood at Sr. No.161, 163 and 165, respectively, therefore they were not recommended for selection by the FPSC. As the appellants were below in merit, thus were not recommended for appointment as such no perversity or illegality has been committed and decision of the FPSC does not require any interference by this Court. Reliance is placed on the case titled as Mushtaq Ahmad Mohal and others v. The Honourable Lahore High Court, Lahore and others (1997 SCMR 1043) wherein the Supreme Court of Pakistan in a such like matter has held as under:

“14. The above contention is unfounded. It is an admitted position that the petitioners were below in the merit list from the above 24 candidates who were selected on zonal basis.”

Another reliance is placed on case cited as Syed Ali Iqbal Hussain v. District Sessions Judge, Bahawalpur and others (2018 SCMR 1009), wherein the Supreme Court of Pakistan has held as under:

“8. We have also examined the record ourselves, gone through the merit list and found that the petitioner had indeed been granted an undue favour which was in violation of the merit policy. The argument of the learned counsel that since none of the candidates, who had secured higher marks, had challenged the merit list, the appointment of the petitioner had somehow attained legitimacy is ex facie misconceived. Where an apparent illegality or impropriety had come before the High Court it could not have shut its eyes and looked the other way. It ought to have, and rightly took cognizance of the matter and passed an appropriate order.”

Furthermore, the suitability/eligibility of a candidate for appointment against a post falls within the exclusive domain of an Appointing Authority/Selection Committee, who are considered the best evaluator/judge on the field. The Supreme Court of Pakistan on the same point in a case reported as Arshad Ali Tabassum Vs. The Registrar Lahore High Court, Lahore (2015 SCMR 112) has held as under:-

“7. As far as the contention of the petitioner that he was not recommended for appointment by the committee due to the malice on the part of the members of the Interview Committee for the reason that his services were terminated as Civil Judge on the charge of misconduct, is concerned, suffice it to observe that according to the established principle of law this Court cannot substitute opinion of the Interview Committee on the bald allegation after losing the chance in the interview. Reference is made to the case of Asif Mahmood Chughtai, Advocate and 17 Others v. Government of Punjab through Chief Secretary & others (2000 SCMR 966), Dr. Mir Alam Jan v. Dr. Muhammad Shahzad & Others (2008 SCMR 960) and Muhammad Ashraf Sangri v. Federation of Pakistan & Others (2014 SCMR 157). In such circumstances, the petitioner could not establish any malice on the part of the Interview Committee. There is also no measuring apparatus with this Court to determine that the petitioner was deferred in the interview by the Interview Committee only for the sole reason of his misconduct as Civil Judge. It is presumed that the Interview Committee must have given the petitioner marks after judging his ability without being influenced by the earlier misconduct of the petitioner as the Interview Committee was not acting as Disciplinary Committee dealing with the misconduct of the petitioner. Since the petitioner could not fulfil the requisite criteria for the post of Additional District & Sessions Judge, therefore, he was not recommended for appointment by the Selection Committee, thus, no illegality has been committed by the respondent while acting on the recommendations of the Examination Committee warranting interference by this Court in its constitutional jurisdiction.”

Reliance is also placed on a case cited as Nisar Ahmed Mehar v. Province of Sindh through Chief Secretary Sindh and 5 others [2019 PLC (C.S.) 660], relevant portion whereof is reproduced as under:

“21. In Service matters, the suitability of a candidate for appointment, exclusively falls within the domain of appointing authority. Such authority, in our view, cannot be compelled to make appointment without fulfilling the requisite formalities by a candidate. In the case in hand, the petitioner, on the face of record, has failed to establish any legal right which can be enforced under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.”

The FPSC while dismissing the review of the appellant [Usama Bin Maalik] after discussing the contentions raised by the appellants observed as under:

“Allocation for CE-2020 was made strictly in accordance with the judgment of Lahore High Court in F.A.O No.01/2010 upheld by the Supreme Court of Pakistan in C.P. No.941/2010. As far as your contention regarding amendment in memorandum for provision of 10% women quota, it may be observed that Courts have directed implementation of women quota in letter and spirit. Accordingly, women were to be considered for open merit as well as reserved quota. Thereafter, there were 105 open merit seats against Punjab quota. The last candidate allocated from Punjab against open merit seat was merit 147. Your merit position was 161. Therefore, in terms of judgment, referred to above it was not possible to allocate you against open merit seats of Punjab.”

9. Learned counsels for the appellants could not point out any mala fide on behalf of the FPSC for non-selection of the appellants and also could not point out any illegality, irregularity or jurisdictional defect in the impugned orders of the FPSC while dismissing the representations as well as reviews of the appellants.

10. Resultantly, all these appeals being devoid of any merits are hereby **dismissed**.

(Ch. Muhammad Iqbal)
Judge

Approved for reporting.

Judge