

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

Writ Petition No.77143 of 2021

Ghulam Ghous

Versus

**Province of Punjab through Secretary
Higher Education Department and another**

J U D G M E N T

Date of hearing: 20.07.2023.

Petitioner by: M/s. Abid Saqi and Mudassar Farooq, Advocates.

Respondents by: M/s Malik Muhammad Awais Khalid, Sadiq Ameen Cheema, Muhammad Azam Khalil and Muhammad Ali Bhatti, Advocates.

Ms. Shehzeen Abdullah, Assistant Advocate General along with Ch. Rehman, Senior Law Officer and Mian Zahid, Law Officer, Higher Education Department.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioner has called into question vires of order / letter dated 12.11.2021, issued by Government of the Punjab, Higher Education Department, whereby petitioner was held disentitled to get age relaxation in terms of Rule 3(v) of the Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976 (“**Rules of 1976**”).

2. Learned counsel for petitioner submits that name of petitioner for the post of Registrar was recommended by the Search Committee twice but these recommendations were neither forwarded to the Syndicate of respondent-university nor petitioner was appointed. Adds that petitioner is entitled to be given benefits of the Rules of 1976 but the same are not being extended without any lawful justification. Further submits that petitioner is being

subjected to gross discrimination in the matter as a candidate one year older than petitioner (appearing at Sr.No.3 of the list of candidates for the post of Controller of Examination) has been recommended.

3. Learned Legal Advisor for respondent-university contends that respondent-university advertised the posts including the post of Registrar by following the terms & conditions / criteria set by Government of the Punjab, Higher Education Department vide Notification dated 23.02.2021 and after conducting the interview, recommendation of the Search Committee of three candidates (petitioner at Sr.No.1) was forwarded to Chancellor through respondent No.1, therefore, instant writ petition is not maintainable against respondent-university.

4. Learned Law Officer submits that Rule 3(v) of the Rules of 1976 is applicable to civil servants and does not apply to university employees.

5. Arguments heard. Available record perused.

6. Perusal of record shows that initially the respondent-university advertised the posts of Registrar (BPS-19) and Controller of Examinations (BPS-19) in Daily Nawa-i- Waqt on 02.09.2019 and after conducting the interview by the Search Committee, a panel of three candidates for the post of Registrar, wherein petitioner's name was at Sr.No.1, was submitted to the respondent No.1 / Higher Education Department, Government of the Punjab for approval of the Chancellor but the same was not materialized by the respondent No. 1. In the meanwhile, a uniform criteria for the post of Registrar, Controller of Examinations & Treasurer was notified and circulated vide Notification dated 23.02.2021 after getting ascent from the Chancellor. Accordingly, the respondent-university again advertised the posts including the post of Registrar (BPS-20). After conducting the interviews by the Search Committee in its meeting held on 13.07.2021 for the position of Registrar (BPS-20), three candidates including petitioner at Sr.No.1 were recommended

and forwarded to the Chancellor through respondent No. 1 vide letter dated 16.07.2021 for the approval of the Chancellor, pursuant thereto impugned letter was issued.

7. The stance of respondent-Higher Education Commission is that petitioner was over-age for about 06 years, 02 months & 21 days, however general age relaxation for 05-years was granted to petitioner but still he was over-age for about 01 year, 2 months & 21-days. Whereas the version of petitioner is that he had already served as Registrar in respondent-university for more than 05 years and after excluding said period, he is well within prescribed upper age limit. The dispute is regarding applicability of Rule 3(v) of the Rules of 1976, which reads as under:-

v) In the case of a candidate already working as a Government servant, the period of his continuous service as such shall for the purpose of upper age limit prescribed under any service rules, of the post for which he is a candidate, be excluded from his age.

The Rules of 1976 have been framed by the Governor of the Punjab by deriving authority from section 23 of the Punjab Civil Servants Act, 1974 and are applicable to the recruitment of all posts. The afore-referred Rule specifically provides that period of continuous service of a Government servant shall be excluded while computing upper age limit. The above Rule does not specifically provide that it would apply to civil servants rather it is providing benefit to Government servants. Had the Rules making authority intended to extend benefit of this Rule to ‘civil servants’ only, it could have used these words in explicit terms in the said Rule. The term ‘Government servant’ connotes all Government servants including civil servants and not vice versa. Reliance is placed upon *Saleem-ur-Rehman and others v. Government of Punjab through Secretary, S&GAD, Lahore and others (1986 SCMR 747)*, *Punjab Government and others v. Saleem- ur-Rehman and others [1985 PLC (C.S.) 112]* and *Muhammad Iqbal v.*

Government of the Punjab through Secretary Education Schools, Punjab, Lahore and 4 others [2020 PLC(C.S.) 747].

8. Notification dated 23.02.2021 was issued by Government of the Punjab Higher Education Department after the approval of the Provincial Cabinet of the Punjab, which prescribed terms and conditions for the post of Registrar of Government College University and it specifically envisages that age for initial recruitment would be *40 to 50 years, with age relaxation as per Government Rules*, leaving no room for respondent-Higher Education Commission to create any distinction or non-applicability of the Rules of 1976.

9. Needless to say that general age relaxation and exclusion of period served in Government employment for the purpose of computation of upper age limit are two separate and distinct benefits / rights awarded to Government employees including contract employment. These rights can be pressed into service by Government employees seeking further employment. Rules 3(v) of the Rules of 1976 is a beneficial dispensation and is to be interpreted in a manner so as to advance the remedy. Reliance is placed upon Muhammad Qasim and 6 others v. Home Department, Government of the Punjab through Secretary, Civil Secretariat, Lahore and 2 others [2004 PLC (C.S.) 69] and Saghir Ahmad Naqi v. Government of the Punjab through Secretary Home (Prisons) Department, Lahore and another [2005 PLC (C.S.) 1409].

10. The Government College University, Faisalabad was constituted by way of the Government College University Faisalabad Ordinance, 2002 and the Governor of the Punjab is the Chancellor of the University. The Syndicate of the university includes – the Vice Chancellor (Chairperson), the Secretary to Government of the Punjab, Education Department, the Secretary to Government of the Punjab, Finance Department and the Secretary to Government of the Punjab, Law and Parliamentary Affairs

Department as Members. Autonomous Public Bodies are an emanation of the Government and are clearly a limb of the Government or even an agency of the State and recognized by and clothed with rights and duties, either by or under a Statute and thereby become extended arms of the Government. The employees of autonomous bodies are considered as officials serving in connection with the affairs of the Government and hence, can be stated to be in the service of Government i.e. Government servants.

11. It is pertinent to mention here that under Rule 2(c) of the Punjab Government Rules of Business, 2011, ‘Autonomous Body’ means a Body mentioned in Column No. 4 of the First Schedule while Rule 2(d) of the Punjab Government Rules of Business, 2011 states that “Business” means the work done by the Government. Similarly, Rule-3 deals with Allocation of Business and sub-rule (3) states that *the business of the Government shall be distributed amongst several Departments in the manner indicated in the Second Schedule*. The Government College University, Faisalabad has been mentioned as an Autonomous Body of the Higher Education Department, Government of Punjab in Entry No. (xiv) of Column No. 4 of the Serial No. 16 of the First Schedule. Moreover it is further mentioned at Serial No. 37 (xiv) under the Higher Education Department in the Second Schedule. So provision of higher education is business of the Government of the Punjab, which business is tasked to be performed by the Higher Education Department and the Government College University Faisalabad is the vehicle and tool through which such business of the Government is conducted. Furthermore, the Finance Department of the Government of Punjab is also obligated with financial supervision and oversight of the autonomous bodies (which includes the Government College University Faisalabad) as per Second Schedule.

12. Nutshell of above discussion is that petitioner being Government employee is entitled for benefit of Rule 3(v) of the

Rules of 1976 and refusal of such right is against law / rules and as such the petitioner has been discriminated. Resultantly, instant petition is **allowed** and impugned letter dated 12.11.2021 is declared to be illegal and without lawful authority. The recommendation of the Search Committee, vide letter dated 16.07.2021 shall be processed and finalized as per law at the earliest.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Sultan