

Judgment Sheet

**IN THE LAHORE HIGH COURT  
LAHORE  
Judicial Department**

**I.C.A.No.10837 of 2023**

**Akhiz.**

**Versus**

**Chief Secretary Punjab, etc.**

**JUDGMENT**

Date of hearing:

**28.02.2023**

Appellant by:

Mr. Akhiz, appellant in person.

Respondent-UHS by:

Mr. Imran Muhammad Sarwar,  
Advocate.

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**MUZAMIL AKHTAR SHABIR, J:** Through this Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called in question order dated 02.02.2023 passed by learned Single Judge of this Court, whereby constitutional petition bearing W.P.No. 70467/2022 filed by the appellant, with the following prayer, was dismissed.

*“It is therefore, most respectfully prayed that this writ petition may kindly be accepted and directions be issued to respondents No. 2 while entertaining the application of the petitioner on behalf of his real daughter namely Prastish Akhiz in the light of minority quota while its notification No. PA/AS(LM)/MISC/2020 dated 18.05.2020, and name of petitioner’s daughter may kindly be added in the minority quota after conducting MDCAT.*

*It is further prayed that the respondent No. 1 to 4 may also be directed to act upon the above said notification in its true letter and spirit to meet the ends of justice.*

*It is further prayed that during the pendency of this writ petition while restraining the respondent No. 4 for not to prepare merit list of all the students without making a separate merit list for minorities on 2% quota seats.”*

2. It is contended by the appellant that the Government of the Punjab, Higher Education Department vide Notification No. PA/AS (LM)/MISC/2020 dated 18<sup>th</sup> May 2020, has reserved 2% quota seats in Public Sector Higher Education Institutes for religious minorities under the Punjab Minorities Empowerment Package and the appellant's daughter seeks admission in MBBS programme on the basis of said quota reserved for minorities, which has been declined by the respondents without any legal justification and the learned Single Judge has also not given due consideration to the grievance of the appellant while dismissing the constitutional petition filed by the appellant.

3. On the other hand, learned counsel for the respondent-UHS states that the afore-referred quota was reserved for employment in the Higher Education Department and not in seats reserved for admission of students in educational institutions, therefore, the stance of the appellant is not justified and the learned Single Judge of this Court rightly dismissed the constitutional petition filed by the appellant.

4. Heard. Record perused.

5. The appellant through his constitutional petition sought direction to entertain application of his daughter for considering her in minority quota in MBBS admission by placing reliance on the Notification dated 18<sup>th</sup> May 2020, issued by the Government of the Punjab, Higher Education Department; the operative part of which is reproduced below:-

*"The Government of the Punjab has been pleased to approve the reservation of 2% seats in Public Sector Higher Education Institutes for religious minorities under the Punjab Minorities Empowerment Package along with direction to ensure separate merit list for minority candidates, under Rules 28 (15) & 30 to the Punjab Government Rule of Business, 2011."*

6. It is observed that the afore-referred Notification applies to recruitment to various posts and not for admission in MBBS

programme/classes, which is a very competitive process and quota of minorities for the said programme has not been yet reserved. The reservation of posts by 2% quota in various departments for religious minorities cannot be extended to admission in educational institutions on the basis of said quota as both cater to different aspects, wherein merit is maintained for admission of students to educational institutions whereas the quota is reserved in service in different departments for minorities for appointment to ensure that they get sufficient representation in service, therefore, the learned Single Judge was justified to dismiss the constitutional petition filed by the appellant by observing as under:-

*"2. The above Notification approves the reserving of 2% seats in Public Sector Higher Education Institution for religious minorities under the Punjab Minorities Empowerment Package and it also obliges the department to ensure separate merit list for minority candidates. Suffice to say that this Notification by its terms does not apply to the case of the petitioner and is applicable on recruitments being made to the Public Sector Higher Education Institution. On the other hand, the petitioner's daughter has completed her pre-medical F.Sc. Examination, 2021 from Lahore Board having studied in Kinnaird College, Lahore. She seeks admission in the MBBS Program on the basis of minority quota. Suffice to say that there is no such quota reserved for minorities for admission to medical universities and colleges in MBBS and BDS programs. This has also been affirmed by the University of Health Sciences Lahore in its letter dated 8.12.2022. The petitioner's daughter should compete on the Punjab merit list having studied in one of the best institutions in Pakistan for women. No direction can be issued by this Court in this regard and this petition is dismissed."*

7. The policy decision of the Government through afore-noted notification dated 18<sup>th</sup> May 2020 reserving 2% quota in Public Sector High Education Institutes for religious minorities under the Punjab Empowerment Package has been made applicable to candidates who apply to join government service and not for candidates who seek admission to educational institutions as students. This fact has been also affirmed by the Counsel for the respondent-UHS. Nothing has been placed on the record to show that the afore-referred notification

was extended to admissions of students in educational institutions especially MBBS and BDS students. This court cannot extend the policy decision of the government taken in service matter in Educational institutions to be applicable to admissions of students to said educational institutions or other such institutions as this Court cannot take the role of policy maker and substitute policy framed by the competent authority by policy of its own. Reliance may be placed on **2012 PLC (CS) 917 = 2011 SCMR 1864** (*Executive District Officer (Revenue), District Khushab at Jauharabad and others versus Ijaz Hussain and another*), wherein it is provided that framing of policy and rules thereunder fell in the executive domain and Court could neither assume role of policy maker nor that of a law maker. In the said case the direction of High Court to amend the recruitment policy providing for 40% marks for interview with observation that marks for interview should not exceed 25% of the total marks was set aside by the Supreme Court and it was observed that Recruitment policy framed by the Provincial Government was part of delegated legislation and its provisions could not be struck down on vague consideration of being ‘unreasonable’ or likely to be misused and only the particular act of mala fide could be challenged and struck down. Similar view has been taken in judgments reported as **2006 PSC 1284** (*Syed Muhammad Arif and others versus University of Balochistan and others*), **PLD 1975 SC 667** (*Government of Pakistan through Secretary, Ministry of Commerce and another versus Zamir Ahmad Khan*), **1978 SCMR 327** (*Zamir Ahmad Khan versus Government of Pakistan and another*) wherein it is mentioned that Court has only jurisdiction to interpret the law that Court had no jurisdiction to take the role of policy maker in the garb of interpretation.

8. Besides it is settled by now that where a thing is required to be done in a particular manner, it must be done in the said manner and not otherwise as the same would be against the intention of legislature and not sustainable. Reliance in this behalf may be placed on **2022**

**SCMR 2080** (*Mall Development (Pvt.) Ltd. versus Waleed Khanzada and others*), wherein it is mentioned that when the law provides a particular manner of doing things, they must be done in that manner or not at all. Anything done to the contrary would be illegal, ex-facie erroneous and unsustainable in law. Same principle has been laid down in judgments reported as **2021 SCMR 1979** (*Attaullah Khan versus Ali Azam Afridi and others*), **PLD 2018 SC 189** (*Muhammad Hanif Abbasi versus Imran Khan Niazi*), **2017 SCMR 1427** (*The Collector of Sales Tax, Gujranwala versus Super Asia Mohammad Din and Sons*), **2016 CLD 2025 (SC) = PLD 2016 SC 995** (*Shahida Bibi and others versus Habib Bank Limited and others*), **PLD 2013 SC 255** (*Muhammad Anwar and others versus Mst. Ilyas Begum and others*), **2014 SCMR 1015** (*Zia Ur Rehman versus Syed Ahmed Hussain and others*), **PLD 2011 SC 512** (*Khalil-ur-Rehman and another versus Dr. Manzoor Ahmed and others*) and **2007 SCMR 1086** (*Muhammad Akram versus Mst. Zainab Bibi*).

9. In view of the afore-referred position as no separate quota is reserved for admission of students belonging to religious minorities and the aforementioned notification is not applicable to the case of appellant for admission to M.B.B.S. and BDS program and the Court ordinarily has no jurisdiction to extend policy decision made for a particular purpose to any other purpose to which the same is not applicable, hence, on the basis of the principles laid down in the afore-referred judgments, this Court restrains itself from extending the notification dated 18<sup>th</sup> May, 2020 reserving 2% quota seats for employment in public sector Higher Education Institutes for religious minorities under the Punjab Minorities Empowerment Package to admissions of students to said institutes as for admission the said students cannot be treated differently from other students and have to compete on merit unless a policy is framed by the government to cater to quotas for minorities for admission of students in educational institutes.

10. There is another aspect of the matter, which needs to be addressed. The appellant has filed the titled constitution petition and the Intra Court Appeal in his own name for seeking admission of his daughter to the MBBS program on 2% quota for religious minorities without disclosing that in which capacity he is representing her. The petition and the appeal should have been filed in the name of appellant's daughter for she was the candidate who was seeking admission and if she had attained the age of majority, the appellant could have represented her as her attorney or her counsel as he is an advocate of this Court. In case she was still a minor, then the petition and appeal could have been filed in her name with the appellant being father as her next friend, however, both the said courses of action have not been adopted, rather the appellant has filed the constitutional petition and the Intra Court appeal in his own name whereas he himself is not seeking admission to the MBBS program and is not an aggrieved party in strict sense to be authorized to invoke jurisdiction of this Court. Moreover, the vires of the notification/policy or law have also not been called in question for which the appellant could claim to have *locus standi* to file the constitutional petition and appeal. Even the prayer of the constitutional petition already reproduced above shows that the appellant seeks direction to the respondents to entertain his application on behalf of his daughter, which shows that the appellant's daughter has not filed any application with the respondents for redress of grievance. The entire proceedings have been initiated by the appellant without any apparent authority to represent his daughter in the said proceedings whereas no law authorized any person to represent another without the knowledge or against the wishes of the other, for which reference may be placed on **2007 CLC 483 (Karachi)** (*Syed Imtiaz H. Rizvi versus Abdul Wahab and another*), hence, this appeal is not maintainable on the account of having been filed by an unauthorized person, lacking *locus standi*.

11. In view of what has been discussed above, the impugned order, whereby constitutional petition filed by the appellant has been dismissed, is well-reasoned and does not suffer from any illegality or jurisdictional defect for this Court to interfere in the same.
12. For what has been discussed above, this Intra Court Appeal being devoid of any force is **dismissed**.

**(CH. MUHAMMAD IQBAL) (MUZAMIL AKHTAR SHABIR)**  
**JUDGE JUDGE**

*\*Zeeshan Khan\**