

Order Sheet
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN
Judicial Department

W.P. No.12771 of 2024

Muhammad Zaman

Vs. Government of Punjab, etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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07.11.2024. Ms. Shahnaz Saeed Qazi, Advocate for petitioner.
 Malik Masroor Haider Usman, Assistant Advocate General.
 Ali Niaz, Law Officer, PPSC.

Petitioner seeks benefit of appointment under Rule 17-A of Punjab Civil Servants (Appointment & Conditions of Service) Rules 1974 (Rules, 1974), claims right to be considered for appointment, statedly accrued before the omission of Rule 17-A of the Rules, 1974 vide Notification No. SOR-III(S&GAD)2-60/2024 dated 26.07.2024. Pursuant to the order dated 04.11.2024, relevant documents are provided, wherefrom it transpired that invalidation certificate of petitioner's father was affirmed on 21st December 2023. Notably, process for considering petitioner for the purposes of appointment under Rule 17-A of the Rules, 1974 had commenced before omission of Rule 17-A *ibid*, took effect.

Grievance alleged is that despite entitlement to be considered and fulfilling all conditions, grant of 10% marks had been denied by Punjab Public Service Commission (PPSC) upon giving retrospective effect to the omission of Rule 17-A of the Rules 1974. PPSC regretted petitioner's request for grant of additional marks.

2. Question of law involved is whether PPSC's interpretation of the omission of Rule 17-A of the Rules 1974 is lawful, which read and enforced it retrospectively. This Court already held that retrospective effect could not be extended to the Notification of the omission of Rule 17-A of the Rules 1974, while deciding constitutional petition, vide order of 14.10.2024, in the case bearing W.P. No.13444/2024 titled "**SYED NOOR-UL-HADI SHAH VS. GOVERNMENT OF PUNJAB, etc**".

3. Upon perusal of Rule 17-A of the Rules 1974, it appears that entitlement for grant of additional marks was provided therein, which was denied by giving retrospective effect to an omitted rule. Entitlement for additional marks is apparently available, subject to the conditions prescribed.

4. Learned Law Officer opposed this petition, who read few paragraphs from recent decision of Hon'ble Supreme Court of Pakistan of 26.09.2024 – which was announced in open Court on 18.10.2024 – passed in case bearing ***Civil Petition No.3390 of 2021***, titled **"General Post Office, Islamabad & others Vs. Muhammad Jalal"**(*2024 SCP 358*), to emphasize that concession(s) extended in the nature of Rule 17-A appointments were declared discriminatory and respective governments were directed to withdraw all such policies / rules, etc. Decision is examined, which had not declared Rule 17-A of the Rules, 1974 *void ab initio* or invalid from inception – from the date it was introduced by the Government. Evidently, Government of Punjab had issued Notification of omission of Rule 17-A of the Rules 1974 even before hearing of referred case on 26.09.2024, which was announced in open

court on 18.10.2024. How could this court extend retrospective effect to the Notification of omission of Rule 17-A, when no such intention was evident from the Notification, whereby the delegatee / rule making authority had given prospective effect to such Notification. In these circumstances, element of retrospectivity could not be read into or extended to the Notification – such is not the scope and extent of judicial review jurisdiction, i.e., to read words in the Notification or to provide something, not intended to be there in the first place. There is no cavil that judgments, unless given retrospective effect qua enforceability, are prospective. No retrospectivity could be extended to the ratio settled in the case of General Post Office, Islamabad & others (supra). Effect of repeal in terms of section 4 of the Punjab General Clauses Act 1956 cannot be overlooked while attending to the grievance of the petitioner.

5. In view of the above, it is reiterated that retrospective effect extended to the Rule 17-A of the Rules 1974 by PPSC constitutes misreading of the law, an error apparent, which erroneous interpretation is declared infective and of no legal effect. Simultaneously, the scope of judicial review jurisdiction is clear, which cannot be extended to embark upon determination of eligibility claimed by the petitioner, for the purposes of considering right to be considered for appointment under Rule 17-A of the Rules, 1974. This, undoubtedly, is the domain of the authority(ies) concerned, including PPSC.

6. This petition is **disposed of** with the direction to respondent No.2 to re-visit the case of the petitioner by giving prospective effect to the omission of Rule 17-A

of the Rules, 1974; and consider petitioner's entitlement qua additional marks in accordance with the conditions prescribed and limitations provided in terms of Rule 17-A of the Rules, 1974.

(Asim Hafeez)
Judge

M.S.Aleem

Approved for reporting.

Judge