

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Mian Saqib Nisar
Mr. Justice Amir Hani Muslim
Mr. Justice Iqbal Hameedur Rahman

Civil Appeals No. 1213 & 1214/2015.

(On appeal against the judgment dated 28.05.2014
passed by the Peshawar High Court, Peshawar,
in W. Ps. No. 3857 & 4423/2010)

Govt. of KPK through Chief Secretary,
Peshawar, etc.

(in both cases)

Appellant(s)

Versus

Hayat Hussain, etc.

(in C. A. 1213/2015)

Abdul Basir, etc.

(in C. A. 1214/2015)

Respondent(s)

For the Appellant(s)
(in both cases):

Mr. Waqar Ahmed Khan, Addl. AG.

For the Respondent(s):

In-person.

Date of Hearing:

25.02.2016.

JUDGMENT

Iqbal Hameedur Rahman, J: - Through this single judgment, we intend to decide the listed appeals. The instant appeals are directed against the judgment dated 28.05.2014 passed by the Peshawar High Court, Peshawar, in W. Ps. No. 3857 & 4423/2010 whereby the said petitions filed by the respondents have been accepted.

2. Through the above mentioned writ petitions, the respondents had sought a declaration that orders dated 18.08.2010, 09.09.2010 & 04.10.2010 be declared as illegal, unconstitutional, without lawful authority, ultra vires to their rights and based on malafides and also sought that a direction be given to the appellants to proceed with the process as per the advertisement dated 20.07.2010. The precise facts are that the appellants requisitioned 53 posts in BPS-17 in the Provincial Management

Service (PMS). The said requisition was forwarded to the Khyber Pakhtunkhwa Public Service Commission (hereinafter to be referred as “the Commission”), who thereafter advertised the said posts on 20.07.2010. Pursuant to the advertisement, the respondents, Hayat Hussain, Superintendent, KPK Public Service Commission, Peshawar, and Abdul Basir, Office Assistant, Board of Revenue, KPK Peshawar, applied under 10% reserved quota for ministerial staff as per the Provincial Management Service Rules. Later on vide order dated 18.08.2010 it was conveyed by the KPK Establishment Department to the Secretary of the Commission that the matter with regard to 10% reserved quota in PMS (BPS-17) had been examined by the KPK Establishment Department and it is clarified that the same is meant only for ministerial staff serving in the Administrative Departments of KPK Civil Secretariat excluding the employees of attached departments/subordinate offices. The said letter was followed by another letter dated 09.09.2010 wherein it was intimated to the Commission that requisition of 53 posts of PMS officers (under 10th in-service quota) is withdrawn by issuing notification dated 04.10.2010 through which Khyber Pakhtunkhwa Provincial Management Service Rules, 2007 (hereinafter to be referred as “the Rules”) have been amended and 10% reserved quota had been restricted to persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks borne on the cadres strength of Secretariat who possess post graduate qualification from a recognized University with at least five years service as such. The said orders and notification gave rise to a grievance to the respondents, who being employees of attached departments and who have been excluded from 10% reserved quota as previously provided in the Rules as such they had challenged the said

orders and notification before the High Court by filing writ petitions contending therein that discriminatory treatment is being given to the them in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, as they were performing the same functions as that of Secretariat employees as such they cannot be excluded because they fulfilled the qualification and experience. The High Court took their contentions into consideration and vide impugned judgment held that they being similarly placed persons have been treated differently as such it constituted a sheer discrimination and further held that it was not a case where rules have been challenged by a person in service rather it was a case where blessings have been given to a class of employees by depriving others through special amendment introduced in the Rules in the garb of interpretation and misinterpretation of rules, which smacks of malafide on the part of the appellants and accordingly struck down the notification dated 04.10.2010 and restored earlier rules framed in the original form as per rule-3 of Schedule-I of the Rules, which entitled the respondent to compete on 10% reserved quota on the basis of competitive examination to be conducted by the Commission from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government. Being aggrieved, the appellants approached this Court by filing Civil Petitions No. 442-P & 443-P/2014 wherein leave was granted vide order dated 20.11.2015, the relevant portion therefrom is reproduced herein below: -

“ The learned Additional Advocate General appearing on behalf of the petitioners contended that it is well beyond the domain of jurisdiction

of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan to sit in judgment over the vires of the rules or notifications in view of the judgment rendered in the case titled I. A. Sharwani vs. Government of Pakistan (1991 SCMR 1041) and that the High Court could not impute mala fides to the legislature when there was absolutely nothing on the record as could even remotely suggest that the rules were amended to benefit one and impair the rights of the other.”

3. It would be pertinent to reproduce here the relevant portions of the Rules prior to amendmnet as provided in Schedule-I: -

S. No.	Nomenc lature of posts	Minimum qualificatio n for appointmen t by initial recruitment	Age limi t for initi al recr uitm ent	Method of recruitment
1	2	3	4	5
1	PMS (BS-17) as per detail at Schedule -II	2 nd Division Bachelor Degree from a recognized University.	21-30 year	<div><div>1)</div><div>Fifty per cent by initial recruitment on the recommendations of the Commission based on the result of competitive examination to be conducted by it in accordance with the provisions contained in ³Schecule-VII.</div><div>2)</div><div><div>Subject to rule7, by promotion in the following manner:</div><div><div>(a)</div><div>twenty percent from amongst Tehsildars, who are graduates, on the basis of seniority-cum-fitness, having five years service as Tehsildar and have passed the prescribed Departmental Examination; and</div><div>(b)</div><div>twenty percent from amongst the Superintendents/Private Secretaries on seniority-cum-fitness basis, who are graduate and have undergone a training course of 9-weeks at the Provincial Management Academy/Provincial Staff Training Institute. A joint seniority list of the Superintendents and Private Secretaries shall be maintained for the purpose of promotion on the basis of their continuous regular appointment to the respective posts.</div></div></div><div>3)</div><div>Ten percent by selection on merit, on the basis of competitive examination, to be conducted by the Commission in accordance with the provisions contained in ⁴Schedule-VII, from amongst persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government.</div></div>

That according to the original Rules, 10% of selection on merit on the basis of competitive examination was to be made from amongst the persons

holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government. From the perusal of the same it is apparent that the same had not been restricted only to Secretariat employees. The Rules have been amended through notification dated 04.10.2010, which reads as under: -

“ GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Date Peshawar, the 04.10.2010

NOTIFICATION

No. SOE-II(ED) 2(14)/2009: In exercise of the powers conferred by Section 25 of the North-West Frontier Province Civil Servants Act, 1973, (NWFP Act No. XVIII OF 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendments shall be made, namely:

AMENDMENT

In Schedule I, against Serial No. 1 in Column No. 5 for Clause (3) the following shall be submitted, namely:

- (3) Ten per cent by Selection on merit, on the basis of competitive examination to be conducted by the Commission in accordance with the provisions contained in Schedule VII, from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at-least five years service as such.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA”

By virtue of the above mentioned amendment, the respondents being employees of attached departments have been excluded to be eligible for 10% quota selection on the basis of competitive examination.

5. The learned Additional Advocate General for the appellants argued that the said amendment had been made in order to clarify that appointments to the posts of PMS (BPS-17) in 10% quota was meant only for the ministerial staff of the Secretariat so as to encourage talented lower

staff. Moreover, the respondents could still compete in open merit as such there was no discrimination. He further argued that the appellants were duly competent to amend the Rules and the Rules were amended strictly in accordance with law.

6. On the other hand, the respondents appearing in-person submitted that through the amendment they were deprived of their right. They further submitted that the Secretariat employees are already covered under Schedule-I subsection 2)(b) for promotion as such the 10% quota actually meant for other attached departments.

7. In the facts and circumstances of the case and in the light of the arguments advanced by the learned Additional Advocate General as well as the respondents in-person, it is to be considered whether amendment in the Rules could be effected by the Government regarding restricting the reservation of 10% quota only for ministerial staff of Civil Secretariat KPK and whether it is justifiable, secondly, whether amendment was malafidely made in order to exclude and deprive the respondents from future prospects of their promotion moreso when they are performing the same functions and duties as such whether it is a discrimination and do the respondents have a vested right to challenge the same. In the above perspective, whether the High Court has the jurisdiction in the matter to strike down rules relating to Civil Servants regarding their appointment and promotions and amendments made therein. The stance of the appellants is that amendment in the relevant provisions of the Rules was quite justified as the employees of attached departments get sufficient chances of promotion in their cadres against the quota reserved specifically for them under their respective service rules, whereas the employees of Civil Secretariat cannot appear in those examinations, for instance the Sub Accountants in the District Accounts Offices accorded promotion after qualifying SAS examination.

Similarly, the Junior Instructors (BS-14) of Technical Education Department with diploma of Engineering i.e., equal to FA/F.Sc are promoted to BS-17 within 5 to 10 years period. Likewise, Sub-Engineers (BS-11) of C&W, PHE and Irrigation Department having B.A. degree are considered or accelerated promotion to the post of Assistant Engineer (BS-17) after qualifying the departmental exam prescribed under their respective service rules, as such the respondents are entitled to get further promotion to the post of PMS BS-17 in their own service cadre. Further justification given by the appellants was that the ministerial staff of Civil Secretariat is transferable in different departments of Civil Secretariat which make them well acquainted with the nature of job of PMS Officers. Whereas, the employees of other departments/cadre are experts in their own field and their job profile is quite different from that of PMS Officers. Thus reserving 10% quota for ministerial staff of Civil Secretariat is justified as these posts cannot be used as learning place for others.

8. It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down as held by this Court in the case of **The Central Board of Revenue, Government of Pakistan vs. Asad Ahmad Khan** (PLD 1960 SC 81), the relevant portion therefrom is reproduced herein below: -

“ In our opinion the High Court made the above order without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the Inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time the pay scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. In the circumstances it cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ.” (emphasis supplied)

As far as the contention of the respondents that the rules could not be changed to affect them adversely is concerned, the said proposition has also been settled by this Court in the case of **Muhammad Umar Malik and others vs. Federal Service Tribunal and others** (PLD 1987 SC 172), wherein the proposition that the rules of promotion could not have been changed so as to affect adversely those already on the eligibility list i.e., combined list of U.D.Cs and S.G.Cs, was repelled by observing that, “*No such vested right in promotion or rules determining eligibility for promotion exists*”, and held as under: -

“ Mr. Abid Hasan Minto, Advocate, when called upon to address arguments on merits, urged that the rules of promotion should not have been changed so as to affect adversely those already on the eligibilities list i. e. the combined list of the U.D.Cs. and S.G.Cs. In other words he was claiming a vested right in promotion for all the U.D.Cs. borne on the joint cadre on the date of its separation. The position of law on the subject is clear in view of numerous decisions of this Court, *e.g. Government of West Pakistan v. Fida Muhammad Khan (1) Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (2), Province of West Pakistan v. Muhammad Akhtar (3), Manzur Ahmad v. Muhammad Ishaq (4)*. No such vested right in promotion or rules determining eligibility for promotion exists.”

9. In the facts and circumstances of the case and in the light of the case law cited above, it is quite apparent that the advertisement earlier made had subsequently been withdrawn and thereafter an amendment was made in the Rules and as yet the respondents have not appeared either in the examination or in any interview or selection, therefore, there appears to be no vested right created in their favour, and accordingly any change made in the Rules cannot furnish a cause to the respondents. Moreover, the amendment was made in the Rules in order to clarify certain anomalies, which had duly been taken care of, as such no malafide can be attributed to the Government and as per the settled principle the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the Government which does not warrant interference by the Courts. Resultantly, these appeals are allowed and the impugned judgment of the High Court is set aside.

Judge

Judge

Judge

ISLAMABAD
25.02.2016
(Farrukh)

Approved for Reporting.