

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali

Mr. Justice Ejaz Afzal Khan

Mr. Justice Mushir Alam

Civil Appeal No.1184 of 2011

Against judgment dated 14.01.2011 of
Federal Service Tribunal, Islamabad passed
in Appeal No.325(P)CS/2010.

Mst. Basharat Jehan

Appellant(s)

VERSUS

Director General, Federal Government Education,
FGEI (C/Q) Rawalpindi & others

Respondent(s)

For the Appellant(s): Mr. Ghulam Nabi Khan, ASC

For the Respondent(s): Mr. Sajid Ilyas Bhatti, DAG

Date of Hearing: 11.07.2014

JUDGMENT

MUSHIR ALAM, J- Instant Civil Appeal is pursuant to
leave granting order dated 7.12.2011 which reads as follows;

"Inter alia contends that the learned Service Tribunal did not appreciate that in terms of Chapter II of National Command Authority Rules, para 7 (k), for initial appointment, the age prescribed was "not be less than 18 years or more than 35 years of age". However, it was specifically stipulated therein that the said limit "may be relaxed in exceptional cases upto the maximum of forty five years by the Competent Authority as mentioned in the Delegation of Powers".

2. Having heard petitioner's learned counsel at some length, leave is granted inter alia to consider whether while dismissing petitioner's appeal, the learned Tribunal considered the afore-referred."

2. Facts that form basis for the above order appear to be that Appellant aggrieved by judgment dated 14.1.2011 passed by the Federal Service Tribunal, Islamabad, whereby Service appeal filed by the Appellant, challenging her removal from service vide order dated 20.3.2010 under Removal of Service (Special Power) Ordinance, 2000 (*herein after referred as RSO, 2000*) on the ground of misconduct for allegedly not providing the proof of relaxation in age limit as required in her appointment letter dated 14.07.2007.

3. In response to advertisement in news papers dated January 2007, Appellant applied for the position of Assistant Librarian (BPS-09). Beside other educational qualifications, upper age limit for the said post in the advertisement was 35 years. Last date for the application was 31.01.2007.

4. Appellant applied for the said post, she appeared and qualified the written test, which was held on 18.2.2007. She appeared in interview and was selected on merits. She was issued appointment letter dated 14.07.07 and accordingly joined the Federal Government Girls High School, Risalpur, along with her joining she furnished certificate of age relaxation to the School, per certificate at (page-60). After joining the School, her qualifications were also got verified on 11.8.2007 (Page-61). It is the case of the appellant, that to her utter surprise she received a letter dated 21.9.2007 notifying cancellation of her appointment on the ground of being over aged. Appellant challenged the order before the Federal Service Tribunal. The Service Tribunal vide its order dated 2.2.2010 set aside the termination order being against the principle of natural justice and without any show cause notice.

5. Appellant was accordingly issued another Show Cause Notice dated 20.2.2010 on the same ground as mentioned in preceding paragraph. Appellant in response relied upon Notification dated 28.11.2011 whereby age was generally relaxed by 05 years over and above 35 years of age as advertised against said post. She was however removed from services, under RSO, 2000, which order was also challenged through impugned Judgment dated 14.1.2011 passed by

learned Federal Service Tribunal, whereby her Service Appeal was dismissed.

6. Learned ASC for the appellant, contended that as per appointment letter dated 14.7.2007 of which condition No.(d) and (f) are relevant reads as follows:

"d. The appointee will have to provide age relaxation proof (covered under the Federal Government age relaxation Policy) in case he/she is born before 01.08.1978.

f. The appointees will draw pay/allowances as fixed by the Federal Government and will be regulated by such rules/orders as are in force or may be made by the Federal Government/Department from time to time." (underlined to emphasize).

7. It was urged by the learned ASC for the Appellant that qualifying age against the subject post of Assistant Librarian (BPS-09), was clearly mentioned in the advertisement as 35 years, which was also as per Notification issued under Civil Servant (Appointment, Promotion and Transfer) Rule, 1973 dated 3rd June 2004, whereby age limit was revised from 25 years to 35 years (Page-62 Of the file).

8. It was urged that the Appellant was of 37 years of age at the time of applying for said position and was entitled for general relaxation of 05 years of age as per Government Policy, which was applicable on all the department under the Federal Government, under Office Memorandum No.F.9/2/9 R5 dated 28th November, 2000. It was further urged that one Shahnaz Parveen appointed as M.TT was 39 years of age at the urdu medium Girls Middle School, Malir Cantt, Karachi was also appointed and no exception to her being over aged was taken, thus Appellant is being discriminated.

9. It was argued by the learned ASC for the appellant that in the first place no relaxation in age was required in view of the policy decision of the Federal Government, through Memorandum mentioned herein. It was next urged that if it was required, such was submitted at

the time of joining and so also alongwith reply to Show Cause Notice (Page-40). It was stated that the policy decision as to age relaxation was being followed by various departments under the Federal Government, including Federal Directorate of Education/Respondents. To buttress his arguments he has drawn our attention to various advertisements including those issued by respondents for the similar post for subsequent years to show that maximum age for the appointment to various position including BPS-09, to which post the Appellant was appointed as per condition No.6 thereof is 35 years and it was specifically mentioned *"maximum age limit is 35 years, as per government policy relaxation of 05 years is given, therefore all such persons who are 40 years of age on the cut of date of application"*, copies of such advertisements are available at pages No.44, 45, 46 and 47. It was argued that Federal Service Tribunal did not advert to such aspect of the matter, which rendered the impugned judgment erroneous.

10. Mr. Sajid Ilyas Bhatti, learned DAG urged that the maximum age for the subject position was 25 years and after giving relaxation of 05 years therefore for the subject post age was 30 years. According to him last date for the receipt of the applications is 31.01.2007, appellant was 37 years 04 months and 14 days. Therefore, on the date of application, she was over aged and was nor eligible for the appointment without obtaining age relaxation from the competent authority as required, which she failed. According to learned DAG, appellant was rightly removed from services.

11. When attention of learned DAG was drawn to the order of this Court dated 05.09.2013 which reads as follows;

"We have heard learned counsel for the appellant and learned Deputy Attorney General at some length. Learned Deputy Attorney

General has not been able to respond as to how the appellant was overage because admittedly she was 37 years of age at the time of appointment and in terms of the advertisement issued in the newspaper the maximum age limit was 35 years but there was relaxation of five years in terms of the notification No.F.9/2/9 R5 dated 28.11.2000. Let the concerned official of the Ministry of Defence not below the rank of a Joint Secretary appear in Court for a date in the week commencing from 16.09.2013." (Underlined to add emphasis)

12. In response he has drawn our attention to Cabinet Division's decision dated 10.9.1997 and Notification dated 13.02.2013, respectively made available through CMA.No.2105 of 2014 whereby, through first mentioned decision; the management and control of Educational Institutions which include Schools and Colleges in Cantonment and Garrison, now vest in Director Army Education, GHQ. And as per later Notification dated 13.02.2013, qualifying eligibility for the Librarian is 05 years experience as Assistant Librarian (BPS-09). He has attempted to show by comparative chart placed on record through referred CMA that originally age for the advertised position was 25 years and giving benefit of the subject notification it was 30 years, but in the advertisement by typo error it was mentioned as 35 years, as such petitioner cannot be extended further age relaxation. According to learned DAG, since 10.9.77 Control and management of all the School and Colleges in Cantonment and Garrison have been transferred to the DAE, GHQ Rawalpindi therefore all appointments, transfer and posting are to be carried out under such directive.. It may be noted that such placement of Schools and Colleges under the Administrative and Management control of the Respondents would not them take them out of the pale of Department of Federal Government; and would be bound by all the policy directive. It is not the case of the Respondents that Respondents have become autonomous body and therefore not bound by the directives of the Federal Government.

13. The documents as relied upon in the CMA 2105/14 do not answer any quarry raised in the order reproduced in the preceding paragraph nor, as noted in the leave granting order as noted in the opening part of this judgment. Learned DAG admits that the age given against the advertised post of Assistant Librarian (BPS-09) was mentioned in the advertisement was 35 years. It was also admitted that no corrigendum to such purported error was issued. Learned DAG though state that age relaxation of 05 years was given by the Federal Government, but according to him it was already extended to the Petitioner and no further age relaxation is possible.

14. As it could be gleaned from the record and as per Notification dated 28.11.2000, referred to in the order of this Court, noted above, age was revised and all the departments of the Federal Government were required to specifically mention such fact in the advertisement. As noted, in various advertisements placed on record, such fact finds mention. Relevant paragraph of the notification reads as follows: -

"The maximum age limit prescribed or initial appointment under any rules for the time being in force shall be relaxed for a period of five years.

2. the above cited relaxation is with reference to the upper age limit prescribed in the recruitment rules of posts made under sub rule (2) of rule 3 of the Civil Servants (Appointment, promotion and Transfer) Rules, 1973 and is not applicable to the case of competitive Central Superior services Examination conducted by the Federal Public Service commission.

3. All ministers/Divisions/Departments and the Federal public Service commission are, therefore, requested to clearly indicate in their advertisements that government has allowed general relaxation upto five years over the age limit prescribed in the recruitment rules of posts and given in the advertisement."

15. As noted in the narrative above, as per Notification issued under Civil Servant (Appointment, Promotion and Transfer) Rule, 1973 dated 3rd June 2004, original age limit fixed for the appointment to the post of BPS-09 was 25 years, which was revised to 35 years. In this view

of the matter it cannot be said that she was over aged as she did not obtained age relaxation, as none was required. As noted above, if there was any lapse it was on the part of the Respondents. If the Notification/memorandum as noted above had gone unnoticed by them, it is not the fault of appellant. It is not the case of the Respondents that she procured the appointment letter through dubious means. Since appellant cannot be attributed any wrong on her part, respondents cannot be allowed to take benefit of their own oversight, lapse or ignorance of law (i.e. Notification/Memorandum of relaxation of general age dated 28.11.2000).

16. The representation of the Appellant was dismissed on the ground *inter-alia*, that the qualifying age was wrongly mention in the advertisement as 35 years instead of 25 neither can be attributed to the appellant, nor any corrigendum was published in the newspapers to such an effect. Such position, taken now appears to be an after-thought. Appellant as noted above had joined the services after appearing in the qualifying test and so also qualified the interview. From the date of application dated 31.01.2007 till letter dated 14.07.2007 calling upon her to join and take charge on 1.8.2007 for seven months it did not occurred to the Respondents that she is over aged by two years (37.years) as against the age of 35 as advertised. We have also noted that in terms of Chapter-II of National Command Authority Rules,; para 7(K) for initial appointment the age prescribed was "*not less than 18 years or more than 35 years of age*". However it was specifically stipulated therein that the said limit "*may be relaxed in exceptional cases upto 45 by the competent authority as mentioned in the Delegation of Powers*" said Notifications/Policy directives were neither considered by the respondents nor by the Service Tribunal.

17. Appellant served the Respondent-department to the satisfaction of the authority. It is not the case of the Respondents that the appellant did not possessed the required qualification for the relevant post of Librarian and or that she did not serve the department to their satisfaction. She had applied for the advertised post giving her full particulars, including her qualification and age. Even if it is presumed that the competent authority over sighted her age, it would be deemed to have been relaxed in exercise of power vested in the Authority. There is no denial that one Shehnaz Parveen was also appointed as MIT in a school at Malir, Karachi was of 39 years of Age and no exception to her being over age was taken. If that be the case, Appellant is justified to urge that she has been discriminated. since she was issued joining letter on 14.7.2007 she joined the school at Risalpur on 1.8.2007 as required. At the time of joining she submitted the age relaxation certificate at the time of joining the School, such certificate to such effect was placed on record (page-59).

18. Under these facts and circumstances a right had come to vest in the appellant on issuance of appointment letter and more so after joining the service. In the case of Ghulam Murtaza v. Federation of Pakistan (2011 PLC (CS) 709) passed by learned Division Bench of Sindh High Court placing reliance on the case of Jabbar Malik v. Province of Sindh and others, last mention judgment was also upheld by this Court in Civil Petition No.426-K to 436-K of 2008, it was held that once a person is appointed after fulfilling all the codal formalities, appointment letter is issued, it was held that a vested right is created and appointment letter could not be withdrawn. Similar view was taken in the earlier decision of the same Court by another learned Bench

reported as Muhammad Farooq m Memon v Government of Sindh (1986 CLC 1482).

19. As noted, above, general benefit of age relaxation extended to the employees of the Federal Government across board and extend to all departments under the Federal government pursuant to any policy decision cannot be denied on the assumption that particular department is not bound by such decision as it has its own rule. Such course is dangerous and amounts to challenge the authority of Federal Government, which course is not approved. Nothing was brought on record to show that such directive/policy decision expressed through Memorandums/ Notifications were not applicable to the respondents. Age relaxation of upper age limit for the direct recruitment to the advertised Post (of Librarian BPS-09) in the Directorate of Education in GHQ, which is also under the Federal Government, has not been denied by the respondents such benefit cannot be denied without any justifiable reason, which regretfully was not brought to the notice of this Court.

20. Once a right is accrued to the appellant by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of *locus poenitentiae*, well recognized and entrenched in our jurisprudence (One may refer to Director, Social Welfare, NWFP, Peshawar v. Sadullah Khan (1996 SCMR 1350).

21. In view of the forgoing reasons impugned judgment of Federal Service Tribunal (FST) dated 14.01.2011 is set aside and Civil Appeal is allowed in following terms: -

- (i). Appellant shall be given joining within one month from date of receipt of copy of this judgment.
- (ii). Seniority will be counted from the date of appointment letter dated 14.07.2007.
- (iii). However, no back benefit will be extended to the appellant for the period she remained out of office one month from the date of this order.

Judge

Judge

Judge

Islamabad, the

11th July, 2014

Not approved for reporting

Sarfraz Ahmad/*