

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed  
Mr. Justice Qazi Faez Isa  
Mr. Justice Maqbool Baqar

**Civil Petition No.29 of 2017**

[On appeal against the judgment dated 17.11.2016 passed by the Peshawar High Court, Peshawar, in Writ Petition No.1032-P of 2016]

***Muhammad Aamir Khan*** *...Petitioner(s)*  
***Versus***  
***Government of KPK through Senior Member*** *...Respondent(s)*  
***Board of Revenue, KP & others***

For the Petitioner(s) : Mr. Muhammad Iqbal Khan Mohmand, ASC

For Respondents No.1-5 : Mr. Zahid Yousaf Qureshi, Addl.A.G. KP  
For Respondents No.6-7 : Nemo

Date of Hearing : 24.04.2019

**JUDGMENT**

**GULZAR AHMED, J.**— The petitioner is aggrieved by the impugned judgment dated 17.11.2016 passed by the learned Division Bench of the Peshawar High Court, Peshawar, by which the Writ Petition No.1032-P of 2016 was dismissed.

2. We have heard Mr. Muhammad Iqbal Khan Mohmand, learned ASC for the petitioner and have also gone through the record.

3. The petitioner has filed Writ Petition with a prayer that he having passed Patwar Examination, 2009, and his name having been brought on the register of pass patwar candidates, his appointment as Patwari could not have been denied on the ground of over age while allowing such appointments to his colleagues/ juniors mentioned in the partwar list. Learned ASC for the petitioner has contended that though vide notification dated 01.10.2010 upper age limit for the post of Patwari was extended to 35 years by amending existing NWFP Revenue & Estate Department (Tehsildar, Naib-Tehsildar/Subordinate Revenue

Service) Rules, 2008 (**RED Rules**), but contended that these rules were further relaxed and in this respect made reference to the NWFP Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 2008 (**Amending Rules**). So far this submission of the learned ASC for the petitioner is concerned, the notification dated 01.01.2010 reads as follows:

"GOVERNMENT OF NWFP  
REVENUE & ESTATE DEPARTMENT

Dated Peshawar the 01.01.2010

NOTIFICATION

No.\_\_\_\_\_/Admn:VII/A. Relaxation      In pursuance of the approval by the Chief Executive NWFP and in exercise of the Powers conferred by Section -26 of the NWFP Civil Servants Act, 1973 read with this Department Notification No.32102/Admin:I/135/SSRC, dated 26.12.2008, the following amendment in the NWFP Revenue & Estate Department (Tehsildari, Naib Tehsildari/Subordinate Revenue Service) Rules, 2008 (Patwari S.No.8 Appendix):-

AMENDMENT

The Upper Age limit for the post of Patwari is extended to 35 years by amending the existing NWFP Revenue & Estate Department (Tehsildar, Naib Tehsildar/Subordinate Revenue Service) Rules, 2008 (Patwari S.No.8 Appendix) once for all. And no provision for age relaxation over 35 years will be allowed under any circumstances by any Authority.

Sd/-  
Senior Member  
Board of Revenue"

This amendment as noted above, was specifically made in the RED Rules, which specifically apply to the case of patwaris. Amending Rules apparently have no application to the patwaris as the same are applicable to general employees of the provincial government. Thus, these rules having no application in the case of the petitioner, the relaxation of upper age as mentioned in these rules, relates only to the initial appointment of the general employees of the province.

4. The learned ASC for the petitioner then referred to the order dated 06.12.2017 passed by a Division Bench of the Peshawar High Court, Peshawar, in Writ Petition No.4867-P of 2017 and also an order dated 05.10.2018 passed by another Division Bench of the same High Court in Writ Petition No.1199-P of 2018 to contend that as the petitioners in these two writ petitions have been appointed as Patwaris despite they being over

age in terms of notification dated 01.01.2010 beyond the one allowed by the notification, the petitioner be also granted similar relief. Before we deal with the question, we would like to reproduce below the relevant para of the impugned judgment wherein the High Court has dealt with the relevant laws in the matter of making appointment of Patwaris and the age relaxation to be granted to them:

*"5. In view of the respective stance of the parties, passing of Patwar Examination by the petitioner in 2009 and consequent entry in the relevant Patwar Register maintained by the Deputy Commissioner, pursuant to Chapter-3 Part-II Para 3.6 of the Land Record Manual is undisputed. Ibid para explicitly provides method of recruitment/appointment of Patwari which for ready reference is reproduced as follows:-*

*3.6 List of Patwar pass persons:(1) For each Sub-Division, a list of all Patwar Pass persons shall be maintained by the Sub-Divisional Collector/Political Assistant in Form P-I given in Appendix 'G' with a view to have ready information about the availability of eligible persons in the Sub-Division to facilitate filling up the vacancies. However, the appointment of Patwaris shall be made strictly in accordance with the Service Rules and the Recruitment Policy as may be applicable at the relevant time.*

*(2) Maximum educational qualification for the Patwari is Matric/Secondary School Certificate. The name of only those persons shall be enrolled, who are bona fide residents of the concerned Sub-Division.*

*(3) The names of the eligible persons shall be added to the list as and when the result of the Patwar Examination is received and no eligible person shall be refused enrolment.*

*(4) The aforesaid list shall be verified and updated by the Collector concerned at least once in a years so as to exclude the name of those, who have become un-available on account of death, migration, employment on any other post, etc.*

*(5) A separate list of Patwar Pass persons belonging to Cholistan area will be maintained by the Colonization Officer concerned to meet the requirements of the organizations."*

*6. Para-3.6(1) provides in unequivocal terms appointment of Patwari shall be made strictly in accordance with the Service Rules and the Recruitment Policy as may be applicable at the relevant time which is of great significance for the purpose of instant petition. It is an admitted fact that petitioner at the time of convening the Departmental Selection Committee Meeting was over age by six months. While maximum age for appointment of Patwari has been extended to 35 years, vide Notification dated 01.01.2010 which is sufficient relaxation for the purpose of appointment, as compared to other departments. While extending age limit, it is further provided in the same notification that no provision for age relaxation over 35 years will be allowed under any circumstances by any authority. By inserting a condition, the competent authority has once for all extended the maximum age limit, for all and sundry, which is applicable without seeking any age relaxation from any concerned quarter. Further embargo has been placed on*

*the authority against age relaxation including the age relaxation Rules.*

*7. Learned counsel for petitioner tried to make out a case of discrimination that one Asad Zaman has been appointed by extending him benefit of age relaxation. It appears that in that case Notification dated 01.01.2010 issued by the Senior Member Board of Revenue KPK was not brought in the notice nor was considered. Hence a wrong precedent cannot be made basis for agitating a right because two wrongs cannot make one right. It is settled law that things are required to be done as prescribed by law and rules on the subject and not otherwise."*

5. Thus, we note that the impugned order dated 17.11.2016 being in the field, there is no mention of the same in the orders dated 06.12.2017 passed in the Writ Petition No.4867-P of 2017 and 05.10.2018 passed in Writ Petition No.1199-P of 2018, rather it appears that while passing the order dated 05.10.2018 in Writ Petition No.1199-P of 2018 the Bench has squarely relied upon the order dated 06.12.2017 passed in Writ Petition No.4897-P of 2017. The grave aspect of the matter that has really astonished us during the course of hearing was that Mr. Muhammad Iqbal Khan Mohmand, learned ASC for the petitioner in the present petition has also appeared before the High Court in the said Writ Petitions. There is no presence of respondents' counsel in the order nor anything written in the said order that respondents have filed any reply or even notices to the respondents have been issued by the Court. The Court in the said Writ Petitions mainly on the basis of facts, as mentioned before it, has proceeded to dispose of the petitions by granting relief to the petitioner in the Writ Petition of relaxation of age beyond the one as provided in the notification dated 01.01.2010. In the entire body of the orders of the High Court no law or rule appears to have been considered on the basis of which the petitioners in the said petitions were claiming relief and the Court passed order merely on the asking of the petitioners in the Writ Petitions without bothering to note or examine as to whether the petitioners were at all entitled to the relaxation of upper age limit or not under the relevant law and the rules made thereunder. Even the notification dated 01.01.2010 was not considered. Same mistake has been committed while passing the order dated 05.10.2018 in the above Writ Petition No.1199-P of 2018. The reading of these two orders

regretfully shows non-seriousness of the concerned Benches in dealing with such cases before it and casually passed the orders without at all applying their mind or reading the relevant law or rules applicable to the case. It is also amazing to note that the two orders referred to above specifically go against the established rule of precedent to be applied with all rigour and force in that where there already existed in the field an order/judgment of the Division Bench on the subject which is being dealt with and considered in subsequent cases, said earlier order/judgment has to be adhered to and a different opinion from the one taken in the earlier order/judgment could not be expressed as such could only be done by referring the matter to the Chief Justice for constitution of a larger Bench. These two orders dated 06.12.2017 and 05.10.2018 are in grave violation of law and least to be expected from the high office of the Judges of the High Court for the reason that the earlier judgment dated 17.11.2016 was altogether suppressed. The Judges are expected in all circumstances to be knowing the law and such is their hallmark as entrenched in the principle that *'a Judge must wear all laws on sleeve of his robes'*.

6. It is really astonishing to note that in the Writ Petition No.4867-P of 2017 the respondents have not been heard and it is not clear as to whether any opportunity of hearing to them was at all provided. In the subsequent order dated 05.10.2018, the Court has shown post-haste in deciding the Writ Petition before it just by putting on notice Mr. Mujahid Ali Khan, AAG, who happened to be present in the Court who raised no objection then and there without seeking any instructions from the respondent-department. Even in this petition, we note that no notice to the respondents was ordered to be issued before passing order dated 05.10.2018 disposing of the petition.

7. Before we further deal with the instant matter and give our final opinion as to how these two orders were dealt with, we direct the Registrar, Peshawar High Court, Peshawar, to transmit Record & Proceeding of Writ Petitions No.4867-P of 2017 & 1199-P of 2018 in a sealed cover. Such be done by the Registrar within a period of two weeks.

8. So far as the present case is concerned, we have noted that the High Court in passing the impugned judgment has dealt with and considered all relevant laws and rules applicable to the case of the petitioner but also taken into consideration the notification dated 01.01.2010 and thus, non-suited the petitioner as his age at the time of his turn for being appointed was beyond maximum upper age limit, the Court had no power to further relax the upper age limit for that the jurisdiction of the Court is to apply the law and rules as it appear on the statute book. The vires of law itself have not been challenged by the petitioner, thus, no deviation from the said notification could be made on any principle of law.

9. For the foregoing reasons, we find no merit in this petition, the same is dismissed and leave refused.

10. The office is directed to prepare separate file in terms of para-7 above and put up the same immediately before the Court on receipt of R&P of the above Writ Petitions.

**JUDGE**

Bench-II  
ISLAMABAD  
24.04.2019  
APPROVED FOR REPORTING  
**Hashmi**

**JUDGE**

**JUDGE**