

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 2327 OF 2016

(On appeal against the judgment dated 03.06.2016
passed by the Islamabad High Court, Islamabad in
FAO No. 18/2016)

Haider Abbas

... Petitioner

VERSUS

FPSC through its Chairman

...Respondent

For the Petitioner: In person

For the Respondent: Mr. Sohail Mehmood, DAG
Mr. Usman Hayat Gondal, Director Legal
Mr. Mumtaz Shoukat, A.D. FPSC

Date of Hearing: 24.01.2017

JUDGMENT

FAISAL ARAB, J.- In the CSS Competitive Examination-2011, final result of which was announced in the year 2012, the petitioner who appeared from Gilgit-Baltistan-FATA region was placed at Serial No. 249 on the overall merit list. Though his first priority was to seek recommendation against a vacancy in Foreign Service, however, based on his placement on merit quota of Gilgit-Baltistan-FATA region, he could only be recommended for Inland Revenue Service, which was second on his priority list. He was accordingly notified by the Establishment Division on 10.07.2012. He then joined service without any reservation. Then a vacancy occurred in Foreign Service on a seat that was allocated to one Ms. Mahin Habib in the Competitive Examination-2011 against women's quota of Gilgit-Baltistan-FATA region but she failed to join. This resulted in cancellation of her appointment vide Ministry of Foreign Affairs' letter dated 22.04.2014. This vacancy was then re-advertised by Federal Public Service Commission to be filled from the successful women candidates of Competitive Examination-2013 that were held in the

year 2014. This vacancy was thus allocated to one Ms. Saima Jameel. As this vacancy was originally advertised for Competitive Examination-2011, in which the petitioner appeared, being a successful candidate from the same region and the Foreign Service was a group of his first priority, he thought that it was his right to seek appointment on this vacancy. The petitioner thus made a representation on 09.11.2015 to the Federal Public Service Commission for his reallocation from Inland Revenue Service to Foreign Service.

2. The petitioner's claim for his reallocation to Foreign Service was based on another ground as well. He maintained that a vacancy in Foreign Service Group on merit quota for Gilgit-Baltistan-FATA region was wrongly created in the Competitive Examinations-2010 as the 'fraction' available on merit quota for such examination was not sufficient enough to create vacancy and this 'fraction' ought to have been carried forward to the next year's competitive examinations in which the petitioner appeared i.e. Competitive Examinations-2011 and had this been done, a vacancy on merit quota in Foreign Service would have been available on which, on account of his placement on merit he would have been recommended.

3. The Federal Public Service Commission, however, rejected the representation of the petitioner on both the grounds. It maintained that the seat claimed by the petitioner was reserved on women's quota and not on merit quota of Foreign Service group and when it was not taken by Ms. Mahin Habib, it could be filled only by a female candidate, which was accordingly done when Ms. Saima Jameel was recommended. As to the petitioner's other ground that vacancy in Foreign Service Group on merit quota was wrongly created in Competitive Examination-2010 on account of lack of requisite 'fraction' and such 'fraction' for that year ought to have been carried forward for creating vacancy in Competitive Examination-2011, the Federal Public Commission maintained that after allocation of the 'fraction' for Competitive Examination-2010, the same was sufficient to create one vacancy on merit quota in Foreign Service group for the Gilgit-Baltistan-FATA region. Thus the Commission came to the conclusion that no right of the petitioner was infringed in the selection process. The petitioner challenged the decision of the Commission before the

High Court in appeal which was dismissed. Feeling aggrieved, this petition has been filed.

4. To present his case, the petitioner appeared in person and urged the same grounds which he urged before the Federal Public Service Commission as well as before the High Court. As the petitioner was conscious of the fact that the vacancy in question has already been filled with the selection of Ms. Saima Jameel, he sought creation of a supernumerary vacancy so that he could be accommodated. For the creation of supernumerary post, he cited a precedent of an officer whose services were transferred by the Commission from Railway Service to Inland Revenue Service in pursuance of a judgment of the Federal Service Tribunal, Karachi inspite of the fact that there was no vacancy. We also heard the counsel and representative of the Commission and examined the record.

5. The stand of the Federal Public Service Commission on the first ground was that where a seat allocated to a particular quota is not taken and falls vacant after the training has commenced then it is carried forward to the next competitive examination as a vacancy available against the same quota. This is exactly what was done in the present case as is evident from the Statement of allocation of vacancies for Competitive Examinations-2011. This statement shows that in each group vacancies are to be created on merit quota, women's quota and minorities' quota, depending upon the sufficiency of the 'fraction' available for each of the three categories. Where a vacancy is created for a particular quota of the group, if the candidate to whom it is allocated fails to avail it then it is to be filled by a candidate of the same category and cannot be allocated to a candidate who is eligible from any of the remaining two categories. In the present case Mahin Habib was recommended on women's quota in Foreign Service group but she failed to join service and thus her seat became vacant whereas the petitioner was a candidate on merit quota in Foreign Service group, thus was not entitled to raise claim against a vacancy occurring in women's quota. The petitioner's representation to the Commission that the seat that fell vacant from his region on account of failure of Ms. Mahin Habib to join service ought to have been given to him, therefore, does not appear to be legally tenable.

6. As to the other ground of the petitioner that vacancy on merit quota in Foreign Service group in the Competitive Examination-2010 was wrongly created, we have examined the Statement prepared for allocation of vacancies for Competitive Examination-2010. In terms of this statement, against 4% quota reserved under recruitment policy for Gilgit-Baltistan-FATA region, eight fresh vacancies for all the groups were created against the total 'fraction' of 8.40 allocated to this region for Competitive Examination-2010. This 'fraction' was further distributed whereby the 'fraction' that was allocated to merit quota was 7.14, to women's quota it was 0.84 and to minorities quota it was 0.42. Thus out of eight fresh vacancies created for all the groups of the region, seven were allocated to merit quota, based on available 'fraction' of 7.14 and the remaining one vacancy was allocated to women's quota based on available 'fraction' of 0.84. The seven vacancies created for merit quota were further distributed according to the formula whereby one vacancy on merit quota fell to the share of Foreign Service Group, which was accordingly allocated to the successful candidate who appeared in Competitive Examination-2010. Thus the vacancy on merit quota for Foreign Service Group created for Competitive Examination-2010 stood filled. The formula that was applied appears to be in consonance with the recruitment policy and the rules for competitive examinations as is evident from the two statements pertaining to allocation of vacancies for the Competitive Examinations of 2010 and 2011 that are at pages 50 and 51 of the case file. The petitioner's stand that there was no justification to create vacancy on merit quota in Foreign Service Group for Competitive Examination-2010 and the 'fraction' ought to have been treated as unutilized and carried forward to Competitive Examination-2011 in which examinations the petitioner qualified, was not based on any lawful justification.

7. Apart from the fact that the petitioner has no case on merits, his representation before the Federal Public Service Commission in the first place was also barred by time as it was belatedly made in the year 2015.

8. In view of the above, petitioner's representation was rightly rejected by the Federal Service Commission. This petition is therefore dismissed and leave is refused.

JUDGE

JUDGE

JUDGE

Islamabad, the
24th of January, 2017
Approved For Reporting
Khurram