

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi



Civil Petition No.1392 of 2024

(Against the judgment dated 14.02.2024 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No.1772/2023)

Mst. Farakh Naz

... Petitioner

Versus

The Secretary Elementary & Secondary Education Department, Govt of Khyber Pakhtunkhwa, Peshawar and others

... Respondents

For the Petitioner: Mr. Shahid Qayyum, ASC

For the Respondents: Mr. Zahid Yousaf Qureshi, AAG KP

Date of Hearing: 22.10.2025

JUDGMENT

Syed Mansoor Ali Shah, J.- *The question before us is whether marriage can disqualify a daughter from appointment under the quota reserved for the children of civil servants who die or become incapacitated while in service.*

The mother of Farakh Naz (petitioner) was an employee at the Education Department, Government of the KPK, who retired from service on medical grounds on 27 April 2022. As a consequence, the petitioner was appointed as a Primary School Teacher (Basic Pay Scale-12) at Government Girls Primary School, Tatar Khel No. 2, District Karak, Khyber Pakhtunkhwa, under the deceased or incapacitated employee's quota under Rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion, and Transfer) Rules, 1989 ("**Rules**"), vide order dated 8 January 2023. The petitioner was performing her duties, when the District Education Officer (Female), District Karak suddenly withdrew petitioner's appointment order without issuing a show-cause notice, vide order dated 12 May 2023, on the basis that the petitioner got married. This termination was based on a clarification letter dated 21 February 2022¹, which

¹ The clarification provides: The facility of employment to one of the children of the deceased/invalidated government servant is given in view of their dependence on their parents. The

stipulated that the benefit of appointment under the quota is not available to a female who has contracted marriage. Further, clarification dated 28 April 2023² provided that a married daughter may again be considered eligible for appointment if she has separated from her husband and is dependent on her parents. Aggrieved of her termination order, the petitioner filed a departmental appeal against the impugned order which was rejected vide order dated 29 August 2023. Consequently, the petitioner preferred an appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar, ("**Tribunal**"), challenging the impugned order, which was dismissed vide judgment dated 14 February 2024 ("**impugned judgment**"). Hence, the instant petition for leave to appeal.

2. The learned counsel for the petitioner contended that in *Zahida*³ a similar withdrawal order has already been set aside by this Court and prays for the same relief. He further argues that termination was affected without adhering to the due process of law, particularly in the absence of any show-cause notice or opportunity of hearing. Conversely, the learned counsel for the respondents supported the impugned judgment, asserting that the petitioner had suppressed her marital status, thereby disentitling her from any equitable relief. It was submitted that the Tribunal had rightly concluded that, in view of the clarifications dated 21 February 2020 and 28 April 2023, the petitioner's appointment was not sustainable, and hence no indulgence was warranted in her favour.

3. At the very outset, it is pertinent to observe that the facts of the present case are substantially on all fours with the earlier judgment of this Court in *Zahida*, wherein the services of the petitioner in that case had likewise been terminated based on the above clarifications. In the said judgment, while interpreting Rule 10(4) in a gender-neutral manner, this Court affirmed that a woman's legal identity, rights, and autonomy remain intact after marriage, and that any attempt by the executive to limit these rights through administrative instructions is devoid of lawful authority. It held that

facility is equally available to male and female children. However, in case the female has contracted a marriage, she loses this right. Hence, a married daughter is not eligible for this facility.

² The clarification provides: It is to further clarify that a married daughter after separation from her husband and dependent on her parents is also entitled to appointment under Rule 10(4) of the Rules subject to the conditions that: (i) In case the married daughter is separated judicially, she has to produce a divorce certificate duly issued by NADRA and (ii) In case she has separated customarily she has to produce a certificate from the Deputy Commissioner concerned to the effect that she is separated and is fully dependent on her parents after separation.

³ *Zahida Parveen v. Government of Khyber Pakhtunkhwa* PLD 2025 SC 529.

the exclusion of married daughters from the purview of Rule 10(4) offends the constitutional guarantees enshrined in Articles 14, 25, and 27 of the Constitution of Pakistan, 1973 ("**Constitution**"), and contravenes Pakistan's international commitments under the Convention on the Elimination of All Forms of Discrimination Against Women ("**CEDAW**")⁴. Ultimately both clarification letters were unequivocally struck down by this Court as being discriminatory, ultra vires the Rules, and issued without lawful authority.

Moving Beyond Zahida

Rule 10(4) Extends Continuity of Livelihood to The Family - Marital Status of The Child, Whether Male or Female, is Wholly Immaterial

4. We take the opportunity of the instant matter and consider it necessary to further build upon *Zahida* by clarifying that the benefit under Rule 10(4) is not a personal reward for the child or other members of the family, but a posthumous or continuing premium on the service rendered by the parent - the deceased or incapacitated civil servant. The quota is therefore a recognition of the parent's dedication to public service, and the appointment under it is the State's means of extending continuity of livelihood to the family. The children or other dependents are merely the conduits through whom the State expresses its recognition and support. The said benefit - appointment to a post - is to be realized through the family members of the deceased or incapacitated civil servant, including the children, the wife or widow, and, where applicable, the husband or widower. Hence, apart from the prescribed educational qualifications and age, the only qualification relevant to such appointment is the applicant's status as a family member of the deceased or incapacitated employee. The marital status of the child, whether male or female, is wholly immaterial. The rationale of the rule is compensatory and benevolent - it aims to provide financial continuity to the affected family, not to assess or penalize the marital status of the child. To deny this benefit to a married daughter on the ground of her marriage is to misread the object of the Rule. The benefit is a recognition of the services rendered by the parent; it matters little whether the beneficiary child is married or unmarried.

⁴ Pakistan ratified the CEDAW on 3 December, 1996.

5. The Rule contemplates appointment of a child of a deceased or incapacitated civil servant to provide financial relief to the affected family in recognition of the parent's service to the State. Its purpose is not to assess the dependency or economic condition of individual children but to ensure that the benefit of employment reaches the family of the civil servant who has died or become incapacitated during service. In this context, a son and a daughter stand on an equal footing. Both can transmit the intended economic relief to the family, and the choice of either fulfils the object of the Rule. The assumption that a daughter, by reason of her marriage, ceases to be connected with or concerned for her parental family is misconceived and rests on outdated social stereotypes. If a son's marriage does not disqualify him or interrupt the flow of financial benefit to the family, there is no rational basis to hold that a daughter's marriage should have that effect. The relief contemplated by the Rule flows to the family through the appointed child – whether son or daughter – and the daughter's marital status bears no nexus to the object of the Rule. Any interpretation that denies her this opportunity offends the guarantees of equality and non-discrimination under Articles 25 and 27 of the Constitution and perpetuates a stereotype the Constitution itself rejects.

The Constitutional Framework

6. The Constitution of Pakistan is gender-neutral in its recognition of fundamental rights and does not draw a distinction between a man and a woman, or a son and a daughter, in the enjoyment of their entitlements (Article 25). Indeed, it goes further and consciously discriminates in favour of women by directing the State to take special measures for their protection and advancement (Articles 25, 27, and 34). This constitutional framework acknowledges that women have historically faced systemic disadvantage and therefore deserve additional support to ensure substantive equality. Yet, despite this constitutional protection, the petitioner has been denied her rightful claim to the quota reserved for the children of a deceased or incapacitated parent on the ground of her marriage - a denial that stands in stark contradiction to both the text and spirit of the Constitution.

Marriage does Not Strip a Woman of Her Personhood

7. Being married is not a disqualification that strips a woman of her personhood or her constitutional entitlements; marriage merely alters her legal status, not her fundamental rights. A woman like a man is a "person" under the Constitution – and this constitutional status of her personhood remains undisturbed through marriage or divorce. The view that a daughter (and not the son) is always dependent upon her father and thereafter as a wife is always dependent upon her husband is constitutionally unsustainable. Such a notion undermines her individuality and erodes her identity as a person in her own right. As Martha C. Nussbaum aptly observes, "*A society that denies women equal opportunities for full human functioning denies itself justice.*"⁵

Woman's Choice – To Work or to Care – is Equally Dignified

8. A woman is a full and independent person, enjoying all her fundamental rights in her own capacity as a citizen of Pakistan. Even if she is being looked after by her husband, it remains her personal choice to seek employment, to serve the State, and to enjoy financial autonomy. Conversely, if she chooses to remain at home and devote herself to caregiving and managing the household, that too is a dignified and valuable choice. The contribution of a homemaker to the stability of the family and, by extension, to the strength of the nation, is immeasurable. The labour of care - raising children, nurturing the family, maintaining the household - is an onerous and vital task, too lightly acknowledged in law and society. Strong families and strong nations are built on the strength of mothers who devote themselves to this unseen work. To describe such a woman as "dependent" on her husband is therefore extremely demeaning. She is independent in her personhood and her choice, and whether she stays at home or joins the workforce, her contribution to the family and to society is no less valuable than that of a man. Economic independence, in whatever form it manifests - through employment or through the exercise of meaningful choice - is a crucial component of a woman's dignity, enabling her to live as an equal and self-reliant member of society. The law cannot compel her to remain dependent, nor can it penalize her for exercising her choice to pursue public employment. Any interpretation

⁵ Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press 2001)

that does so perpetuates patriarchy and violates the constitutional guarantees of equality, liberty, and dignity.

A Woman Is Not a Liability: Rejecting the Language of Patriarchy

9. We must also strongly dispel, once again, the regressive notion reflected in the above referred clarifications issued by the Establishment Department of the Government of Khyber Pakhtunkhwa, which state that a married woman is no longer “a liability”⁶ of her father. Such a statement is deeply insensitive, for it unpersons a woman. The very use of the term “liability” to describe a woman reflects a patriarchal rigidity of thought that has no place under our Constitution. We are astonished that such a term could find its way into official correspondence in the 21st century, more so in a republic that constitutionally guarantees equality, dignity, and respect to all its citizens irrespective of gender.

Women’s Inclusion Is a Constitutional Right, Not a Concession

10. Looking at from another angle, the participation of women in the public sphere is not a benevolent concession - it is the realization of a right long denied. At the heart of the matter lies not only the individual dignity of women but also the collective progress of society. When women contribute across education, administration, policy, health, and justice, institutions draw upon a broader spectrum of experience, enhancing the quality, legitimacy, and responsiveness of governance.⁷ Women’s equal participation in public life is thus not simply a means to personal financial independence; it is a structural driver of socio-economic development, good governance, and constitutional democracy. This has been recognized internationally through the Sustainable Development Goals (SDGs)⁸ and by comparative constitutional jurisprudence⁹ that advocates affirmative measures to correct gender imbalance in public services.

⁶ According to the Merriam-Webster Dictionary, the term “liability” connotes “the quality or state of being liable” or “one that acts as a disadvantage.”

⁷ Khan, M. A., Imran, A., Khan, S. M., & Qureshi, H. K. J. ‘Role of Women in the Economic Development of Pakistan: Theoretical Insight’ (2022 IRASD Journal of Economics, 4(2)) 243–251; Radhika Kapur, ‘Participation of Women in Social, Economic and Political Activities’ (2021 Delhi University)

<https://www.researchgate.net/publication/355733271_Participation_of_Women_in_Social_Economic_and_Political_Activities>.

⁸ SDG 5: ‘Achieve gender equality and empower all women and girls’

⁹ *Dattatraya Motiram More v. State of Bombay* AIR 1953 Bom 311; *Vinayak S/o Ramchandra Sudame v. State of Maharashtra and Others* 1982 (2) BomCR 671; *Om Narain Agarwal v. Nagar Palika, Shahjahanpur* 1993 INSC 62; *Government of Andhra Pradesh v. P.B. Vijayakumar & Another* 1995 SCC (4) 520.

11. In addition to CEDAW, as discussed in *Zahida*, the exclusion of married women from public service also completely goes against the global agenda of equality for women as put forth in the Beijing Declaration and Platform for Action, 1995 ("**Beijing Declaration**")¹⁰. The Beijing Declaration is the world's most comprehensive, visionary plan ever created to achieve the equal rights of all women and girls.¹¹ Although the declaration is not a legally binding treaty it creates a foundational global commitment towards achieving gender equality carrying significant moral and political weight.¹² It recognizes in Article 13 that women's empowerment and their equal participation in decision-making processes are indispensable to achieving equality, development, and peace; Article 16 underscores that sustainable economic growth, social justice and poverty eradication require women's full involvement in economic and social development; and Article 26 directs states to promote women's economic independence including employment by reforming structural inequalities, expanding access to productive resources, and addressing the feminization of poverty. The accompanying Platform for Action further operationalizes these commitments. It places a direct responsibility on governments to design and implement inclusive policies with the equal participation of women, ensuring that gender equality becomes an integral component of national development and governance frameworks.

The Quranic Ethos of Equality: Women as Independent Moral and Civic Beings

12. The moral imperative to uphold women's substantive freedom and equality - in the social, familial, spiritual, and public spheres - finds its deepest grounding in Islamic teachings. The Holy Quran, through its timeless ethical vision, lifted women from being treated as property of men or tribes to independent, autonomous moral beings, fully participating in family and social life.¹³ By placing

¹⁰ 'Beijing Declaration (UN Women); adopted unanimously by **189 member states** at the Fourth World Conference on Women <<https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>>

¹¹ 'The Beijing Declaration and Platform for Action at 30, and why that matters for gender equality' (*UN Women*, 24 January 2025).

¹² It is important to note that Pakistan took steps to cement the commitments undertaken by the Beijing Declaration. The creation of the National Commission on the Status of Women in 2012 came out of the international commitments under the Beijing Declaration.

¹³ Sulaimani, F. (1986) 'The Changing Position of Women in Arabia Under Islam During the Early Seventh Century.' University of Salford, International Studies Unit. <http://usir.salford.ac.uk/14814/1/361089.pdf>; Also see Brown, J. 'Islam is not the Cause of Honor Killings. It's Part of the Solution.' (Yaqeen Institute for Islamic Research) (2016).

women on an equal spiritual footing with men, Islam transformed pre-Islamic society and established a moral order where dignity and equality are indivisible. The Quran's divine message makes no distinction between men and women in their moral worth¹⁴ or capacity for public service. There can, therefore, be no justification for treating women differently in matters of public employment, particularly on patriarchal interpretations of hardship or dependency that apply equally, if at all, to both men and women.

13. Within the framework of *usul-al-fiqh*, there is no textual or rational basis to exclude women from gainful employment - before, during, or after marriage. The foundational rule is one of permissibility unless expressly prohibited¹⁵, and Islam contains no such prohibition. On the contrary, modern scholarship has rearticulated the Quran's gender-egalitarian ethos and reaffirmed the substantive equality embedded within Islamic tradition.¹⁶ From an age that tolerated female infanticide, Islam advanced women to positions of moral and civic leadership.¹⁷ Women in Islam were thus never confined to the domestic sphere alone. Performing valued public duties was recognized as a means of fulfilling their potential and serving the community. The Quran, the Sunnah, and the Hadith literature collectively affirm women's dignity, their right to public participation, and society's duty to honour their contributions in every sphere of life.

Rejecting Patriarchal Constructs

14. It is therefore imperative that legislators and policymakers recognize women as autonomous individuals and refrain from enacting or interpreting laws in a manner that subordinates their personhood

<https://yaqeeninstitute.org/en/jonathan-brown/islam-is-not-the-cause-of-honor-killings-its-part-of-the-solution/>.

¹⁴ The Quran at many places directly addresses both men and women and draws no distinction therein. See Quran (16:97); "Whoever does good, whether male or female, and is a believer, We will surely bless them with a good life, and We will certainly reward them according to the best of their deeds." (Tran. Dr. Mustafa Khattab, The Clear Quran)

¹⁵ This Legal Maxim in the Shariah is *Al-Asl Fi Al-Ashya' Al-Ibahah* (the original rule for all things is permissibility). See Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society 1991) 306-309.

¹⁶ Recently building on a "hermeneutics of recovery", Amina Wadud and Asma Barlas have advocated for such a reading. See Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (2nd edn, Oxford University Press 1999) and Asma Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (rev edn, University of Texas Press 2019).

¹⁷ Exemplified by Samra bint Nuhayk and Shifa bint Abdullah, who were appointed as market supervisors to ensure fair trade in the reign of the Caliph Umar ibn al-Khattab. See Dr. Omar Suleman et al, "'We Used to Have No Regard for Women': Gender Equity & the Advent of Islam" (Yaqeen Institute for Islamic Research, 22 July 2024) <https://yaqeeninstitute.org/read/paper/we-used-to-have-no-regard-for-women-gender-equity-the-advent-of-islam#ftnt29>; Cf. *Al-Mu'jam Al-Kabeer At-Tabarani* 785; *Al-Ahad wal-Mathani* 2860.

to patriarchal or marital constructs. The exclusion or “othering”¹⁸ of women - particularly on the ground of matrimony - constitutes a direct assault on their dignity and equality and denies them the fundamental rights that attach to their independent selves. Terminations such as that of the petitioner, resting upon patriarchal readings of the Rule or policy, not only violate the identity and rights of women but also impoverish society and future generations, who are thereby deprived of the intellect, values, and perspectives that women uniquely bring to public life.

15. In *Zahida*, this court already clarified that although *Jalal*¹⁹ struck down Rule 10(4) as unconstitutional, that judgment operates prospectively, and does not affect appointments already made, such as this one. It is also worth emphasizing that when this Court declares a notification, circular, or rule as *ultra vires*, such declaration is not person-specific - it operates *erga omnes* (i.e., against all) rather than *inter partes* (i.e., between the parties). *Zahida* is not a judgment in *personam* but a judgement in *rem*, as it decided the question of law.²⁰ So its direction equally applies to all appealing and non-appealing parties.²¹ The underlying principle is equal treatment of all persons similarly situated to avoid impartial justice that breeds discontent, resentment, and frustration within the social fabric.²² Thus, the Government should give full effect to the Court’s decision by extending its benefit to all persons to prevent the multiplicity of litigation arising from identical causes.

16. Consequently, in view of the above, the impugned judgment is set aside, and the respondent-department is also directed to restore the petitioner’s appointment with all back-benefits in light of

¹⁸ “**Othering**” is a sociological and philosophical term used to describe the process by which a group or individual is **marginalized, excluded, or treated as fundamentally different or inferior** to a dominant group

¹⁹ *General Post Office, Islamabad v. Muhammad Jalal* PLD 2024 SC 1276.

²⁰ *Government Of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Maqсад Hayat and others* 2023 SCMR 8.

²¹ *Bashir Ahmed Badini v. Hon'ble Chairman and Member of Administration Committee and Promotion Committee of Hon'ble High Court of Balochistan* 2022 SCMR 448; *WAPDA v. Abdul Ghaffar* 2018 SCMR 380; *Kashif Zafar v. Postmaster-General* 2013 SCMR 726; *Hameed Akhtar Niazi v. Secretary, Establishment Division* 1996 SCMR 1185; *Abdul Hameed Nasir v. National Bank of Pakistan* 2003 SCMR 1030; *Hadayat Ullah and others v. Federation of Pakistan* 2022 SCMR 1691

²² *Mehar Muhammad Nawaz Versus Managing Director, Small Business Finance Corporation* 2009 SCMR 187.

*Sharif*²³. This petition is converted into an appeal and allowed in the above terms.

Judge

Judge

Islamabad:
22.10.2025
Approved for reporting
(Muhammad Mohsin Masood, LC)

²³ *Muhammad Sharif v. Inspector General of Police, Punjab* 2021 SCMR 962.