

JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3236 of 2019
Khurram Shahzad and others

Versus

National Commission on the Status of Women through its Chairperson
and another

Date of Hearing: 04.03.2020.
Petitioners by: Ms. Natalya Kamal, Advocate.
Respondents by: Mr. Muhammad Nadeem Khan Khakwani,
learned Assistant Attorney-General.
M/s Shahid Iqbal Khan and Mukhtar Ahmad,
Directors, N.C.S.W.

MIANGUL HASSAN AURANGZEB J.- Through the instant writ petition, the petitioners impugn the office orders dated 02.09.2019 issued by the National Commission on the Status of Women (“N.C.S.W.”), whereby their appointment letters dated 02.04.2019 were withdrawn. Vide the said letters dated 02.04.2019, petitioner No.1 (Khurram Shahzad), petitioner No.2 (Younas Masih) and petitioner No.4 (Yasir Khan) were appointed as Naib Qasids (BPS-01), whereas petitioner No.3 (Muhammad Imran) was appointed as Driver (BPS-04) by N.C.S.W.

2. The facts essential for the disposal of the instant petition are that the petitioners had been appointed on contingent basis in the N.C.S.W. Details regarding their age at the time of first appointment, the posts against which they were appointed, and the dates of their subsequent appointments are given in the table herein below:-

Sr. No.	Name	Post	Date of Birth	Date of appointment as contingent paid employee	Age on first appointment at N.C.S.W.	Date of subsequent offer of appointment
1.	Khurram Shahzad	Naib Qasid (BPS-01)	16.4.1983	01.10.2015	32	02.04.2019
2.	Younas Masih	Naib Qasid (BPS-01)	1971	01.10.2015	44	02.04.2019
3.	Muhammad Imran	Driver (BPS-04)	16.7.1980	01.10.2015	35	02.04.2019
4.	Yasir Khan	Naib Qasid (BPS-01)	01.5.1979	13.02.2017	37	02.04.2019

3. On 24.11.2017, N.C.S.W. published an advertisement inviting applications for appointments against *inter alia* two posts of Driver (BPS-04) and ten posts of Naib Qasid (BPS-01). In the said advertisement, it was explicitly mentioned that the appointments will be made in accordance with the prevailing recruitment rules/policy of the Federal Government as provided in Office Memorandum No.53/1/2008-SP, dated 03.03.2015. It was also provided that age relaxation to the contingent paid employees will be given in accordance with the Establishment Division's U.O. No.53/1/2008-SP(PI), dated 03.04.2017.

4. On 12.03.2018, two of the petitioners, namely, Khurram Shahzad and Muhammad Imran filed writ petitions before this Court seeking the regularization of their services. The said petitioners had also sought directions for the framing of recruitment rules. The said petitions were partly allowed vide judgment dated 16.11.2018 with the direction to the Federal Government to frame and notify the rules under the National Commission on the Status of Women Act, 2012 (**"the 2012 Act"**) and thereafter to continue with the recruitment process. Furthermore, it was directed that the petitioners along with other incumbents should also be considered for appointment by the N.C.S.W. under the relevant rules.

5. After the said judgment, the National Commission on the Status of Women Employees (Recruitment and Conditions of Service) Rules, 2018 (**"the 2018 Rules"**) were made by the Federal Government in exercise of the powers conferred by Section 20 of the 2012 Act. These rules were notified in the official Gazette on 09.01.2019.

6. The petitioners participated in the competitive process pursuant to the said advertisement. It is an admitted position that the petitioners were issued No Objection Certificates (**"N.O.C."**) for participation in the said process. Vide letters dated 02.04.2019, N.C.S.W. offered appointments to the petitioners *"purely on temporary basis"* against the posts for which they had applied. After the said offers were accepted by the petitioners, N.C.S.W., vide office orders dated 11.04.2019, appointed them *"purely on temporary basis"*.

7. Through impugned office orders dated 02.09.2019 issued by N.C.S.W., the said appointment letters dated 11.04.2019 were

withdrawn. The said office orders dated 02.09.2019 have been assailed by the petitioners in the instant writ petition.

8. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that the petitioners had been working on the contingent basis in N.C.S.W. for several years prior to the publication of the advertisement dated 24.11.2017; that on 02.04.2019, the petitioners were offered appointment on temporary basis; that the said offers were accepted by the petitioners; that all of a sudden, vide impugned office orders dated 02.09.2019, the petitioners' appointment orders were withdrawn; that no opportunity of a hearing was given to the petitioners before passing the impugned orders; that in the 2018 Rules, there is no scope for appointments on temporary basis; that N.C.S.W. could not assert that the petitioners were overage after they had been given N.O.C. for participation in the competitive process; that since the petitioners had been working on contingency basis, they were entitled to age relaxation; that the issuance of the appointment letters in the petitioners' favour gave them strong vested rights which could not have been withdrawn; that the principle of *locus poenitentiae* barred N.C.S.W. from withdrawing the petitioners' appointment letters; that the impugned orders dated 02.09.2019 are devoid of reasons; and that the said orders were issued in violation of the principles of natural justice. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

9. On the other hand, learned Assistant Attorney-General, assisted by Shahid Iqbal Khan, Director, N.C.S.W., submitted that since the petitioners had been appointed on temporary basis, they could not invoke the Constitutional jurisdiction of this Court; that after the petitioners had been appointed, an objection had been raised by the Office of the Accountant General Pakistan Revenues that N.C.S.W. had not observed the Establishment Division's restriction regarding age limits while appointing the petitioners, who were class IV employees; that since the petitioners were overage, their appointments were required to be approved/regularized by the Prime Minister's Secretariat through the Establishment Division; that under

the Esta Code (2015 Edition) the maximum age limit for a Driver (BPS-04) was 30 years whereas the maximum age limit for Naib Qasid (BPS-01) was 25 years; that the term “Unified Recruitment Rules” used in Rule 5 of the 2018 Rules means the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 as well as the Esta Code; that the age relaxation admissible to the petitioners under notification (S.R.O. 1079(I)/93), dated 04.11.1993 would also not bring the petitioners within the maximum age limit for appointment against the said posts; that the age relaxation for ten years up to the age of fifty five was not applicable to the petitioners, since they had not completed two years of continuous “*government service*”; that Shahid Iqbal Khan, Director, N.C.S.W. had submitted a detailed note giving a justification for not appointing the petitioners on account of being overage; that despite the said note, the Chairperson, N.C.S.W. gave directions regarding the petitioners’ appointments; and that the impugned orders dated 02.09.2019 do not suffer from any legal infirmity. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

10. I have heard the contentions of the learned counsel for the petitioners as well as the learned Assistant Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 above, and need not be recapitulated.

11. As mentioned above, in compliance with the judgment dated 16.11.2018 passed by this Court in writ petition No.959/2018, the Federal Government framed the 2018 Rules. Rule 5 of the said Rules provides *inter alia* that the posts of Naib Qasid (BPS-01) and Driver (BPS-04) shall be filled and governed under the Unified Recruitment Rules of the post concerned notified by the Government.

12. It is an admitted position that under Establishment Division’s notification (S.R.O. 1302(I)/90), dated 15.12.1990, the maximum age limit for a Driver (BPS-04) was thirty years whereas the maximum age limit for Naib Qasid (BPS-01) was twenty five years. The petitioners were admittedly many years older than the prescribed maximum age limit when the advertisement dated 24.11.2017 was published or when their appointment letters were issued.

13. The vital question that needs to be determined is whether on account of being earlier employed on contingent basis in the N.C.S.W., the petitioners were entitled to age relaxation.

14. The general relaxation in age given by the N.C.S.W. in the advertisement dated 24.11.2017 was five years for the candidates for the posts of Naib Qasid (BPS-01) and Driver (BPS-04). Even if the benefit of this age relaxation is given to the petitioners, they do not satisfy the age limit for appointment against the said posts. As mentioned above, the said advertisement also makes the relaxation of the upper age limit under the Establishment Division's letter dated 03.04.2017 applicable to the recruitment process. Paragraph 1(e)(v) of the said letter is reproduced herein below:-

"The number of years served as contract/contingent paid/daily wage project employee, even if no longer in service, shall be excluded for the purpose of determination of upper age limit in addition to relaxation of upper age limit as per existing rules".

(Emphasis added)

15. Paragraph 1(e) was added/inserted through Establishment Division's O.M. dated 11.05.2017 in the "Recruitment Policy/Mechanism to Ensure Merit Based Recruitment in the Ministries / Divisions / Subordinate Offices / Autonomous / Semi-Autonomous / Corporations / Companies / Authorities" dated 16.01.2015.

16. If the period for which the petitioners had served on contingent basis is excluded for the purpose of the determination of the upper age limit by giving them the benefit of age relaxation under paragraph 1(e)(v) of the Establishment Division's letter dated 03.04.2017 and/or the amended recruitment policy dated 11.05.2017 (contained in Establishment Division's O.M. No.F.53/1/2008-SP) even then they do not satisfy the prescribed age limit.

17. Now, the benefit of age relaxation under paragraph 1(e)(v) of the Establishment Division's letter dated 03.04.2017, is *"in addition to relaxation of upper age limit as per existing rules"*. As mentioned above, under Rule 5 of the 2018 Rules, the Unified Recruitment Rules notified by the Government have been adopted by the N.C.S.W. Notification (S.R.O. 1079(I)/93), dated 04.11.1993 was issued pursuant to Rule 12 of the Civil Servant (Appointment, Promotion and Transfer) Rules, 1973. Therefore, the said notification has been made applicable

to the recruitment process in the N.C.S.W. by dint of Rule 5 *ibid*. The said notification provides *inter alia* that a government servant who had completed two years of continuous government service on the closing date for receipt of applications would be entitled to age relaxation by ten years up to the age of fifty five years. If the benefit of age relaxation under the said notification is given to the petitioners, petitioners No.1 and 3 would satisfy the prescribed age limit. Petitioner No.2 (Younas Masih) would still be overage by four years, whereas petitioner No.4 (Yasir Khan, who had not completed two years of service in N.C.S.W. on contingency basis), would not be entitled to the benefit of age relaxation under the said notification dated 04.11.1993.

18. The benefit of age relaxation under the said notification dated 04.11.1993 is being denied to petitioners No.1 and 3 by N.C.S.W. on the pretext that the petitioners could not be termed as “*government servants*” when they served on contingency basis for more than two years. It is my view that the benefit under the said notification could not be denied to petitioners No.1 and 3 since the Unified Recruitment Rules notified by the Government had been adopted by N.C.S.W. through the 2018 Rules. The said notification dated 04.11.1993 has indeed been issued by the Government and applies to recruitments. If N.C.S.W.’s stance is accepted then any rule or notification issued by the Government, which gives any benefit to a government servant or is with reference to a government servant would not be applicable to N.C.S.W.’s employees or to the recruitment process conducted by N.C.S.W. Such an interpretation would make the adoption of the Unified Recruitment Rules of the Federal Government through Rule 5 of the 2018 Rules meaningless.

19. N.C.S.W.’s objection that the period during which the petitioners served on contingency basis could not be termed as “*government service*” also does not appeal to me. This is because the benefit of age relaxation under paragraph 1(e)(v) of the Establishment Division’s letter dated 03.04.2017 applies also to contract/contingent paid/daily wage and project employees. It is that very paragraph which extends the benefit of age relaxation not just to the extent of the period of any employee’s service on contingency basis but also to relaxation of

upper age limit under the “existing rules”, which includes the said notification dated 04.11.1993.

20. It was also contended on behalf of N.C.S.W. that since the petitioners had been appointed on temporary basis, they could not have invoked the Constitutional jurisdiction of this Court in order to question the withdrawal of their appointment letters. It is an admitted position that through the advertisement dated 24.11.2017, applications had been invited by N.C.S.W. for appointments on regular basis. There is no mention of any contractual or temporary appointment in the said advertisement. The competitive process in which the petitioners had participated was also for permanent appointments. Therefore, the words “*purely on temporary basis*” in the petitioners’ appointment letters are to be treated as surplusage. In the case of Allauddin Akhtar Vs. Government of Punjab (1982 CLC 515), the petitioner was appointed to the statutory post of Chairman Board of Intermediate and Secondary Education, Lahore for a period of four years under Section 14 of the West Pakistan (Board of Intermediate and Secondary Education, Lahore) Ordinance, 1961. One of the terms of the petitioners’ appointment was that the term of his office was to be for a period of four years subject to the condition that the controlling authority or the government could terminate the deputation earlier in the public interest. Fearing his removal from the said post, prior to the expiry of his tenure, he filed a petition under Article 199 of the Constitution before the Hon'ble Lahore High Court. Subsequently, the petitioner was removed by the controlling authority. The Hon'ble High Court allowed the writ petition and declared the petitioner to be the holder of a post having a statutory tenure of four years and that his tenure could not be reduced by reference to such terms and conditions of his appointment as were found to be inconsistent or mere surplusage. Since the said judgment was authored by the Hon'ble Mr. Justice Shafi-ur-Rehman (as he then was), who subsequently rose to grace the Hon'ble Supreme Court, the said judgment deserves reverence and respect.

21. The dates of the petitioners’ appointment on contingent basis; the period for which they served on contingency basis up to the cut-off date of 09.12.2017 (i.e. fifteen days after the advertisement dated

24.11.2017); the required age limit with the benefit of the age relaxation of five years given under the advertisement; and the age relaxation to which the petitioners were entitled under paragraph 1(e)(v) of the Establishment Division’s letter dated 03.04.2017 as well as the notification dated 04.11.1993 are given in the table herein below:-

Sr. No.	Name and post	Date of appointment on contingency basis	Age on 09.12.2017	Required upper age limit for the post with five years general age relaxation	Length of service up to 09.12.2017	Age on 09.12.2017 after admissible relaxation
1.	Khurram Shahzad Naib Qasid (BPS-01)	01.10.2015	34 years, 07 months and 23 days	25+5=30	02 years, 02 months and 08 days	34-10-2=22 (less than upper age limit)
2.	Younas Masih Naib Qasid (BPS-01)	01.10.2015	46 years and 11 months	25+5=30	02 years, 02 months and 08 days	46-10-2=34 (overage by 4 years)
3.	Muhammad Imran Driver (BPS-04)	01.10.2015	37 years, 04 months and 24 days	30+5=35	02 years, 02 months and 08 days	37-10-2=25 (less than upper age limit)
4.	Yasir Khan Naib Qasid (BPS-01)	13.02.2017	38 years, 07 months and 08 days.	25+5=30	09 months and 26 days	Overage by 08 years. Relaxation not admissible due to lack of two years service on contingency basis.

22. The sole ground on which the petitioners’ appointment letters were withdrawn was that they had not satisfied the prescribed age limit. I have already held that the petitioners were entitled to the age relaxations given in the advertisement dated 24.11.2017 as well as the age relaxation under paragraph 1(e)(v) of the Establishment Division’s letter dated 03.04.2017 in addition to the age relaxation under the notification dated 04.11.1993. The benefit of age relaxation under the said instruments would bring petitioners No.1 and 3 within the prescribed age limit. As regards petitioners No.2 and 4, their appointment letters could not have been withdrawn without having afforded them an opportunity of a hearing. After all, N.C.S.W. had permitted petitioners No.2 and 4 to participate in the competitive process and had also issued them an N.O.C. for such participation. It

is an admitted position that their appointment letters had been withdrawn without being afforded them an opportunity of a hearing. Their appointment letters had taken effect since they had joined their duties after the issuance of the said letters. The principle of *locus poenitentiae* prevented the N.C.S.W. from withdrawing their appointment letters without affording them an opportunity of a hearing. This is an added reason why the instant writ petition ought to be allowed.

23. In view of the above, the instant petition is partly allowed; the impugned orders dated 02.09.2019 whereby the petitioners' appointment letters were withdrawn, are set-aside; N.C.S.W. is directed to reinstate petitioners No.1 and 3 in service with back benefits; and N.C.S.W. shall afford an opportunity of a hearing to petitioners No.2 and 4 and thereafter decide whether or not their appointments were in accordance with the law. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2020.

(JUDGE)