

Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.3043 of 2019

Aamir Javed and 08 others.

Versus

Federation of Pakistan, through its Secretary, Ministry of Interior, Islamabad
and 02 others.

Petitioners By : Hafiz Noor Muhammad, Advocate.

Respondents By : Raja Khalid Mehmood Khan, learned
Deputy Attorney-General.
Raja Saad Sultan, learned Assistant
Attorney-General.
Muhammad Imtiaz Shah, Director NPB.
Muhammad Shahid, A.D. NPB.

Date of Hearing : 23.01.2020

AAMER FAROOQ, J. - For the reasons recorded in my detailed
judgment of even date passed in connected Writ Petition No.1528 of 2019, the
instant petition is **allowed**.

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 31st day of January, 2020.

JUDGE

M. Zaheer Janjua

Form No: HCJD/C-121

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.1528 of 2019

Rizwan Ashraf and another.

Versus

Federation of Pakistan, through its Secretary, Ministry of Interior, Islamabad and 02 others.

Writ Petition No.1224 of 2019

Raashid Habib Masoodi and 02 others.

Versus

Federation of Pakistan, through Secretary, Ministry of Interior, Islamabad and 03 others.

Writ Petition No.1622 of 2019

Muhammad Asad.

Versus

Federation of Pakistan, through its Secretary, Ministry of Interior, Islamabad and 02 others.

Writ Petition No.1725 of 2019

Naeem Khan and 23 others.

Versus

Federation of Pakistan, through Ministry of Interior, Islamabad and another.

Writ Petition No.2570 of 2019

Syed Zulfiqar Ali Gillani and 58 others.

Versus

Federation of Pakistan, through Ministry of Interior, Islamabad and another.

Writ Petition No.3043 of 2019

Aamir Javed and 08 others.

Versus

Federation of Pakistan, through its Secretary, Ministry of Interior, Islamabad and 02 others.

Writ Petition No.3047 of 2019

Adeel Shahzad and 11 others.

Versus

Federation of Pakistan, through its Secretary, Ministry of Interior, Islamabad and 02 others.

Writ Petition No.3054 of 2019

Muhammad Akram and 09 others.

Versus

Federation of Pakistan, through Ministry of Interior, Islamabad and another.

Writ Petition No.3057 of 2019

Kamran Latif and 12 others.

Versus

Federation of Pakistan, through its Secretary, Ministry of Interior, Islamabad and 02 others.

Writ Petition No.3068 of 2019

Noor Jamal and 04 others.

Versus

Federation of Pakistan, through Ministry of Interior, Islamabad and another.

Writ Petition No.3073 of 2019

Abdul Sattar Khan.

Versus

Federation of Pakistan, through Ministry of Interior, Islamabad and 02 others.

Writ Petition No.3086 of 2019

Sher Zaman and 03 others.

Versus

Federation of Pakistan, through Secretary, Ministry of Interior, Islamabad and 03 others.

Writ Petition No.3089 of 2019

Ameer Abbas and another.

Versus

Federation of Pakistan, through Ministry of Interior, Islamabad, etc.

Writ Petition No.3099 of 2019

Muhammad Imran and 12 others.

Versus

Federation of Pakistan, through Secretary Ministry of Interior, Islamabad
and 02 others.

Writ Petition No.3100 of 2019

Mubashira Javaid and 15 others.

Versus

Federation of Pakistan, through Secretary, Ministry of Interior, Islamabad
and 02 others.

Writ Petition No.3134 of 2019

Muhammad Shahzad Zafar Hashmi.

Versus

Ministry of Interior, Government of Pakistan, Islamabad through its Secretary
and 02 others.

Writ Petition No.3239 of 2019

Mst. Muzammil Batool and another.

Versus

Federation of Pakistan through Secretary, Ministry of Interior, Islamabad
and 02 others.

Petitioners By : Hafiz Noor Muhammad, Advocate (in Writ
Petition No.1528 of 2019, Writ Petition
No.1622 of 2019, Writ Petition No.3043
of 2019, Writ Petition No.3047 of 2019
and Writ Petition No.3057 of 2019).
Mr. Irfan Javed Abbasi, Advocate (in Writ
Petition No.1224 of 2019).
Raja Inaam Ameen Minhas and Ch.
Waqas Zameer, Advocates (in Writ
Petition No.1725 of 2019, Writ Petition
No.2570 of 2019).
Mr. Adil Aziz Qazi, Mr. Saad Ahmed
Rajput, Raja Amir Shahzad, Zopash Khan
and Mr. Haseeb Hassan, Advocates (in
Writ Petition No.3054 of 2019, Writ
Petition No.3068 of 2019 and Writ
Petition No.3089 of 2019).

Syed Hassan Abbas, Advocate (in Writ Petition No.3073 of 2019).

Malik Awais Haider, Advocate (in Writ Petition No.3086 of 2019).

Ms. Chand Bibi, Advocate (in Writ Petition No.3099 of 2019, Writ Petition No.3100 of 2019 and Writ Petition No.3239 of 2019).

Mr. Bilal Hassan Sabri and Muzammil Hussain Shad, Advocates (in Writ Petition No.3134 of 2019).

Respondents By : Raja Khalid Mehmood Khan, learned Deputy Attorney-General.
Raja Saad Sultan, learned Assistant Attorney-General.
Muhammad Imtiaz Shah, Director NPB.
Muhammad Shahid, A.D. NPB.

Date of Hearing : 23.01.2020

AAMER FAROOQ, J. - This judgment shall decide the instant petition as well as the petitions specified in the schedule attached herewith as common questions of law and facts are involved.

2. The petitioners, in all the petitions, are either employees of Provincial Police Departments, National Highway and Motorway Police, Federal Investigation Agency (F.I.A.) or other similar organizations. They are aggrieved of the Standard Operating Procedures (SOPs) drafted by National Police Bureau and issued by Ministry of Interior, Federation of Pakistan as guiding principles for selection of police officials to participate in Peacekeeping Operations Overseas. In this behalf, United Nations department of Peacekeeping Operations require police officers from different countries for their Peacekeeping Missions Abroad. Pakistan is one of the countries which sends its police force for the said purpose. United Nations has a policy for selection of the officers and also conducts tests for the candidates short listed pursuant to the said policy. The numbers of seats

are intimated beforehand to Pakistan and the selection process is then initiated after which test is conducted by the representatives of United Nations Peacekeeping Department and the final candidates are selected. National Police Bureau/the Ministry of Interior based on the policy considerations/guidelines of United Nations drafted Standard Operating Procedures (SOPs) for selection and has issued and circulated to all provincial police departments as well as other similar agencies including National Highway and Motorway Police as well as Federal Investigation Agency (F.I.A.). The petitioners are aggrieved of the Standard Operating Procedures (SOPs) on various grounds and have challenged the *vires* of the same.

3. Hafiz Noor Muhammad, Advocate Supreme Court of Pakistan appearing for the petitioners in Writ Petition No.1528 of 2019, *inter-alia*, contended that the Standard Operating Procedures (SOPs) were drafted by National Police Bureau, which was not competent to do so; that National Police Bureau is neither a Division nor an attached department of the Interior Division. It was submitted that sending of the force for Peacekeeping Missions is a sensitive matter and the relevant SOP or policy decision ought to have been taken by the Prime Minister of Pakistan, which is Competent Authority as per Rule 15 of the Rules of Business, 1973. Learned counsel took the Court through various provisions of the SOP to substantiate that the same is based on quota and is discriminatory. It was submitted that a certain percentage of quota has been given to the repeaters without any justification or basis. Even regional quotas have been marked, which are in violation of Constitution of Pakistan. Learned counsel also took the Court through by way of comparison of the provisions of United Nations Policy and SOP to substantiate that the latter is also in violation of the United Nations Policy.

4. Learned Advocate Supreme Court further contended that previously the SOPs drafted by Ministry of Interior were challenged before this Court and were struck down with observations in case titled "*Nazar Muhammad Qureshi and 12 others Vs. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and 05 others*" **[2012 PLC (CS) 90]**, however, while drafting the impugned SOP, the observations made by this Court have not been kept in regard. Learned counsel also submitted that when the initial action is taken by incompetent authority, the entire superstructure collapses. It was further submitted that National Police Bureau is not the competent authority and even Ministry of Interior could not have issued the SOP without sanction from the Prime Minister of Pakistan. In support of his contentions, learned counsel placed reliance on cases reported as "*Abdul Wahab and others Vs. HBL and others*" **(2013 SCMR 1383)**, "*Nazar Muhammad Qureshi and 12 others Vs. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and 5 others*" **[2012 PLC (CS) 90]**, "*Zarai Taraqati Bank Limited and others Vs. Said Rehman and others*" **[2013 PLC (CS) 1223]**, "*Khawaja Ahmad Hassaan Vs. Government of Punjab and others*" **(2005 SCMR 186)**, and "*Pakistan through Secretary Finance, Islamabad and 5 others. Vs. Aryan Petro Chemical Industries (Pvt.) Ltd., Peshawar and others*" **(2003 SCMR 370)**. It was also contended that the concept of quota is not permissible as per the Constitution of Islamic Republic of Pakistan, 1973 and reliance was placed on case reported as "*Nusrat Baig Mirza Vs. Government of Pakistan and another*" **(PLD 1992 Federal Shariat Court 412)**, "*Mushtaq Ahmad Mohal and others Vs. The Honourable Lahore High Court, Lahore and others*" **(1997 SCMR 1043)**, "*Mrs. Naseem Firdous Vs. Punjab Small Industries Corporation through Managing Director and 3 others*" **(PLD 1995 Lahore 584)**, "*New Jubilee Insurance Company Ltd., Karachi Vs. National Bank of Pakistan Karachi*" **(PLD 1999 SC 1126)**, "*Abdullah Nawaz Cheema Vs. Federal Public Service Commission (FPSC), Islamabad and another*"

(2019 SCMR 622), "*Haider Abbas Vs. Federal Public Service Commission through Chairman*" **(2017 SCMR 612)**, "*Suo Motu Case No.01 of 2014*" **(PLD 2014 SC 699)** and "*Lt. Muquddus Haider Vs. Federal Public Service Commission through Chairman, Islamabad*" **(2008 SCMR 773)**. It was submitted that undoubtedly, the Courts generally do not interfere in the policy matters, however, if the policy is in violation of any law or fundamental rights of the citizens, this Court in its constitutional jurisdiction can strike it down. Reliance was placed on "*Muhammad Rafique and others Vs. Secretary Schools, Government of Punjab, Lahore and others*" **[2019 PLC (CS) 699]** and "*Amjad Ali Vs. Province of Sindh, through Secretary Education and Literacy Department, Sindh Secretariat Karachi and 2 others*" **[2019 PLC (CS) 846]**. Reliance was also placed on unreported decision of the Hon'ble Supreme Court of Pakistan "*Sajjad Ali Vs. Vice Chancellor thr. Registrar University of Malakand at Chakdara, Dir Lower & others*" **(Civil Petition No.3107 of 2018)**. Other Counsel for the petitioners adopted the arguments of Hafiz Noor Muhammad, Advocate Supreme Court.

5. Since *vires* of the Federal Policy was under challenge, hence notice under Order 27-A C.P.C. was also issued to the Attorney General for Pakistan.

6. Raja Khalid Mehmood Khan, learned Deputy Attorney-General, entered appearance on behalf of the respondents and defended the policy. It was submitted that there is no material difference between the Policy of the United Nations and the SOP issued by Ministry of Interior. It was submitted that some minor changes have been made in order to ensure due compliance and to tailor the policy for local requirements. It was further submitted that had the SOP been in violation of the United Nations Policy, the referred agency would have questioned the same. It was further contended that the policy is not in violation of Article 27 of the Constitution and National Police Bureau being part of Ministry

of Interior drafted the policy, which then was approved by the Ministry of Interior.

7. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

8. The Government of Pakistan, Ministry of Interior received intimation from United Nations regarding its intention to select the officers meeting the requisite criteria as part of Peacekeeping Missions Abroad. The petitioners participated in the process but were not selected for one reason or the other and have challenged the SOP in this behalf issued by National Police Bureau, Interior Division, Government of Pakistan. The Ministry of Interior/National Police Bureau on the basis of five hundred seats available as per intimation by United Nations allocated percentage quota to all provinces as well as other departments. In this behalf, Punjab's quota was 39.46%, Sindh's quota was 30.66%, KPK's quota was 14.31%, Balochistan's quota was 7.3%, ICT, Islamabad's quota was 2.3%, NH&MP's quota was 1.15%, AJ&K's quota was 1.69%, PRP's quota was 1.42%, Gilgit Baltistan's quota was 1.21% and other institutions including F.I.A. and I.B's quota 0.5%. Out of this quota 80% was for fresh induction and 20% for repeaters. The salient guidelines regarding the eligibility are provided in letter dated 15.04.2019, issued by National Police Bureau to all concerned. The eligibility criteria is as follows:-

“5. The opportunity is open to all ranks of the executive side (Only uniformed personnel) fulfilling the following criteria:

- i. Minimum academic qualification of graduation.***
- ii. Have a minimum of five years of service.***
- iii. Should not be under disciplinary proceedings.***
- iv. Be in possession of a valid motor car / jeep driver's license.***
- v. Should be 25 years or above on the date of the UN (SAAT) Test.***
- vi. Should be cleared by a medical board.***
- vii. Should have basic computer knowledge.***

- viii. *Should be security cleared by the I.B or Special Branch.*
- ix. *Must have command over English language (spoken & written).*
- x. *Officers on deputation can apply with the concurrence of both the lending and borrowing organizations.”*

9. 10% Special quota for women was also marked. A comparison of the SOP framed by National Police Bureau and United Nations Guidelines is as follows:-

COMPARISON OF SOP FRAMED BY NATIONAL POLICE BUREAU WITH UNITED NATIONS GUIDELINES AND SOP.

| Sr# | NPB SoP | U.N Guide Lines | U.N SoP | Remarks |
|-----|--|--|--|---|
| 1. | 7(2)(i) Minimum academic qualification of graduation | Nil | Nil | This is not the requirements of U.N SoP and Guide Lines |
| 2. | 7(2)(ii) Have a minimum of five years service | U.N Guidelines A minimum of five years excluding training. Retired personnel can be deployed if they have retired within the past five years. | A minimum of five years excluding training. Retired officers can be selected if they have retired within the past five years effective from date of deployment to Mission. | |
| 3. | 7(2)(iii) Should not be under disciplinary proceedings | Nil | must not be under investigation or being prosecuted for any criminal, human rights or disciplinary offenses with the exception of minor traffic accidents... A candidate who has been involved in serious misconduct in a previous U.N assignments will be disqualified from future services in a PKO or SPM. | |
| 4. | 7(2)(iv) Be in possession of a valid motor car/jeep drivers license | U.N Guidelines Must have at least one year of recent driving experience and must be in possession of a valid national or international driving license for at least one year. | National driving license have at least one years of driving experience know standard traffic regulations and be able to safely operate a manual gear four-wheel drive vehicle. | |
| 5. | 7(2)(v) Should be 25 years or above on the date of the U.N SAAT Test. | U.N Guidelines Not less than 25 years of age, the maximum age limit for service with the U.N is 62 years however it is strongly recommended that the deployment of said personnel be under 55 years of age. | At least 25 years of age and should be less than 62 years old for service in PKO or SPM. Generally it is strongly recommended that a candidate be under 55 years of age at the time of deployment. | |
| 6. | 7(2)(vi) Should be cleared by a medical board | All the U.N Police Officers deployed in U.N Peace Keeping Operations must receive a medical clearance from Medical Services Division, U.N Headquarters, New York. A pre-deployment Medical examination is required for all U.N Police Officers being considered for a Mission assignment with the U.N. The examination must have taken place within the preceding three months. | A U.N Police Officers must be physically and mentally fit taking into consideration that he/she will be deployed to a potentially hostile and hazardous environment. Before deployment to PKO or SPM, the candidate must undergo a thorough medical examination in the MS. | |
| 7. | 7(2)(vii) Should have basic computer knowledge | Guidelines Basic Computer knowledge is essential. | Basic computer knowledge. Candidates with demonstrated computer skills would be given preference over other candidates for deployment. | |
| 8. | 7(2)(viii) Should be security cleared by the I.B or Special Branch. | Nil | Nil | |
| 9. | 7(2)(ix) | | | |

| | | | | |
|-----|---|--|---|--|
| | Must have command over English Language (spoken & written) | | | |
| 10. | 7(2)(x) Officers on deputation can apply with the concurrence of both the lending and borrowing organizations. | Nil | Nil | |
| 11. | 3(F) candidates who clear the U.N SAAT Test will be sent on Missions as per provincial/organizational quota. In working out quota 80% of seats will go to freshly selected candidates while 20% will go to repeaters. | Nil Provisions of 3(A to I) are not the requirements. | Nil Provisions of 3(A to I) are not the requirements. | Allocation of quota for fresh and repeater candidates is in violation of this Hon'ble Court's judgment reported as 2012 PLC CS 90. |
| 12. | 5(b) officers who return from a Mission will have to undergo a 03 years cooling off period before they can be eligible for the next U.N Mission. | Nil | Nil | |
| 13. | 10. Women Police Officers will have a 10% quota dedicated for them. | | Member States to nominate a minimum of 20% female candidates for each AMS. Sr.No.28 to reach the target of 20% female Police Officers in PKO and SPMs, preference for deployment will be given to equally qualified female candidates. | |
| 14. | | | Mission specific skills The candidates must demonstrate that he/she has at least one or more of the specialized skills required for deployment to a specific PKO/SPM (see Annexure-G) page 32 of U.N SoP. | |
| 15. | | Fire Arms Skills | Fire Arms Handling and Shooting Skills. | |

The comparison shows that the material difference between the SOP framed and United Nations Guidelines or SOP is regarding minimum academic qualification of graduation and command over English Language. Moreover, the SOP provides for provincial and organizational quotas, whereas no such requirement exists as per United Nations SOP. Furthermore, there is a quota for repeaters and also a three years cooling off period before eligibility. Under United Nations Guidelines, 20% minimum quota for women is applicable, whereas under the local SOP 10% quota is provided. During the course of arguments, the thrust was on quota for repeaters and organizational and provincial quotas. It seems that United Nations issued guidelines and its SOP for recruitment but the Government of Pakistan tailored those guidelines or SOP in such a way as to suit its requirements and in doing so provided a filter for eligible candidates, who are finally tested by the

United Nations representatives before making a final selection of five hundred candidates. The policy earlier in existence was challenged before this Court in case reported as "*Nazar Muhammad Qureshi and 12 others Vs. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and 05 others*" **[2012 PLC (CS) 90]**, in which this Court made certain observations, which are provided in paragraphs No. 8 and 9 of the judgment. For sake of brevity, the referred observations are provided herein below:-

"8. Admitted position in the present case is that the Policy of the Government dated 28th April 2011, is in contradiction with the Policy of United Nations for selection of officers. Under the Policy of the Government, the minimum age limit has been fixed as 30 years, whereas under the Policy of the United Nations minimum age limit is 26 years, in such a way most of the officers have been deprived from participating in the competition. In the same manner upper age limit has been declared as 50 years, whereas in the criteria given by the United Nations, the upper age limit is 62 years, preferably 55 years. Again, 50% quota has been assigned to the repeaters. The Policy shows that an intentional effort has been made to deprive police officers from participating in the competition. The Policy, as such, is based on discrimination. No plausible explanation has been put forward, as to why all the police officers are not permitted to compete for posting in the U.N. Mission. There is no doubt that Policy making is the prerogative of the Government and the Court in exercise of constitutional jurisdiction cannot make Policy for the Government, however, if a Policy itself is not supported by any Law or Rule or is based on discrimination, then the Court has the jurisdiction to examine the same. The discriminatory attitude of the respondents is also clear from the fact that certain officers were sent in violation of their own Policy, which fact has not been denied. The argument that this policy has been framed only to provide an opportunity to the fresh officers, is not correct, because it is not the case of appointment, rather the object is to hold a fair competition for all, where everyone should have the opportunity to participate. The Government, no doubt, has the authority to refuse sending any officer for the U.N Peacekeeping Mission, however, if the Government has decided to send the Officers, then opportunity of fair

competition cannot be denied, irrespective of the fact that the officer is a repeater or fresh candidate. This fact cannot be ignored too, that the U.N. Committee in the criteria has held that preference should be given to the repeaters.

9. *Even if it is presumed that the object of Government in changing the Policy is to provide opportunity to fresh candidates, then they should improve the quality of education and the standard of training imparted to the police officers. Furthermore, opportunity cannot be provided by depriving others from participating in competition. The Policy of the Government based on letter dated 28th April, 2011 can neither be considered as fair nor just. It is neither based on reasons nor is supported by any Law or Rule. The contention that the Policy was not approved by the Prime Minister, was denied by the learned Deputy Attorney General. However, the said Policy is in the form of a letter which does not show that it was issued with the approval of the Prime Minister.”*

10. It seems that while rewriting the policy, the Ministry of Interior has not followed all the observations made by this Court. It is pertinent to observe that the policy seems to have been drafted by National Police Bureau and issued/sanctioned by Ministry of Interior, Government of Pakistan. Under Rule 15 of Rules of Business, 1973 all important policy decisions or deviations there from are to be taken by Prime Minister of Pakistan. Nothing is available on record to show that Prime Minister of Pakistan sanctioned the policy. Though, learned counsel for the petitioners vehemently argued that National Police Bureau is not even an attached department of Ministry of Interior and could not have drafted the guidelines, however, mere drafting of a policy or a document does not make it *ultra vires*, however, it is the authority which accords approval of the same that matters. Ministry of Interior under the Rules of Business does not seem to have the authority to devise any such policy and it was incumbent upon the referred Ministry or Division to have forwarded the same to the office of Prime Minister for its due sanction or approval. In this behalf, the judgments relied upon by learned counsel for the petitioners are instructive. In "*Zarai Taraqiyati*

Bank Limited and others Vs. Said Rehman and others” [2013 PLC (CS) 1223], the Hon’ble Supreme Court of Pakistan observed that all statutory authorities or bodies derive their powers from statutes which created them and from the rules or regulations framed thereunder, any order passed or action taken, which is in derogation or in excess of the powers of statutory authority or body, could be assailed as *ultra vires*. Similar observations were made in *“Khawaja Ahmad Hassaan Vs. Government of Punjab and others” (2005 SCMR 186)* and *“Pakistan through Secretary Finance, Islamabad and 5 others. Vs. Aryan Petro Chemical Industries (Pvt.) Ltd., Peshawar and others” (2003 SCMR 370)*. The next thrust of arguments was regarding the fixation of provincial quota by Ministry of Interior on the basis that no regional quota is provided under the United Nations Guidelines and even otherwise the quota system is in violation of Article 27 of the Constitution. Under Article 27 of the Constitution, all regional quotas are to be done away with eventually and in order to give protection to people from a certain part of the country, the legislature could legislate regarding providing them a due representation. For ease of convenience, Article 27 of the Constitution is reproduced below:-

“27. Safeguard against discrimination in services.— (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

Provided that, for a period not exceeding [forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan:

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex [:]

[Provided also that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament).]

(2) Nothing in clause(1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority."

11. Based on the interpretation of Article 27 in "*Nusrat Baig Mirza Vs. Government of Pakistan and another*" (**PLD 1992 Federal Shariat Court 412**), the Federal Shariat Court held that the quota system is un-Islamic. In "*Mushtaq Ahmad Mohal and others Vs. The Honourable Lahore High Court, Lahore and others.*" (**1997 SCMR 1043**), held the quota to be unlawful. In this behalf, it was observed that even otherwise, the Constitutional requirement, *inter alia*, enshrined in Article 18 of the Constitution which enjoins that "Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business" includes the right of a citizen to compete and participate for appointment to a post in any Federal or a Provincial Government department or an attached department or autonomous bodies/corporations etc. on the basis of open competition, which right he cannot exercise unless the process of appointment is transparent, fair, just and free from any complaint as to its transparency and fairness. The above objective enshrined in our Constitution cannot be achieved unless due publicity is made through public notice for inviting applications with the aid of the leading newspapers having wide circulation. It was further observed as follows:-

"19. In order to appreciate the above submissions of the learned counsel for the parties, it may be advantageous to reproduce Article 27 of the Constitution, which reads as under:--

"27.---(1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any

such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

Provided that, for a period not exceeding twenty years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan:

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

(2) Nothing in clause (1) shall prevent any Provincial Government, or any local authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority."

A perusal of the above-quoted clause (1) of Article 27 of the Constitution (which relates to one of the Fundamental Rights guaranteed by the Constitution), enjoins that no citizen otherwise qualified for appointment in the service of Pakistan shall be' discriminated against in respect of any such' appointment on the ground only of race, religion, caste, sex, residence or place of birth. It may further be pointed out that the original first proviso to the above clause provided that for a period not exceeding ten years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan. The above period of ten years was substituted by twenty years through President's Order No. 14 of 1985. The said period of twenty years had expired on 13-8-1993 as the Constitution was enforced on -14-8-1973. It may also be observed that proviso 2 to above clause lays down that in the interest of the service of Pakistan, specified posts or services may be reserved for members of either sex if such posts or 4ervices entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

It may be pertinent to point out that by virtue of clause (2) of above Article any Provincial Government, or any local authority in a Province has been

empowered to prescribe the requirement of residence in the Province for a period not exceeding three years in relation to any post or class of service.

It may be highlighted that Clause (1) of Article 27 of the Constitution guarantees that every citizen will have equal opportunity for appointment in the service of Pakistan if otherwise qualified. Whereas clause (2) thereof also guarantees equal opportunity to all the citizens with the condition that any Province or local authority may prescribe the requirement of three years residence in the Province concerned in order to ensure that the locals of that Province should have preferential right to have a job as compared to an outsider, who has no domicile and has not been residing for a period of three years in that Province. This condition has been provided apparently in order to ensure the Provincial autonomy which the Constitution guarantees to the Federating Units.

20. We may observe that Article 27 of the Constitution is to be read in conjunction with inter alia Articles 2A, 18 and 25 of the Constitution. Aforesaid Articles 2A and 18 of the Constitution have already been referred to hereinabove. Whereas above Article 25 of the Constitution guarantees that all citizens are equal before law and are entitled to equal protection and that they shall not be discriminated on the basis of sex alone. Inter alia the above Articles of the Constitution are designed, intended and directed to bring about an egalitarian society based on Islamic concept of social justice.

We may state that in view of the above factual position, namely, that the period of twenty years mentioned in proviso 1 to clause (1) of Article 27 had expired on 13-8-1993, the High Court could not have invited applications for the above 14 additional vacancies for the posts of Civil Judges-cum-Judicial Magistrates on zonal basis as it would have been violative of aforesaid clause (1) of Article 27 of the Constitution.

24. Then it was lastly contended that even nowadays the Government Departments in the Federal as well as the Provincial Governments and other corporate bodies have been inviting applications for appointment on zonal or area basis. To reinforce the above submission he wanted to show certain advertisements which appeared in the daily newspapers for inviting applications. The fact that in spite of expiry of the period of twenty years some of the departments in violation of Article 27 of the Constitution, have been inviting applications on the zonal basis is not sufficient to justify the petitioner's claim on the above basis."

12. In so far as quota on the basis of female seats is concerned, observations were made by Hon'ble Lahore High Court in case reported as "*Mrs. Naseem Firdous Vs. Punjab Small Industries Corporation through Managing Director and 3 others*" (**PLD 1995 Lahore 584**) and it was held to be discriminatory. As to regional quota, again in case reported as "*New Jubilee Insurance Company Ltd., Karachi Vs. National Bank of Pakistan Karachi*" (**PLD 1999 SC 1126**), the Hon'ble Supreme Court of Pakistan deprecated the practice. Similar views were expressed in "*Abdullah Nawaz Cheema Vs. Federal Public Service Commission (FPSC), Islamabad and another*" (**2019 SCMR 622**) and "*Haider Abbas Vs. Federal Public Service Commission through Chairman*" (**2017 SCMR 612**). The Hon'ble Supreme Court of Pakistan in an unreported case titled "*Sajjad Ali Vs. Vice Chancellor thr. Registrar University of Malakand at Chakdara, Dir Lower & others*" (**Civil Petition No.3107 of 2018**) has recently observed that though disable quota may be fixed, however, the merit is not to be bypassed in any way. Keeping in view the above judgments of the Hon'ble Supreme Court of Pakistan and other Courts deviation from the guidelines of United Nations on the basis of regional quotas is a departure from the United Nations Guidelines and also is in violation of Article 27 of the Constitution, however, in so far as fixation of female quota is concerned, United Nations SOPs specifically provides so as 20%. However, the quota fixed is lesser than the prescribed, as there are fewer female police officers in Pakistan. Likewise, quota for repeaters is to be adhered strictly in light of the guidelines of United Nations. This Court has already made observations in "**2012 PLC (CS) 90**", which have not been kept in view while drafting the impugned SOP. Moreover, nothing is available on record to show that National Police Bureau is a competent body to draft and issue the United Nations Guidelines. Even if the guidelines are to be drafted by National Police Bureau, they are to be sanctioned by Ministry of Interior with the approval of the Prime Minister. It is trite law that the Courts do

not interfere with the policy decisions of the executive, however, if the policy is in violation of any provision of law or the Constitution then the policy can be struck down as was done earlier by this Court in "**2012 PLC (CS) 90**" supra.

13. For what has been stated above, the instant petitions are **allowed**, the SOP issued by National Police Bureau, Ministry of Interior, Government of Pakistan is declared to be illegal and without lawful authority. However, this pronouncement shall not adversely affect the tests and admissions undertaken under the same. It is expected that the Federal Government shall in future either conduct examines/tests strictly in accordance with the policy of United Nations or even if it is to frame one shall do so keeping in view observations made above and promulgate the same by the Competent Authority.

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 31st day of January, 2020.

JUDGE

Approved for Reporting.

M. Zaheer Janjua