

JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.2765/2011

Nazar Muhammad Qureshi etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior

----- (2)-----

W.P. No.2901/2011

Ghulam Akbar Ch.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (3)-----

W.P. No.2887/2011

Khuda Bakhsh Khan etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (4)-----

W.P. No.2891/2011

Qaiser Ali Sheikh

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (5)-----

W.P. No.2893/2011

Agha Syed Shams Azhar, Inspector etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (6)-----

W.P. No.2840/2011

Muhammad Khalid Hameed etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (7)-----

W.P. No.2842/2011

Khalid Rasheed etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (8)-----

W.P. No.2858/2011

Imran Fazal IP/PSO etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (9)-----

W.P. No.2859/2011

Iqbal Hussain, Inspector etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (10)-----

W.P. No.2860/2011

Shahzad Saleem Kayani, Inspector etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (11)-----

W.P. No.2870/2011

Mansoor Ahmed, Inspector etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (12)-----

W.P. No.2873/2011

Tanveer Ahmad Malik, DSP

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (13)-----

W.P. No.2874/2011

Pervaiz Ahmed Khan

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (14)-----

W.P. No.2875/2011

Shahzada Kaukab Farooq

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (15)-----

W.P. No.2876/2011

Khalid Mehmood Anwar

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (16)-----

W.P. No.2878/2011

Naila Razag, S.I. etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (17)-----

W.P. No.2775/2011

Mirza Qamar-uz-Zaman, DSP etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (18)-----

W.P. No.2628/2011

Muhammad Azeem Minhas

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (19)-----

W.P. No.2793/2011

Javed Hassan, Inspector etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (20)-----

W.P. No.2796/2011

Muhammad Ashraf Awan, DSP etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (21)-----

W.P. No.2808/2011

Yasir Arafat

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

----- (22)-----

W.P. No.2823/2011

Farhat-un-Nisa, ASI etc.

Vs.

Federation of Pakistan through Secretary, Ministry of Interior etc.

Petitioners by: -

Ch. Muhammad Ashraf Gujjar, Advocate (W.P. No. 2765/2011, 2901/2011, 2840/2011)

Malik Muhammad Siddique Awan, Advocate (W.P. No.2887/2011, W.P. No.2858/2011)

Mr. Qaiser Ali Sheikh, Petitioner in person (W.P. No.2891/2011)

Mr. Adil Aziz Qazi, Advocate (W.P. No.2893/2011, 2823/2011, 2859/2011, 2860/2011, 2878/2011, 2628/2011, 2796/2011, 2808/2011)

Mr. Asad Iqbal Siddiqui, Advocate (W.P. No.2873/2011, 2874/2011, 2875/2011, 2876/2011)

Dr. Umair ul Hassan, Advocate on behalf of learned counsel for petitioner (W.P. No.2842/2011)

Respondents by: Malik Amirdad Awan, Advocate (W.P. No.2870/2011, 2793/2011)
Petitioners Mirza Qamar-uz-Zaman, DSP, Rana Muhammad Anwar Khan, DSP and Shehzada Saleem, DSP in person (W.P. 2775/2011)
Shafi Muhammad Chandio, D.A.G.
Ali Akbar, S.P. Legal, NH&MP
Javaid Iqbal, DSP, Legal, Rawalpindi on behalf of IGP Punjab, Lahore.
Javaid Iqbal Khattak, S.P. Legal, Abdul Rauf, Inspector Legal, Islamabad.
Date of Decision: 18-10-2011

=====

Riaz Ahmad Khan J: This single judgment is directed to disposed of all the above titled writ petitions, as common questions of law and facts are involved in these writ petitions.

2. Facts constituting the background of all the above mentioned writ petitions are that United Nations, Department of Peacekeeping Operations, required police officers from different States for their Peacekeeping Missions. Pakistan is also included in the States, wherefrom the police officers are selected for this purpose. The United Nations Selection Team visits Pakistan to conduct tests in order to select capable officers. This practice is in vogue since 1996. For the purpose of selection, United Nations has prepared a Policy for the selection of officers, which is as follows:-

Age

44. Member States shall not deploy police and other law enforcement personnel who are less than 25 years of age. The maximum age limit for service with the United Nations is sixty two (62) years; however, it is strongly recommended that the deployment of said personnel be under fifty five (55) years of age.

Professional Status

45. The United Nations is open to considering contributions from all police contributing countries regarding their nomination of personnel assigned to their national police and other law enforcement agencies for deployment to United Nations peacekeeping operations. United Nations Police Officers should have served in a national police or other law enforcement agency for a minimum of five (5) years, excluding training. Retired personnel can be deployed if they have retired within the past five (5) years.

Assignment of United Nations Police Officers

46. The Head of the Police Component has the right to assign United Nations Police Officers, considering their background and experience, to appropriate duties, responsibilities and/or positions within the Police Component's structure as he/she deems appropriate. The assignment of all contracted posts, if any, will be processed by the police division in consultation with the mission capabilities, special skills, national and regional diversity, ranking and gender balance will be taken into account for the assignments of United Nations Police Officers.

Language(s)

47. It is indispensable to speak fluently, read and write clearly in the official language(s) of the mission.

48. Police and other law enforcement personnel nominated for service as United Nations Police Officers should preferably have passed the mandatory language assessments as set out in the United Nations Selection Assistance Team Guidelines prior to leaving their home countries. Officers that have passed such assessments shall not be subjected to any other language tests in the mission upon arrival.

49. United Nations Police Officers arriving in the mission area without the United Nations Selection Assistance Team clearance must take the mandatory language test in the mission as administered by the designated unit. The concerned candidate who fails this test will be repatriated and the travel costs shall be borne by the Member State.

Firearms

50. The United Nations Police Officers assigned to the missions are only authorized to carry and use firearms in accordance with the relevant issuances of DPKO if and when so authorized by the United Nations. They should preferably receive a United Nations Selection Assistance Team clearance on the use of firearms prior to their deployment.

Driving

51. Police and other law enforcement personnel nominated for service as United Nations Police Officers must have at least one (1) year of recent driving experience, and must be in possession of a valid national or international driving licence for at least one (1) year. In addition, they may be submitted to a driving test by the United Nations Selection Assistance Team. United Nations Police Officers must bring their valid national driving licences or international driving licences to the mission area, which should be valid during their service.

Computer Skills

52. Basic computer knowledge is an essential skill in the mission. Member States are strongly encouraged to incorporate lectures on this topic into their pre-deployment training.

Complementary Skills

53. The following additional criteria are desirable; previous experience in United Nations peacekeeping operations; proficiency in map reading, land navigation and use of global positioning systems; knowledge of the basic negotiation, mediation and conflict resolution, interviewing techniques and basic first aid.

3. The grievance of the petitioners is that the Government has changed the Policy given by the United Nations and prepared its own Policy, based on discrimination and nepotism and further to provide opportunity to the officers of their own choice. In this respect, the Government of Pakistan, Ministry of Interior issued letter No.9/20/2011-

Poll.I(3), dated 28th of April, 2011. In the said letter, the age limit in violation of United Nations' Policy, was changed and it was provided that the Officers should be more than 30 years and less than 50 years and that the Police Officers should have active service for at least 8 years. Similarly, 50% quota was reserved for repeaters and 50% quota was reserved for fresh candidates. Repeaters have to serve at least 2 years before being eligible for their new deployment in the UN Mission. It was further provided that police personnel, who served in UN Mission for more than two times, may not be considered. Feeling aggrieved of the said letter, the present writ petitions were filed, with the prayer that all police officers, eligible under the criteria given by the United Nations, may be permitted to sit in the exam, to be conducted by the U.N. Mission and if they qualify, they may be permitted to be sent to United Nations' Peacekeeping Mission. Accordingly, it was prayed that the impugned letter dated 28th April, 2011 be declared as illegal, unlawful, arbitrary and it may further be declared that the respondent No.1 has no authority to give guidelines regarding criteria provided by the United Nations.

4. Learned counsel for the petitioners contended that prior to 1996, police personnel were deployed on the basis of recommendation by their respective I.G.Ps. or Home Department, but due to their unsatisfactory performance, the United Nations decided to send its team to select Officers in accordance with the Rules and criteria. In the

year 1997, the Interior Ministry imposed a ban on repeaters and the result was that fresh incumbents could not prove themselves up to the mark and the number of officers dropped to a large extent. In the year 1999, a Committee was constituted, which decided that 25% of nominees may be selected from amongst repeaters, which now has been increased to 50%. Learned counsel contended that in the year 2000, 107 Punjab Police Officers participated and only 5 of them qualified. Similarly, in the year 2002, 64 officers from Baluchistan appeared in the test, all were fresh nominees and only one could qualify. Whereas, in the year 2001, when Interior Ministry allowed repeaters, 30 Officers appeared and 9 qualified. All these facts were mentioned by the respective I.G.Ps. Learned counsel further contended that only prayer of the petitioners is that they want to sit in the exam, which by itself would not qualify them for appointment. Their only prayer is that they should not be discriminated against other police officers. It was further contended that if a ban is imposed upon the repeaters, then the result would be that due to poor standard of education prevailing in Pakistan as well as poor quality training, most of the fresh candidates would not be able to qualify for test and consequently, loss would cause to the Government Exchequer. Learned counsel also contended that the Government does not follow even their own Policy and recently, one officer by the name of Muhammad Maqbool arrived on 26-03-2011 and was again sent back on 26-07-2011. Again, another letter was issued by virtue of which, it

was provided that the above said Policy would not be applied to the P.S.P. officers. Learned counsel contended that in such a way, the Policy of the Government is discriminatory, not based on any Law or Rule and the object of the same is to extend favour of their favourite ones.

5. Mirza Qamar-uz-Zaman, one of the petitioners, submitted that according to Rule 15 of the Rules of Business, 1973, in cases involving important policy or departure from important policy, approval of the Prime Minister was must, whereas, in present case, the impugned Policy was issued without the approval of the Prime Minister and the same is, therefore, nullity.

6. On the other hand, learned Deputy Attorney General submitted that the Government had issued the new Policy, only to provide an opportunity to the fresh officers to participate and so that they may also get an opportunity to go abroad. Similarly, the age limit was changed from the guidelines provided by the United Nations to enable the fresh police officers. It was further submitted that the policy decision of the Government cannot be challenged in writ jurisdiction.

7. I have heard learned counsel for the parties and have also perused the record.

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 Govt. 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 Govt. 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. In the above said circumstances, I hold that the letter/policy guidelines of the Government dated 28th April, 2011 is illegal, void and all the above titled writ petitions are accordingly, accepted. All the petitioners/police officers, eligible to appear in the test in accordance with the criteria laid down by the United Nations Department of

Peacekeeping Operations, will have the right to participate in the competition.

(RIAZ AHMAD KHAN)
Judge

Approved for reporting.

Wajid

Uploaded By : Engr. Umer Rasheed Dar