

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.156 of 2019
Muhammad Rizwan Arshad and others
Versus
Hafiz Abdul Sattar and another

Date of Hearing:	14.07.2021
Appellants by:	Chaudhary Imtiaz Ahmed, Advocate.
Respondents by:	M/s Jameel Hussain Qureshi and Muhammad Umer Haider, Advocates for respondent No.1.

MIANGUL HASSAN AURANGZEB, J:- Through the instant intra Court appeal, the appellants impugn the judgment dated 21.03.2019 passed by the learned Judge-in-Chambers, whereby writ petition No.1180/2018 filed by respondent No.1 (Hafiz Abdul Sattar) was allowed and the appointment of appellant No.1 (Muhammad Rizwan Arshad) as Assistant Scientific Officer (Hakim) (BPS-16) in the National Institute of Health, Islamabad (“N.I.H.”), was set-aside on the ground that the process for the said appointment was not in accordance with the guidelines issued by the Establishment Division.

2. Learned counsel for the appellants submitted that the sole ground on which the appointment of appellant No.1 was set-aside was that the age relaxation of five years under the Establishment Division’s Office Memorandum (“O.M.”) dated 24.06.2010 had not been mentioned in the advertisement dated 26.03.2017 published by the N.I.H.; that the learned Judge-in-Chambers erred by not appreciating that the said advertisement had specifically mentioned that age relaxation of five years in accordance with the governmental instructions would be granted to the applicants applying for appointment against the advertised posts; that although appellant No.1 was 39 years of age on the cut-off date of 10.04.2017 (i.e. 15 days from the date of the advertisement), he was entitled to the general age relaxation of five years under the Establishment Division’s O.M. dated 24.06.2010 as well as age relaxation of ten additional years under the Establishment Division’s notification dated 04.11.1993 on account of being a Government servant having

completed two years of Government service on the closing date for the applications; that there was no need to mention age relaxation under the said notification dated 04.11.1993 since it has been published in the official gazette and is, therefore, deemed to be in the knowledge of all and sundry; that appellant No.1 had completed ten years of continuous service as a Hakim (BPS-15) in the District Health Authority, Lahore, and was therefore, entitled to an additional age relaxation of ten years; that after being appointed as Assistant Scientific Officer (Hakim) (BPS-16) in the N.I.H., appellant No.1 has severed his *lien* with the District Health Authority, Lahore; and that even otherwise, the instructions and notifications regarding age relaxation issued by the Establishment Division are not binding on the N.I.H. since it is an autonomous body established under the National Institute of Health Ordinance, 1980 (“the N.I.H. Ordinance”). Learned counsel for the appellants prayed for the appeal to be allowed and for the impugned judgment dated 21.03.2019 to be set-aside.

3. On the other hand, learned counsel for respondent No.1 submitted that appellant No.1 was over age by 11 years when he applied for the post of Assistant Scientific Officer (Hakim) (BPS-16) in the N.I.H.; that the advertisement dated 26.03.2017 had clearly mentioned the age limit of 28 years for the said post whereas appellant No.1 was 39 years of age by the closing date for the submission of applications; that appellant No.1 could not have been granted the general age relaxation of five years under the Establishment Division’s O.M. dated 24.06.2010 as well as an additional age relaxation of ten years under the Establishment Division’s notification dated 04.11.1993; that even otherwise the age relaxation of ten years under the Establishment Division’s notification dated 04.11.1993 is only for the Federal Government servants and not for the Provincial Government servants; that since appellant No.1 was an employee of the District Health Authority, Lahore, he was not a Federal Government servant and therefore, could not have been given the benefit of an additional age relaxation of ten years under the said notification dated 04.11.1993 which has been issued in pursuance of Rule 12 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 (“the APT Rules”), which in turn have been

made by the President in exercise of the powers conferred by the Civil Servants Act, 1973 (**"the 1973 Act"**), which is a Federal Statute; and that the impugned judgment dated 21.03.2019 does not suffer from any legal infirmity. Learned counsel for respondent No.1 prayed for the appeal to be dismissed.

4. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that vide advertisement dated 26.03.2017, the N.I.H. invited applications for appointment against different posts, including one post of Assistant Scientific Officer (Hakim) (BPS-16). The applicant was required to have a domicile from Punjab and be 28 years of age on the closing date for the submission of applications. The applications had to be submitted within 15 days from the date of the said advertisement. This would make the closing date to be 10.04.2017.

6. It is an admitted position that appellant No.1 was 39 years of age when he applied for the said post. Appellant No.1 was appointed against the said post by giving him general age relaxation of five years under the Establishment Division's O.M. dated 24.06.2010 in addition to age relaxation of ten years under the Establishment Division's notification dated 04.11.1993.

7. Respondent No.1 challenged appellant No.1's appointment by filing writ petition No.1180/2018 before this Court. The said petition was allowed vide the impugned judgment dated 21.03.2019.

8. The operative part of the said judgment dated 21.03.2019 shows that the appointment of appellant No.1 was set-aside primarily on the ground that the N.I.H. had violated the instructions contained in the Establishment Division's O.M. dated 24.06.2010 to clearly highlight the general age relaxation of five years in the advertisement.

9. We have gone through the advertisement dated 26.03.2017 published by the N.I.H. and have found that it does mention that age relaxation of five years under the applicable governmental instructions would be granted to the applicants. However, it does not mention the additional age relaxation of ten years for Government servants who had completed two years of Government service.

10. The vital question that needs to be determined is whether appellant No.1 was entitled to be granted general age relaxation of five years in addition to an age relaxation of ten years on the ground that he had been a Government servant having completed two years of continuous Government service on the closing date for the receipt of the applications. Since in the said advertisement dated 26.03.2017, it was clearly mentioned that age relaxation of five years under the applicable governmental instructions would be granted to the applicants, we are of the view that the N.I.H. did not commit any illegality by granting the benefit of general age relaxation of five years under the Establishment Division's O.M. dated 24.06.2010 to appellant No.1.

11. As regards the age relaxation of ten years under the Establishment Division's notification dated 04.11.1993, the benefit of the same can only be extended to *"Government servants who have completed 2 years of continuous Government service on the closing date for receipt of applications."* Now, the said notification sets out the Civil Posts (Relaxation of Upper Age Limit) Rules, 1993 (**"the 1993 Rules"**) made by the President pursuant to Rule 12 of the APT Rules which in turn have been made by the President in exercise of the powers conferred by Section 25 of the 1973 Act. We are of the view that the benefit of age relaxation of ten years under the 1993 Rules would apply only to the Federal Government servants who had completed two years of continuous service in the Federal Government. Since the 1973 Act as well as the APT Rules deal only with the terms and conditions of the civil servants in the Federal Government and not those of the Provincial Government, the 1993 Rules would have no application to the Government servants of the Provincial Government. In holding so, we derive guidance from the law laid down by the Hon'ble Lahore High Court in the case of Punjab Government Vs. Saleem-ur-Rehman (1985 PLC (C.S.) 112), wherein it was held as follows:-

"10. The next question for consideration is whether there is anything repugnant in the subject-matter of the clause or the context in which it occurs which would militate against this interpretation. On behalf of the respondents it was contended that as the expression "Government Servant" had come to receive its own meaning it was not proper to separate the word "Government" from the word

"servant" and then refer to the Punjab Civil Servants Act to find out what was intended by the word "Government". There is little merit in this argument. We have a federal system of Government in Pakistan. Apart from the Federal Government we have four Provincial Governments. The employees of all these Governments go by the general name of Government servant. Whenever any of these Governments uses the expression "Government servant" in making rules, a different intention is clearly expressed, it uses it in the sense of its own employees only. By way of example the very notification by which the Punjab Public Service Commission invited applications for the competitive examination can be referred to. Here a certain benefit with regard to age limit was proposed to be conferred on the Federal Government employees domiciled in the Punjab as well. To give effect to the intention, clause 7 (iii) (c) of the Conditions of Eligibility was therefore, worded as follows,--

"In the case of Government servants, who are serving in connection with the affairs of the Centre and are domiciled in the Punjab or the Government Servants who have served in connection with the affairs of the West Pakistan /Punjab for a period of not less than four years on 1st January, 1981 as such, the upper age limit shall be 35 years."

Thus the condition expressly mentions the Government servants of the Federation also. During the course of hearing of these appeals we called upon the respondents to show us if there was any rule made by the Provisional Government in which the expression "Government servant" had been used to include the employees of the Governments in the Federation also without a specific mention to that effect. They were unable to do so. It is therefore difficult to accept the contention that since the expression "Government servant" has a definite connotation of its own it should be taken in the statutory rules framed by the Provincial Government to include employees of the other Governments as well."

(Emphasis added)

12. The said judgment was upheld by the Hon'ble Supreme Court vide judgment reported as Saleem-ur-Rehman Vs. Government of Punjab (1986 SCMR 747), wherein it was held *inter alia* that where an exemption or relaxation is sought to be created in respect of a certain category, a restricted and not an extended meaning is given for understanding and applying the statutory provision.

13. Additionally, in the case of Amanat Ali Zahid Vs. Ghazanfar Ali (2005 PLC (C.S.) 406), the respondent being an employee of the Federal Government had sought relaxation in upper age limit for his appointment as a Patwari in the Provincial Government. The Authority did not relax the age limit for the reason that the respondent was not an employee of the Provincial Government. The Division Bench of the Hon'ble Lahore High Court concurred with the view taken by the Authority and in effect held that an employee of the Federal Government could not be given the benefit of age relaxation under the

Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules, 1976 framed in exercise of the powers conferred by Section 23 of the Punjab Civil Servants Act, 1974 which was a Provincial Statute. For the purposes of clarity, paragraphs 8 to 10 of the said report are reproduced herein below:-

“8. The fate of the case hinges upon a correct interpretation of rule 3 (V) of 1976 rules with particular reference to the correct interpretation of the term "Government Servant" employed therein. It is not denied that respondent No. 1 was in continuous service of the Pak PWD since 27-1-1959. He was thus, an employee of the Federal Government and not an employee of the Provincial Government. The moot point involved in this appeal shall be as to whether a person who applies for being recruited to a provincial post can validly claim relaxation of the upper age limit for the period that he has continuously served not as a Provincial Government servant but as a Federal Government employee. It is not denied that employment under the Pak PWD which respondent No. 1 held was under the Federal Government.

9. In exercise of the powers conferred by section 23 of the Punjab Civil Servants Act, 1974, the Governor of the Punjab promulgated the Punjab Civil Servants Recruitment (Relaxation of Upper Age Limit) Rules of 1976. These rules pertaining to the relaxation in the upper age limit relate to the appointment to a post in the Provincial Government. The rules have been framed for the purpose of furthering the purposes and objects of the Punjab Civil Servants Act 1974. A civil servant in the Act of 1974 is defined as a person holding a civil post in connection with the affairs of a Provincial Government. Making reference to the West Pakistan Delegation of Powers (Relaxation of Age Rules, 1961) it would be pertinent to mention that these rules also apply in respect of all the services and posts under the Government of West Pakistan. When further placed in juxtaposition with Rules 3 (III & IV) it becomes manifest that the period of continuous employment served by a person in the particular services mentioned in these sub-rules which are Federal Govt. services is an exception to the general rule and that it is the previous service is a provincial post only which could be considered to be a ground for relaxation of age.

10. There is force in the submission made by the learned counsel for the appellant that through the Recruitment Policy No.R-III-2-15 of 2003 dated 26-5-2003, an across the board relaxation for a period of 5 years was given and even if this specific period is excluded, respondent No.1 would not qualify having crossed the age of 35 years at the relevant time. In identical circumstances in the case of Mohammad Ilyas v. Home Secretary 1999 PLC (C.S.) 106, the across the board 5 years relaxation in the upper age limit was reiterated except in a case where it was not made applicable.”

14. It may be mentioned that the Establishment Division's O.M. dated 24.06.2010 also has a provision for age relaxation of ten years for Government servants and contract employees who had completed two years of continuous Government service on the closing date for

the receipt of applications. The said O.M. having been issued by the Establishment Division would be applicable to the Federal Government servants and contract employees of the Federal Government. Admittedly, appellant No.1 was not a Federal Government servant having completed two years of continuous service in the Federal Government on the closing date for the submission of applications for appointment against the post of Assistant Scientific Officer (Hakim) (BPS-16) in the N.I.H. He had, however, completed two years of continuous service in the District Health Authority, Lahore. Since appellant No.1 had not completed two years of continuous service in the Federal Government, we are of the view that he was not entitled to the additional age relaxation of ten years under the 1993 Rules.

15. As regard the contention of the learned counsel for the appellants that since the N.I.H. is an autonomous body and therefore, not governed by the instructions contained in the Office Memoranda issued by the Establishment Division, we find the same to be paradoxical in addition to be without any force. The advertisement dated 26.03.2017 clearly mentions that the general age relaxation of five years under the applicable governmental instructions would be granted to the applicants. The general age relaxation of five years is admittedly granted under the Establishment Division's O.M. dated 24.06.2010. Therefore, N.I.H. cannot take a position that the said O.M. was not applicable to it. It is none other than N.I.H. that has relied on the said O.M. as well as the 1993 Rules by giving an age relaxation of five years plus ten years to appellant No.1. Learned counsel for the appellants did not refer to any provision in the N.I.H. Ordinance or any of the Rules and Regulations made thereunder, under which the benefit of age relaxation by fifteen years was granted to appellant No.1. The benefit of such age relaxation is a clear contravention of the requirement of the age limit of 28 years for the post of Assistant Scientific Officer (Hakim) (BPS-16) plus general age relaxation of five years clearly provided in the said advertisement. Therefore, the benefit of the age relaxation of fifteen years granted by the N.I.H. to appellant No.1 is unlawful.

16. In view of the above, the instant appeal is dismissed with no order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 02.08.2021.

(JUDGE)

(JUDGE)

Ahtesham*

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