

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 1388-P/2016.

J U D G M E N T .

Date of hearing: **4.4.2017.**

Petitioner: **(Akbar Ali and others) by Mr. Saifullah Khalil, Advocate.**

Respondent: **(Govt. of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others) by Mr. Mujahid Ali Khan, AAG.**

WAQAR AHMAD SETH, J:- Through the instant

Writ Petition, the petitioners seek issuance of an appropriate

writ with the following prayer:-

“It is, therefore, most humbly prayed that on acceptance of this writ petition the impugned order dated 01/01/2016 may very kindly be declared null and void, coram non judice, against the law and facts, principles of natural justice, principle of approbate, re-approbate, principle of estoppel and directions may kindly be issued to respondents to give first preference to petitioner and others qualified candidates in all the posts duly advertised and in those which are going to be advertised in the teaching cadre in the schools of different districts and the associate degree in education be deemed to be equivalent to the BA/B.Sc degree in the respective field of education and the existing education policy for appointment of teachers be modified, amended and quota be reserved for Associate Degree in Education as well as service rules for induction of SST be revised

to accommodate the Graduates of B.Ed (Hons) degree holders”.

2. Brief facts of the case are that the respondents have introduced Associate Degree in Education, which is two years degree program leading to B.Ed (Hons), a total four (04) years program policy vide Notification No. SOF/E&SE/1-25/2010 dated 22.7.2010, however, in the said Notification, it was also declared that Associate Degree in Education equal to Bachelor Degree and B.Ed (Hons) equal to Master Degree and this fact was also approved by the Higher Education Commission vide Notifications dated 25.10.2011 and 29.3.2007. The petitioners along with others applied for the said program and have successfully completed the Associate Degree in Education and B.Ed (Hons). That the respondents had advertised certain posts of ***C.T. (Certified Teacher), PST (Primary School Teacher)*** and ***SST (Secondary School Teacher)*** along with others, for which, test and interview were conducted but the petitioners were straight away refused the posts for the reason that no policy has yet been made for Associate Degree in Education and B.Ed (Hons). The petitioners filed two Writ Petitions No. 842-P/2013 & 08-

P/2015 before this Court, which were disposed of vide order dated 28.10.2015 and sent the cases to the Departmental Authority with direction to pass an appropriate order as per concession and preference committed by them in documents annexed with writ petition at serial No. 10 to 17. The final decision should be made within one month positively. The above said order was not implemented, the petitioners had filed C.O.C. No. 24-P/2016 before this Court, which was dismissed vide order dated 29.3.2016 because the respondents have complied with order of this Court dated 28.10.2015 delivered in Writ Petitions No. 842-P/2013 and Writ Petition No. 08-P/2015 by issuing a speaking order dated 1.1.2016 and the petitioners would be at liberty to challenge the same before competent court of law; hence, the instant Writ Petition.

3. Comments were called from respondents No. 2 to 5, which they accordingly furnished and denied the assertion of petitioners by stating that the matter/issue has already been adjudicated upon by this Court and now the petitioners have again agitated the same; hence, they prayed that the Writ Petition may be dismissed with heavy cost.

4. Arguments heard and record perused.
5. Previously this Court vide order / judgment dated 28.10.2015 in WP No. 842-P/2013 moved by some of the petitioners directed the departmental authorities to pass an appropriate order as per concession and preference committed by them vide different documents / letters. Subsequently COC No.24-P/2016 was entertained and it was held as under:-

“Show cause notice was issued to the respondents and they were also directed to file their reply, which they accordingly furnished wherein they have stated that order of this Court has been complied with and a speaking order was issued to the petitioners on 1.1.2016. In these circumstances, the instant petition has served out its purpose. Dismissed as such, however, the petitioners would be at liberty to challenge order dated 1.1.2016 annexed with the reply of respondents before competent court of law.”

6. The order dated 1.1.2016, whereby the appeal / representation of the employees / petitioners was passed after thorough deliberation and was rejected, inter alia on the following grounds:-

- i) **Because the Govt. was always empowered to make alter or modify the policy and to enhance the qualification for a particular post which could not be challenged. The govt. of Khyber Pakhtunkhwa introduced a policy with bonafide intention within the interest of public at large i.e 25% by promotion on seniority cum fitness.**
- ii) **Because the competent authority has not made such commitment vide which your people are exempted from the competitive**

recruitment process. Furthermore, you are at liberty to participate in the recruitment process. If found fit and eligible then you will be appointed under the rules and existing policy on merit.

iii) Because the work “may” is used in the entire alleged policy which is not mandatory rather it is the discretion of the competent authority how to make appointments /. Recruitment policy / process with the consent of all concerned.

iv) Because it is settled principle of law that “a desire solicited could not be equated to a legal right, hence, no legal / vested right has been infringed nor any provisions of the constitution have been violated.

7. This court while sitting in writ jurisdiction cannot asked the Government to amend, alter, add or subtract anything in the recruitment, promotion rules, as the same is in the domain of the Government / Department, unless and until some discrimination or against the fundamental rights is agitated. Reliance is placed on **1990 SCMR-1321**, (f) **titled Government of NWFP Health And Social Welfare Department through its Secretary versus Dr. Sheikh Muzaffar Iqbal and others**, wherein it has been held as under:-

(a).....

(b).....

(c).....

(d).....

(e).....

(f)....Promotion---Vested right---No one can claim a vested right in promotion or in the terms and conditions for promotion to a higher post---Government has the right to enhance the qualification and the standards for recruitment and promotion in order to maintain efficiency in Service---Except for

the post which a civil servant happens to hold, he cannot claim vested right in other higher tiers in the hierarchy.

8. Reiterating the above principles of law, the apex Court in the case of **Muhammad Saddique versus Secretary to Government of Pakistan, Ministry of Education & others, reported in PLD-1996, SC-197**, again held that Government has the right to enhance qualification and standards for recruitment and promotion in order to maintain efficiency in nature and nobody could claim any vested right in such policy of government. Likewise, in the case of **Zafar Iqbal and others versus Director, Secondary Education, Multan Division and others, reported in 2006 SCMR-1427**, again dilated upon the issue and held that government was always empowered to change promotion policy and domain of the government to prescribed qualification for a particular post through amendment in relevant rules was not challengeable.

In the case of **Executive District Officer (Revenue) District Khushab at Jauharabad and other versus Ijaz Hussain and another, reported in 2011 SCMR-1864**, while dilating upon the “principles of trichotomy of power” it has been held as under:-

---S. 4---Punjab Civil Servants (Appointment and Conditions of service) Rules, 1974, R. 17---Constitution of Pakistan, Preamble---Recruitment, process of policy matter---Academic qualification and interview marks---Ratio---trichotomy of power---Scope---Respondents were unsuccessful in selection of Patwaris and assailed process of selection on the ground that recruitment policy was defective as it had reserved 60% marks for academic qualification and 40% for interviews---High Court, in exercise of constitutional jurisdiction directed the Provincial Government to amend the recruitment policy and marks for interview should not exceed 25% of the total marks---Authorities contended that High Court could not have issued directions to amend recruitment policy as such power fell within policy making domain of the executing authority ---Validity---Recruitment policy was framed by Provincial Government as part of delegated legislation and its provisions could not have been struck down on vague considerations of being unreasonable or likely to be misused---Presumptions was that those who exercise such powers would have done it in a bona fide manner and if such power was exercised in a malafide manner, it was the particular mala fide act which could be challenged and struck down---Provisions did not become unconstitutional, violative of fundamental rights or unreasonable simply because it could be abused because any provision of law could be misused if the wielder of power so intended---Framing of recruitment policy and rules thereunder fell in the executive domain---Constitution of Pakistan was based on the principle of trichotomy of powers where legislature was vested with the functions of law making, the executive with its enforcement and judiciary of interpreting the law---Courts could neither assume the role of policy maker nor that of a law maker, therefore, to such extent the judgment passed by High Court was set aside by Supreme Court.

9. For the reasons recorded hereinabove, this writ petition is dismissed as such, with no order as to cost.

ANNOUNCED.
Dated: 4.4.2017.

JUDGE

JUDGE

Nawab Shah

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