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**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT**

Writ Petition No.3011-P/2016.

*Ahmad Danyal*

Vs.

*Islamia College, Peshawar and others.*

**JUDGMENT**


Date of hearing: 18.05.2017

Petitioner(s): By Mr. Muhammad Isa Khan Khalil, advocate.

Respondent(s): By Qazi Jawad Ihsanullah, advocate.

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**MUHAMMAD AYUB KHAN, J.** - Through



this writ petition, the petitioner has called in question the *quotas* allocated to different categories of students in admission to the Islamia College, University of Peshawar and University of Peshawar and different Boards of this Province. His prayer in the writ petition seeks:-

*"In view of the foregoing, it is, therefore, prayed that, on acceptance of this petition, this august Court may be pleased to issue an appropriate writ, thereby:*

*i. declaring the impugned paras/parts of the prospectus, 3026 of ICP regarding the quota seats, fee structure, self finance scheme and the consequent admissions/actions as illegal, unlawful and of no legal effect;*

ii. directing the ICP authorities to re-process the admissions in the intermediate classes (FA, F.Sc) forthwith on open merit against all the seats with no allocation of reserved seats to any category except that of the disabled students, and to form a fee structure for all on equality and parity basis;

iii. directing the respondents No.1 to 2 to grant admission to the locals of nearby villages on preferential and priority basis, like that being done in Govt. College, Peshawar and other areas/districts of the Province;

iv. directing the concerned authorities to restrain the in-service teachers at all levels from teaching tuitions individually or in private academies, and to take action against those academies which are owned by/or where the in-service teachers (professor, lectures, etc) are teaching for monetary gain;

v. directing the respondents 10 and 11 to take immediate steps for centralization of the BISEs and uniform marking of examination papers through out the province, preferably before the forthcoming matric and intermediate examinations; and

vi. granting any other remedy to which the petitioner is found fit in law, justice and equity".

2. The relevant facts leading to this writ petition are that the petitioner applied for admission in the F.Sc Pre-Medical and Pre-Engineering for both Islamic College and University College for Boys, Peshawar. According to the petitioner, he could not find his admission in any of the Colleges as the open

merit seats were restricted to 150, while 250 seats were allocated for *self finance* seat and about 120 seats through *special quotas* for different categories. It was vehemently contended how *self finance* seats can be allowed in the Government Funded Educational Institution. It was further asserted that all the allocation of these *reserved quota* seats run counter to the Articles 25 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"), besides violative of the judgment of the Apex Court reported in 2001 SCMR-1161.

3. The respondents have filed their comments. The Islamic College, Peshawar filed their separate comments and submitted that since the petitioner was too low in the merit list; therefore, he could not qualify for admission. It is alleged that the allocation of *quota* to different categories has not effected the open merit; that there is no concept of earning profit on education and the fee structure is subsidies; that there is *employees children quota*, which is over and above the open seats, therefore, it cannot be said that employees children are benefited at the cost of others.

4. The comments filed by the respondents No.5 to 9, different Boards of the Province have summarized in para-17 as follows:-

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*" Under the Board of Intermediate and Secondary Education Act, 1990, the creation of BISEs is the mandate of the Government and the Government by exercising such power has created 08 boards in the Province to facilitate the public. After establishment of further boards in the province, so many steps have been taken by the authorities to prepare common papers and to standardize the marking in all the Boards. For ensuring uniformity in awarding marks the BISEs in KP used to prepare/set the question papers by single subject expert and for this purpose every year the different papers are allocated to different boards for preparation of question papers. Similarly, after examination the answers books are marked/checked through groups, wherein each Scorer is allotted one question for marking under the strict vigilance of Head Examiner etc. Furthermore, marking Scheme/rubrics are framed prior to the start of marking process, which are shared with the Head Examiners for onward communication to sub-examiners. The Boards have also started the Optical Marking Recognition (MOR). Due to these steps the examinations and marking system are very much improved and curtailed the chances of cheating etc. It is totally incorrect that there is a run amongst the BISEs for awarding more and more marks without looking at the quality of the education. It is also incorrect that decentralization of BISEs has badly damaged the quality of education. Due to population increase and far flung areas the centralization of BISEs is not possible. The decentralization was adapted to facilities the peoples/students on their*



door steps. It would not be out of place to mention here that it has always been the endeavour of all the BISEs and Government to bring about further improvements in the Examinations and Education system and to bring uniformity".

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5. The Provincial Government has also filed their comments on behalf of respondents No.10 and 11. They admitted the stance of the petitioner and submitted the comments as follows:-

"3. Pertains to the respondents No.1, which is a public university and the petitioner personal record. However, the reservation of 120 seats out of 150 seats for special quota seems extremely disproportional. The reservation of quota for teachers' son with almost no fee as compared to exorbitantly charged 250 seats allocated to self-finance scheme is also not justified. The Higher Education Department Khyber Pakhtunkhwa in its Admission Policy 2014-15 has also reserved 5% seats for the children of its employees on provincial basis, which is purely filled on merit only. There is no fee exemption for them at all (copy of the Admission Policy as Annex-A). The claim of the petitioner against the respondent No.1 appears alarmingly exploitative and uncalled for. The reservation of seats for teacher's son in the respondent No.1 University should be filled on merit.

4. There should be no double standards for those who come on merit and those who do not come on merit despite the conducive environment of the university. The reservation of quota for those who belong to backward areas may be justified but for the children of the University employees in a very favourably

environment cannot be justified. There should be minimum standard even for the sons of the teachers of the Universities. The poor standard 506 marks for the Admission in F.Sc is unwarranted. Islamia College University is indeed the most sought after institutions of this province. Teacher's son's quota should have been filled from the children of all the public sector universities in Khyber Pakhtunkhwa. There should not be any concession in fees structure for them alone. The fees structure of self-finance and those candidates filled on merit is too high, which needs rationalization. It is further submitted that universities are under sub-section 6 of section 3 read with sub-section (3) of section 12-A of the Universities Act, 2012, have financial and administrative autonomy therefore, the respondent No.11 cannot interfere in their autonomy. The respondents No. 10 and 11, fully rely on the wisdom of this Hon'ble Court to judicially review the claim of the petitioner in accordance with law.

11. The merit fixed for ICP Employees children is 560 as compared to the merit fixed for open merit is 1004, as claimed by the petitioner, seems exploitative and monopolistic. The scheme of the autonomy for the universities, does not envision such a monopolistic approach which needs review by this August Court".

6. Arguments heard and record perused.
7. Under the Constitution through 18<sup>th</sup> Constitutional Amendment, Article 25A has been added, which identifies the education, as one of the fundamental rights of the people, the Article reads as under:-

*"25A, Right of education. The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law."*

8. In the successful life of an individual, the education plays an important role. Generally, it is considered to be the foundation of society which brings economic wealth, social prosperity, political stability and maintaining healthy population. Article 25 of the Constitution secured rights of equality amongst the citizens, it is reproduced for convenience:-

*"25.(1) Equality of citizens. All citizens are equal before law and are entitled to equal protection of law.*

*(2) There shall be no discrimination on the basis of sex;*

*(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children".*

9. The issue involved in this case is provisions of *quotas* in different Universities and Colleges. The determination of *quota* finds is mentioned in Article 27 of the Constitution which reads as under:-

*"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.

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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".

10. Finally, the most pertinent provision relating to providing special status for students hailing from socially and educationally backward class has been expressly ordained in sub-Article 4 of Article 22 of the Constitution, which provides;



*"Nothing in this article shall prevent any public authority from making provisions for the advancement of any socially or educationally backward class of citizens."*

11. We, while examining the prospectus for Intermediate, B.Sc, Master in Higher Studies, 2016 of the Islamia College, Peshawar found Admission Regulations that prescribed the following *quotas* for different categories which are either area specific or for the employees of Universities. The admission regulation providing quota to different categories are reproduced for ready reference:-

#### QUOTA SEATS

Category	Seats	Discipline	Eligibility
<b>1. Tribal Agencies (Male)</b>			
a. Khyber Agency	1/1	Pre-Med/Pre-Engg	Domicile & School located within Khyber Agency
b. Kurram Agency	1/1	Pre-Med/Pre-Engg	Domicile & School located within Kurram Agency
c. Aurakzai Agency	1/1	Pre-Med/Pre-Engg	Domicile & School located within Aurakzai Agency
d. Mohmand Agency	1/1	Pre-Med/Pre-Engg	Domicile & School located within Mohmand Agency
e. Bajaur Agency	1/1	Pre-Med/Pre-Engg	Domicile & School located within Bajaur Agency
f. South Waziristan Agency	1/1	Pre-Med/Pre-Engg	Domicile & School located within SW Agency
g. North Waziristan Agency	1/1	Pre-Med/Pre-Engg	Domicile & School located within NW Agency
<b>2. F.R Areas (Male)</b>			
a. F.R Peshawar	1	Pre-Med or Pre-Engg	Domicile & School located within F.R Peshawar
b. F.R Kohat	1	Pre-Med or Pre-Engg	Domicile & School located within F.R Kohat
c. F.R Bannu	1	Pre-Med or Pre-Engg	Domicile & School located within F.R Bannu
d. F.R Dera Ismail Khan	1	Pre-Med or Pre-Engg	Domicile & School located within Dera Ismail Khan
e. F.R Lakki Marwat	1	Pre-Med or Pre-Engg	Domicile & School located within F.R Lakki Marwat
f. F.R Tank	1	Pre-Med or Pre-Engg	Domicile & School located within F.R Tank
<b>3. Sports (Male)</b>	9/8/3/3/7	Pre-Med/Pre-Engg/GS-I/GS-II/Arts	
<b>4. Sports (Female)</b>	2/1	Pre-Med/Pre-Engg (in case of tie/draw preference shall be given to individual performance)	
<b>5. UET Employees Children reciprocal</b>	12	Pre-Med or Pre-Engg	
<b>6. University of Agriculture Peshawar Employee's sons on reciprocal basis</b>		1/1	Pre-Med/ Pre-Engg
<b>7. University of Peshawar Employee's real sons including Federal Centres on the Camps.</b>		15/15/5/5/15/5	Pre-Med/Pre-Engg/GS-I/GS-II/Arts/Theology
<b>8. ICP employee's real children</b>		As per Actual	
<b>9. Physically Challenged (Male &amp; Female)</b>		2/2/1	Med/Engg/GS
<b>10. Islamia Collegiate School Students (Male)</b>		6/6/2/1	Med/Engg/GS-I/GS-II
<b>11. Balochistan (Male)</b>		2/2/1	Med/Engg/GS
<b>12. Senior Alumni (Male &amp; Female)</b>		3	Pre-Med or Pre-Engg
<b>13. Afghan Nationals (Male)</b>		4/4/1/1	Med/Engg/GS-I/GS-II
<b>14. O Level (Self Support) (Male &amp; Female)</b>		2/2	Pre-Med/Pre-Engg
<b>15. Foreign Students</b>			As per Recommendation of the Ministry concerned

12. Unfortunately, the above table shows a completely sorry state of affair, the allocation of *quota*

has out classed the open merit. Allowing *quota* to employees/teachers sons of the Universities shows the arbitrariness and authoritarianism. These Universities are public Universities and never belonged to its employees or its administration.

13. The Hon'ble Federal Shariat Court in *Nusrat Baig Mirza vs. Government of Pakistan* and another PLD 1992 FSC 412 commented upon the quota system in the following words:-

*"The Holy Quran and Sunnah should form the basis of all our directions for all our spiritual as well as worldly endeavours as they provide us a guidance not only towards the good in the Hereafter but also to attain a good life in this world. Quota system in disregard of merit makes the place of domicile as the criteria and this has, unfortunately, been so woven and institutionalized in our socio-political fabric that unless we return to the original message of the Holy Qur'an we will be further away from the righteous and straight path."*

14. It may be noted that allocation of *quota* to different categories remained an issue before the Superior Courts in the history of this country. In the case of *Attiya Bibi Khan vs. Federation of Pakistan* PLD 2001 SC-1161, the august Supreme Court of Pakistan has discussed in detail the allocation of seats in the Medical Colleges. This judgment has in fact

dealt with all categories that were given quota in admission to the Medical Colleges. In this Judgment, the allocation of seats for FATA, disabled and under development areas were considered to have constitutional backing, while the rest either that the employees sons, doctors sons, defence personnel sons etc were not considered as having any constitutional protection and the apex court has in this judgment decided a point of law and under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973 is binding on all the educational institutions of this country, but unfortunately that was considered as specifically for the admission to the Medical Colleges. The judgment in Attiya Bibi case has since been implemented in the Medical Colleges and we have noted in many cases that the prospectus prescribed that quota only which has constitutional backing.

15. The Provincial Government has also shown its dis-pleasure over the reservation of *quota* for teachers or employees sons and considered it as disproportionate and injustice to the deserving candidates. According to the learned AAG in view of Section 12 (a) of the University, 2012 since these Universities have administrative and financial autonomy; therefore, the government cannot interfere.

16. We also found that the merit fixed for the

open merit has gone up to the candidate who got 1004 out of 1100, while the University employee's children, who have 560 marks, had entered these Institutions through the impugned quotas.

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17. The cases of disable persons and candidates from *backward and under developed* districts/FATA is altogether different, as per clear dictates of Articles 22 and 27 of the Constitution, which permits reservation of *quota* to students hailing from socially and educationally backward areas.

18. One of celebrated case of the Apex Court reported in 1991 SCMR-1041 titled "I.A. Sherwani vs. Government of Pakistan", which has laid down the principle on the *equal protection of law and equal treatment before law* and discussed the *reasonable classification*, as contained in Articles 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973:-

"(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having

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*different financial standings and persons accused of heinous crimes;*

*(iv) that no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;*

*(v) that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;*

*(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;*

*(vii) that in order to make a classification reasonable, it should be based:--*

*(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;*

*(b) that the differentia must have rational nexus to the object sought to be achieved by such classification".*

19. On the touch stone of the above principles, we find that reservation of *quotas* for all categories in Islamia College, Peshawar, is illegal and without lawful authority except for disabled students or under privileged class of students or students from FATA or under developed districts of the Province. This Court further directs that the Public Educational

Institutions in Khyber Pakhtunkhwa shall follow the law and provide no *quotas* for admission except for disabled students or under privileged class of students or students from under developed/backward areas of the Province or FATA.

20. For the reasons discussed above, this writ petition is **allowed** in the above terms.

  
**CHIEF JUSTICE**

  
**JUDGE**

Announced.  
Dated: 18.05.2017.  
"T. Shah"

Office  
18/05/17