

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Irfan Saadat Khan
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

Civil Petition No. 288-P of 2015

(Against the judgment dated 14.04.2015 of the Peshawar High Court, Abbottabad Bench, passed in W.P. No.468-A of 2013)

Government of Khyber Pakhtunkhwa through Secretary Agriculture, Peshawar and others

... *Petitioners*

Versus

Tahir Mushtaq and others

... *Respondents*

For the Petitioner: Mr. Shah Faisal Ilyas, Additional AG KP.

For Respondent No.1: Syed Rafaqat Hussain Shah, ASC/AOR

Date of Hearing: 12.09.2024.

ORDER

Qazi Faez Isa, CJ. The Learned Additional Advocate-General, Khyber Pakhtunkhwa (**'AAG'**) states that the respondent No. 1 had filed a writ petition in the Peshawar High Court claiming that when his father retired he was entitled to be appointed in his place on the basis of employee son's quota policy to the post of *Statistical Clerk/Crop Reporter*, but he did not possess the stated qualifications, and the policy was only applicable to Class-IV employees whereas the post which the respondent No. 1 sought was a higher post.

2. Learned counsel for the respondent No.1 has relied upon the instructions issued by the Section Officer (Reg-I) of the Regulation Wing of the Services and General Administration Department of the Government of Khyber Pakhtunkhwa dated 23 May 2000 which stipulates that *'the competent authority has been pleased to direct that a quota of 25% falling to the share of initial recruitment in BPS-1 to BPS-4 shall be reserved for appointment of one of the children of a retiring civil servant on superannuation/invalidation'*. Learned counsel has also relied on the advertisement which at serial No.2 states that it is a grade-2 post in respect of the District of Abbottabad to which he belonged, therefore, he was entitled to be employed in place of his father.

3. The learned AAG responded by stating that the said post was upgraded *vide* Notification No.SOE (AD) 23-13/2013 dated 24 January 2014 to BS-5 with

effect from 1 May 2006 which was done on the petition filed by Mushtaq ur Rehman who was the father of respondent No.1.

4. The said Notification was not considered, let alone controverted, in the impugned judgment. The assertion in the comments filed by the petitioners that the said respondent had not applied for the subject post was also not controverted. The above instructions dated 23 May 2000 do not disclose the stated *competent authority* which it should have as has also been held by this Court in the case of *Province of Sindh v Shahzad Hussain Talpur* (2022 SCMR 439) wherein it was held that '*Merely mentioning the competent authority without disclosing the designation and name of the person who is supposed to be the competent authority is utterly meaningless. Non-disclosure serves to obfuscate and enables illegalities to be committed*'. Moreover, it is noted that the said instructions were not referenced to have been issued under any law.

5. The Constitution of the Islamic Republic of Pakistan prohibits discrimination as stated in Article 25 and further stipulates and entrenches the principle in respect of service of Pakistan in Article 27. In preferring the children of a government servant or reserving seats for them offends the Constitution. The same also detracts from a merit based system of employment. The taxpayers hard earned monies pay for the salaries, benefits and pensions of government servants. The people's interest lies in having the best person for the job, and not to suffer those who secure employment on the basis of a filial relationship. The stated instructions undermine transparency and good governance, therefore, the Government of Khyber Pakhtunkhwa will be well advised to withdraw all such instructions/notifications.

6. For the reason mentioned above, the impugned judgment is set aside by converting this petition into an appeal and allowing it. Copy of this Order be sent to the petitioners for information and compliance.

Chief Justice

Judge

Judge

Judge

Islamabad:
12.09.2024
(Muhammad Asif)

Approved for reporting