

Form No: HCJD/C-121
ORDER SHEET
***IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT***

W.P. No.13444/2024.

Syed Noor-ul-Hadi Shah

Versus

Government of Punjab, etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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14.10.2024

M/s Haji Muhammad Tariq Aziz Khokhar and
Malik Tanvir Sajid, Advocates for petitioner.
Malik Masroor Haider Usman, AAG on Court's
call.

Contemporaneously, cases regarding effect of omission of Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 (“**the Rules, 1974**”) are profusely coming for adjudication. This petition belongs to same category, notionally differing in the facts involved. Learned law officer is found conversant with the matter.

2. Petitioner hereby questions legality of order dated 26.09.2024 (in short, the “impugned order”), whereby petitioner’s right to be considered for appointment under Rule 17-A of the Rules, 1974, claiming to have had arisen before omission of the rule, was declined on simple premise that Rule 17-A was no more part of the Rulebook.

3. Scope of instant petition is purely a legal issue, which is to judicially review the position adopted by the Government of Punjab, and, for the purposes of this petition, the Chief Executive Officer District Education Authority while

interpreting the omission of Rule 17-A, carried out vide Notification No.SOR-III(S&GAD)2-60/2024 dated 24.07.2024, (in short, Notification dated 24.07.2024).

It transpired that Government had issued various notifications, subsequently, to fortify their position regarding omission of Rule 17-A of the Rules, 1974, details whereof are found in the text of the impugned order of 26.09.2024 and paragraphs 3 to 6 of the orders are reproduced hereunder,

3. *"As per amended Notification issued by Govt. of the Punjab, Services & General Administration Department (Regulations Wing), Lahore vide Notification No SOR-III(S&GAD)2 60/2024, dated 24.07.2024 (Copy enclosed as Annex-A), the operative part of the amendment is reproduced hereunder;*

"In the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, Rule 17-A shall be omitted."

4. *Later on, Govt. of the Punjab, Services & General Administration Department (Regulations Wing), Lahore issued an advice/clarification with reference to Notification dated 24.07.2024 vide No. SOR-III(S&GAD)2-60/2024, dated 15.08.2024 (Copy enclosed as Annex-B) the operative part of the clarification is reproduced hereunder;*

"2. The Regulation Wing, S&GAD has examined the matter and it is observed that since 17-A Rule of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 has been omitted after approval of the Provincial Cabinet Punjab, hence, no question arises for making appointment under 17-A of the rules ibid.

5. *Recently, Govt. of the Punjab, Services & General Administration Department Regulations Wing), Lahore has issued another clarification with reference to Notification dated 24.07 2024 vide No. SOR-III(S&GAD)2-60/2024, dated 23.09.2024 (Copy enclosed as Annex-C),the operative part of the clarification is reproduced hereunder;*

"c). It was a policy decision of the Government.

d). No appointment under Rule 17-A can be made w.e.f 24.07.2024 (the date of approval of the Competent Authority) as the said rule is no more exist now."

6. In view of above mentioned facts, reasons and circumstances, the representation of the petitioner for his appointment under 17-A Rule is hereby rejected being devoid of merit having no legal ground".

4. Fundamental question is that whether the policymakers had intended or provided retrospective effect to the omission of Rule17-A of the Rules, 1974?

Upon bare textual reading no such intent, expressive or implied, is evident from Notification dated 24.07.2024, wherein use of the expression 'shall' manifests clarity of thought and actual intent of the policymaker(s). I had no difficulty to read and opine that effect of omission of Rule 17-A of the Rules, 1974 is prospective, and not retrospective. Impugned order is apparently contrary to the intent expressed through Notification dated 24.07.2024. In the context of the Notification dated 24.07.2024, few striking questions / issues need discussion to bring home clarity thereto, which are,

- (i) Whether Rule17-A of the Rules, 1974 constitute a specie of concession by way of quota?
- (ii) Is Rule 17-A creates a vested right?
- (iii) What would be the triggering event for the purposes of invoking Rule17-A of the Rules, 1974?

Questions are responded in order of preference.

5. Rule 17-A of the Rules, 1974 cannot be confused with the quota system, which is intended to provide opportunities to underrepresented and marginalized segment of the population or minorities, etc., and designed in a manner that proportionate representation was reserved. Conversely, Rule 17-A had the objective to ensure continuity of employment in the family, in wake of an unwarranted accident /mishap – intent being to provide compensation or financial security. It is more like a succession in terms of employment, but subject to the limitations and conditions. Rule 17-A of the Rules, 1974, loosely construed tantamount to a collateral service benefit, extended to the Civil Servant by offering employment to unemployed children or widow, which accrues only upon happening of an event specified – which is death of the civil servant or declaration of invalidation / incapacitation, which extends an unemployed heir a right to be considered for appointment, provided such interest is demonstrated by an overt act on the part of interested heir, including widow as the case may be. Benefit offered is simply by dint of the services performed by the civil servant, available to the family upon death or declaration of invalidation / incapacitation. It is pertinent to mention that benefit extended under Rule 17-A of the Rules, 1974 does not constitute part of the terms or conditions of service, but privilege, since no entitlement could be claimed under Rule 17-A of the Rules, 1974, unless conditions prescribed therein are fully met. An alive or healthy civil servant cannot claim

such appointment as a right for family, which privilege in fact accrues upon happening of specified event, whereby actually the services stood terminated, but continuity to service was extended by fiction in exercise of rule-making power, in favour of the family. Hence, Rule 17-A of the Rules, 1974 cannot be confused with the quota system. First issue addressed.

6. Does it create a vested or an enforceable right? Rule 17-A does not create a vested right, since vested right is free from any and all contingencies but in fact Rule 17-A contained in-built limitations and conditions, which have had to be met before someone could claim a right to be considered for appointment. There is a marked difference between a vested right to appointment and right to be considered for appointment. Rule 17-A of the Rules, 1974 offers an opportunity / permission to knock at the door, to be opened once limitations stated and conditions prescribed are fully met. Yes, such privilege extending right to be considered for appointment, stood graduated to an entitlement, and is enforceable, if someone claims to have had fulfilled all the conditionalities, including but not limited to the condition of one's eligibility. This court in the exercise of constitutional jurisdiction cannot order / direct appointment unless privilege available matured into an enforceable entitlement. Doctrine of '*locus poenitentiae*' backed in terms of section 20 of the Punjab General Clauses Act 1956 is attracted, in the context of the entitlement claimed under Rule 17-A of the Rules, 1974. Second issue is answered.

7. Rule 17-A provides an in-built mechanism for its invocation. It is expedient to reproduce Rule 17-A of the Rules, 1974 for ease of understanding:

“17-A. Notwithstanding anything contained in any rule to the contrary, whenever a civil servant dies while in service or is declared invalidated/incapacitated for further service, one of his unemployed children or his widow/wife may be employed by the Appointing Authority against a post to be filled under rules 16 and 17 for which he/she possesses the prescribed qualification and experience and such child or the widow/wife may be given 10 additional marks in the aggregate by the Public Service Commission or by the appropriate Selection Board or Committee provided he/she otherwise qualifies in the test/examination and/ or interview for posts in BS-6 and above.

Provided further that one child or widow/wife or a Government servant who dies while in service or is declared invalidated/ incapacitated for further service shall be provided a job against posts in BS-1 to 5 and the posts of Junior Clerks (BS-7) in the department in which the deceased Government servant was working without observance of formalities prescribed under the rules/procedure. Provided such child or the widow/ wife is otherwise eligible for the post”.

In terms of Rule 17-A, *ibid*, specified triggering event is the occasion when civil servant dies during service or is declared invalidated / incapacitated. This requires no elaboration. If Civil servant had died or declared invalidated / incapacitated before the Notification dated 24.07.2024, and any of his unemployed children or widow had expressed willingness to invoke / seek benefit of Rule 17-A, omission of Rule 17-A would not prejudice the right to be considered for appointment, subject to fulfilling limitations and conditions provided. Hypothetically speaking, if a civil servant had

died on 23.07.2024, could right to be considered be denied without affording / extending reasonable time for demonstrating the intent of an heir to invoke Rule 17-A. Such denial would be unreasonable and otherwise not sustainable in the context of doctrine of '*locus poenitentiae*'. In brief, happening of a triggering event in terms of Rule 17-A of the Rules, 1974, if had happened before omission of Rule 17-A, *ibid*, took effect, would extend right to be considered. It is not possible to consider and discuss every instance or eventuality, which determination is left for the department to be carried out on case-to-case basis. Third issue also responded.

8. In view of above narration, it is clear that through impugned order respondent(s) had attempted to give retrospective effect to Notification dated 24.07.2024, which interpretation is preposterous, misdirected and manifest erred reading / interpretation of the Notification, not even intended by the policymaker / rule-making authority. Hence, impugned order is not sustainable in law.

9. This petition is **allowed** and impugned order is set-aside. It is pertinent to observe that this order shall not be construed as an order directing appointment of the petitioner, but simplicitor an illustrative and interpretative reading of the Notification dated 24.07.2024 in the context of its prospective effect / application. Petitioner's right to be considered for appointment in terms of Rule 17-A would be examined, considered and decided on the basis of facts and circumstances

existing / involved. Assistance offered by the law officer and promptness shown in deciding this case is highly appreciated.

(ASIM HAFEEZ)
JUDGE

Imran/*

Approved for reporting.

JUDGE