

2022 P L C (C.S.) 675

[Lahore High Court]

Before Jawad Hassan, J

JAVED IQBAL KHAN

Versus

GOVERNMENT OF THE PUNJAB and others

Writ Petition No.28503 of 2015, heard on 18th May, 2021.

(a) Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---

---R.17-A---Appointment on reserved quota---Scope---Petitioner assailed rejection of his father's application filing after his retirement from service on medical grounds under R.17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, for appointment of his son as driver constable---Validity---Petitioner's father had retired on medical invalidation without receiving any injuries---Age of a candidate for the appointment to the post of driver constable on family claim basis was to be between 21 to 30 years as prescribed by the rules---Petitioner was found to be overage for the purpose of appointment--
-Respondents had passed the impugned order as per their rules/policy after examining all the record---Constitutional petition was dismissed, in circumstances.

(b) Constitution of Pakistan---

---Art.199---Constitutional jurisdiction---Civil service---Change in appointment criteria---Policy matter---Scope---Change in criteria for the appointment by the department is a policy matter and courts cannot interfere into the policy matters of the Department/Government, particularly when it is in the public interest---Court cannot embark upon an inquiry as to whether a particular policy is wise and acceptable or whether a better policy can be evolved--
-Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution---Government was to decide on how and in what manner the reservations should be made and such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness.

Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others 2012 SCMR 455 and Pakistan Medical and Dental Council, Islamabad through Authorized Representative v. Maleeha Syed and 4 others PLD 2020 Lah. 16 ref.

Malik Abdullah Raza and Anas Irtiza Awan for Petitioner.

Barrister Umair Khan Niazi, Additional Advocate General along with Javed Iqbal,

Inspector Investigation Branch, Mianwali for Respondents.

Date of hearing: 18th May, 2021.

JUDGMENT

JAWAD HASSAN, J.----The Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution") by challenging quasi-judicial order dated 23.06.2015 passed by the Respondent No.4 (the "impugned order") pursuant to directions issued in W.P.No.15351 of 2015 on 22.05.2015.

2. Facts of the case are that the Petitioner's father was retired from the service of the Respondents on medical grounds w.e.f. 10.03.2015. On 04.05.2015, the Petitioner's father submitted an application for the appointment of his son as Driver Constable under Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 which was turned down by the Respondents in terms of instructions dated 29.12.2014 vide order dated 07.05.2015. The said order was challenged before this Court through W.P. No.15351 of 2015 pursuant to which the impugned order was passed whereby the Petitioner has been declared overage. Hence this petition.

3. Report and parawise comments have been filed on behalf of the Respondents vehemently denying the stance of the Petitioner and praying for dismissal of writ petition.

4. Learned counsel for the Petitioner inter alia contended that the impugned order has been passed without looking into the record and relevant law; that the impugned order has been passed in contravention of the Notification dated 05.01.2009; that the eligibility of age for the appointment of Driver Constable was to be calculated from the date of submission of application by the Petitioner's father on 04.05.2015 whereas this fact has totally been overlooked by the Respondents; that the Petitioner has been refused appointment merely on the basis of instructions contained in CPO's circular dated 29.12.2014 while the Respondents have given appointment to one Aziz Ullah Khan on family claim basis under the Notification dated 05.01.2009 as such discriminatory treatment is meted out with him which is violation of Article 25 of the Constitution.

5. Learned Law Officer vehemently contested the arguments advanced by the learned counsel for the Petitioner and contended that the impugned order has been passed strictly in accordance with law. He further states that the Petitioner was not eligible to appointment as he could not meet with age criteria of the Respondents.

6. I have heard learned counsel for the parties and gone through the available record.

7. It evinces from the record that the Petitioner's father was retired on 10.03.2015 on medical invalidation basis whereas he submitted application for appointment of his son/the Petitioner as Driver Constable on 04.05.2015 which was rejected on 07.05.2015 in terms of decision dated 03.10.2014. The imperative part of the decision reads as follows:

"It was unanimously decided that CCPO Lahore and RPOs will send recommendations for recruitment of sons/daughters of Shohada or those officers/officials who have become invalid due to injuries received during police encounters. DIG Establishment will not process the case for recruitment of sons/daughters of officers/officials declared on other grounds".

Emphases added

8. It is also admitted fact that the Petitioner's father was retired on medical invalidation on 09.03.2015 without receiving any injuries in terms of afore-referred decision as a consequent whereof the Petitioner was refused for appointment. Moreover, a procedure for forwarding the cases of invalid/incapacitated retired officials was prescribed in letter dated 29.12.2014 which reads as follows:

"In case of Police Officer/Official applies for declaring him invalid/incapacitated for further service, his case may be examined by a committee headed by District Police Officer, concerned inclusive of Addl: SP/DSP HQrs, SP/Investigation of the district. Then the DPO will refer the case to Regional Police Officer, for approval prior to referring the official/official to District Medical Board for medical opinion"

9. Perusal of the impugned order clearly reveals that the aforesaid procedure was adopted by the Respondent No.4 as he, on 06.06.2015, requisitioned the required information from DPO Mianwali on proforma regarding appointment of the Petitioner as Driver Constable on family claim basis, however on 23.06.2015 when the matter was finally scrutinized the Petitioner was found overage.

10. The counsel for the Petitioner was of the view that as per Punjab Police (Recruitment on Family Claim Basis) Rules, 2008 (the "Rules"), the Petitioner was within the permitted age limit and therefore entitled for the appointment. It is noted that the aforesaid Rules only prescribe the appointment of a child, widow, widower or spouse of a member of police in BS-1 to BS-5 or Junior Clerk (BS-7) without observing formalities regarding advertisement. Even otherwise the Rules had already been withdrawn by the Respondents on 01.04.2014 and were substituted by the Standing Order No.1 of 2014. According to Clause 5 (Physical Standard) of the Standing Order No.1 of 2014, age of a candidate for the appointment to post of driver constable on family claim basis must be between 21 to 30 years. The Petitioner has put much stress on the ground that had his age been calculated from the date of submission of application by his father i.e. 04.05.2015, he would not have become overage. The said stance of the Petitioner is not tenable because the Petitioner had submitted the application on 08.06.2015. According to the CNIC of the Petitioner, his date of birth is 04.06.1985 which is not disputed by the Respondents whereas his age was calculated from the date on which he himself had moved the application i.e. 08.06.2015, which was within the eligibility criteria of age for appointment as per requirement of the Respondents. In this situation, it is quite obvious that the Respondents have rightly calculated the age of the Petitioner in light of their rules/policy. As the change in criteria for the appointment by the Respondents is purely a policy matter and Courts could not interfere into the policy matters of the Departments/Government, particularly when it is in the public interest. It is not in the domain of the Courts to embark upon an inquiry as to whether a particular policy is wise and

acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of the Constitution. It was for the Government to decide on how and in what manner the reservations should be made and such a policy decision normally would not be open to challenge subject to its passing the test of reasonableness. Reliance is placed on "Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others" (2012 SCMR 455) and "Pakistan Medical and Dental Council, Islamabad through Authorized Representative v. Maleeha Syed and 4 others" (PLD 2020 Lahore 16).

11. Moreover, the Petitioner has alleged discrimination on the part of the Respondents who appointed one Aziz Ullah Khan vide order dated 11.05.2015 and Khuram Shahzad vide order dated 14.12.2017 in terms of Recruitment Policy, 2009. As explained above, in the aforesaid policy, the posts based on family claim were to be filled without advertising the posts. But perusal of both the appointment orders clearly reflects that even though the appointments were made without observing the formality of advertisement yet these were made subject to the criteria laid down by the Respondents in their rules/policy including the Standing Orders issued from time to time. So, the Respondents have not committed any discrimination rather they have followed their rules/policies.

12. In view of above, it is clear that the Respondents have passed the impugned order as per their rules/policy after examining all the record. Therefore, this petition does not hold merits hence dismissed.

SA/J-9/L

Petition dismissed.