

Stereo. H C J D A 38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

Writ Petition No.13705/2017

Ameer Hamza

Versus

District & Sessions Judge, etc.

J U D G M E N T

Date of Hearing:	18.11.2021
Petitioner by:	Mahar Ghulam Shabbir Aaheer, Advocate.
Respondents by:	Mr. Muhammad Ayub Buzdar, Assistant Advocate General, Punjab along with Inayatullah, English Clerk, Sessions Court, D.G. Khan.

Anwaar Hussain J. Through the instant constitutional petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter “the **Constitution**”), the petitioner has laid challenge to the order dated 07.09.2017 (hereinafter “the **Impugned Order**”) of the learned District Judge, *Dera Ghazi Khan*, whereby the application of the petitioner for appointment as a Junior Clerk, under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 (hereinafter “the **Rules**”), has been rejected on the ground that since the father of the petitioner stood retired from the service of the subordinate judiciary on 22.01.1989 on account of invalidation, the petitioner is not entitled to appointment after such a long delay of 28 years. While declining the appointment, the learned District Judge, *Dera Ghazi Khan* has held that appointment under Rule 17- A is a benefit, which cannot be claimed after lapse of considerable period of time such as 28 years, while relying upon the letter bearing No. 5703/6-E(LCE)/VII.A.27 dated 27.02.2014 (hereinafter “the **Letter**”), issued by the Registrar of this Court, on the direction of the then Hon’ble Chief Justice as well as the Hon’ble Judges of this Court, whereby the right under Rule 17-A has been envisaged as an immediate relief to ward off imminent and/or

potential financial stress, which the family of a deceased or retired employee face in such circumstances.

2. The precise legal question, as culled out from the facts stated hereinabove, is whether the right to be appointed under Rule 17-A can be asserted at any time, after retirement on account of invalidation or death of an employee during service, as the case may be, or the said right can be exercised within a reasonable timeframe only.

3. Mahar Ghulam Shabbir Aaheer, learned counsel for the petitioner, submits that the Impugned Order has been passed without appreciating the true spirit and import of Rule 17-A, which confers a right upon legal heirs of a government employee to be appointed in service, without fulfilment and/or compliance of any *codal* formalities if such government employee dies or gets retired on account of invalidation/incapacitation during his service. Adds that no time limitation has been envisaged under Rule 17-A or the Letter and hence, benefit of the same can be obtained at any time after the predecessor-in-interest of an applicant dies during the service or faces invalidation. Finally submits that even otherwise, the Impugned Order is not sustainable in view of the *ratio* laid down in Nasir Abbas and 2 others v. Administrator, Municipal Corporation, Multan and 2 others (PLJ 1998 Lahore 1486) whereby it has been held that benefit under Rule 17-A cannot be restricted through any means other than an amendment in the Rule itself.

4. Conversely, Mr. Muhammad Ayub Buzdar, learned Assistant Advocate General submits that the Impugned Order has been passed in accordance with law and the Competent Authority is empowered to stipulate restrictions *qua* benefit of Rule 17-A. Adds that paras (iii) and (iv) of the Letter are unequivocally clear that the benefit under Rule 17-A is an immediate relief, which cannot be claimed after a gap of more than two and half decades.

5. Arguments heard. Record perused.

6. Before answering the legal question involved in the instant matter, it is imperative to examine and understand the true spirit of Rule 17-A, which, for facility of reference, is reproduced hereunder:

“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 of 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.”

While extending the benefit of Rule 17-A to the employees of the District Level Judiciary in Punjab, the Registrar of this Court on direction of the Hon’ble Chief Justice and the Judges of this Court, issued following instructions through the Letter:

“In supersession of previous instructions issued by this Court on the subject cited above, I am directed to inform that the **Hon’ble Chief Justice and Judges** have been pleased to direct that the following guiding principles (based upon the instructions of Government of the Punjab, S&GAD’s Regulation Wing), be adhered to while making appointments in the sub-Ordinate Courts Staff under Rule 17-A of A&CS Rules, 1974.”

i.

- ii.
- iii. The benefit of job under this rule cannot be granted to more than one unemployed family member (child or widow/wife), of the Government Servant and he/she can claim the same at any time, even during a ban on recruitments.
- iv. The purpose and intention behind the rule ibid is to extend immediate relief/financial assistance in the form of job to the family of a Government Servant to reduce their affliction, therefore, the concerned Appointing Authorities are bound to accommodate the applicant(s) against the post of his/her choice (from BS-01 to BS-07), if he/she is otherwise eligible.
- v.
- vi.”

7. In order to appreciate the intention of the legislature behind the promulgation of the above quoted Rule coupled with the instructions contained in the Letter, it is imperative to understand the objective behind the same. Rule 17-A when read with the Letter indicates that the object and underlying purpose of Rule 17-A is to enable the family to get over with the financial crisis, which it faces at the time of the death or permanent invalidation of the sole breadwinner in government service, and hence, the beneficiaries are widow/wife and/or one of his child. *Prima facie*, employment envisaged by virtue of Rule 17-A is compassionate in nature and not an inheritable right, which can be claimed at any time by a legal heir of the retired or deceased employee.

8. In India, appointments similar to one made under Rule 17-A of the Rules are termed as *ex-gratia* or compassionate appointments regulated by different set of rules and policies framed by the Federal Government, State Governments, Local Governments and Autonomous Bodies. In State Bank of India and another v. Raj

Kumar [(2010) 11 SCC 661], the Indian Supreme Court held (at page 664) that the dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme and the objective is to enable the family of the deceased to get over the sudden financial crisis. Similarly in Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138], it has been held as under:

“2.....The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence, they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.....”

(Emphasis supplied)

Analysis of the above referred precedents from the neighbouring jurisdiction reveals that the compassionate employment aims at providing immediate aid to get over with financial crisis and emergency, which the family of a deceased or retired employee faces.

9. Similarly, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 is also *pari materia* with Rule 17-A. Period of two years has been stipulated in the former as a cut-off date within which appointment can be claimed by the wife and/or children of the government employee, who expires during service or stands retired on account of invalidation/incapacitation. Rule 11-A is reproduced hereunder for facility of reference:

“11-A. Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, spouse (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity or incapacity of civil servant on any of the Basic Pay Scale 1 to 11 in the Department where such civil servant was working:

Provided that such appointment shall be made after fulfillment of formalities as required in the recruitment rules and holding interview, for the post applied for:

Provided further that the cut of date shall be within two years of the death of the officer or official.

.....”

(Emphasis Supplied)

10. In present case, unlike the applicable law in the province of Sindh, Rule 17-A does not stipulate any time frame within which the right can be exercised; however, to the extent of benefit of Rule 17-A to the children of the employees of District Level Judiciary in the province of Punjab, the same is governed by the said Rule read with the instructions contained in the Letter. Learned counsel for the petitioner has laid much emphasis on the words “at any time” used in the Letter to assert that the right under Rule 17-A is enforceable at any time and the same cannot be curtailed by interpolation of any time frame. Perusal of Rule 17-A indicates that no specific time frame has been envisaged with respect to the assertion and enforcement of the right to employment conferred under the Rule. This engenders the question whether such right can be claimed, without any time limitation and restrictions, whereas the underlying object of Rule 17-A, as expounded in the Letter is to extend immediate relief/financial assistance in the form of a job to the family of a deceased/retired employee to reduce their affliction. The laws are made by the legislature and the same are interpreted by the judiciary. Such interpretation has to be progressive and dynamic in such a manner that not only the social advances are taken into account but gap between time of framing of a law and the social changes made since then are kept under consideration. While on the one hand, the right to appointment under Rule 17-A is of vital significance to the family of a government employee who dies and/or undergoes incapacitation during service and concomitant financial stress that the family may have to undergo; the same, on the other hand, is an exception to the Article 25 of the Constitution that all citizens are to

be treated equally. Thus at the one end of the fulcrum lies the right of all other citizens that the government jobs and posts are filled through open competition and equal opportunities and on the other end is the right conferred on one of children or widow/wife to appointment under Rule 17-A. Therefore, this Court while interpreting Rule 17-A is called upon to strike balance between the apparently conflicting legal positions i.e., filling the governmental posts through open competition and right to employment of family members of a government servant who dies or suffers incapacitation during service and consequently stands retired. It hardly needs beautification to state that the equality of citizens embedded under Article 25 of the Constitution is a fundamental right and protected as such, as compared to Rule 17-A, which is a sub-constitutional legislation and an exception to and limitation upon the above stated fundamental right. Thus, the interpretation of the right under Rule 17-A has to be weighed in and measured up in proportion to the fundamental right of equality embodied under Article 25 of the Constitution on the yardstick of proportionality. The term ‘proportionality’ has been defined by Professor *Aharon Barak* in his book “PROPORTIONALITY CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS” as a “legal construction” and “methodological tool”, which is made of four components i.e., proper purpose, rational connection, necessary means and the harm caused to the constitutional right. While referring to the said definition, this Court in *D.G. Khan Cement Company Ltd. through Chief Financial Officer v. Federation of Pakistan through Secretary Ministry of Law and 3 others* (PLD 2013 Lahore 693), held as under:-

“22. “The element of proper purpose reflects a value-laden component. It reflects that the notion that not every purpose can justify a limitation on a constitutional right.... The purposes that justify limitation” on human rights are derived from the values on which the society is founded. In a constitutional democracy, these values are democratic values. Indeed, a proper purpose is one that suits the values of the society in a constitutional

democracy. Our Constitution with its preamble, fundamental rights and principles of policy hold out our democratic values. The proper purpose behind sub-constitutional legislations is to upload these constitutional values.

23. What is required by the “rational connection” ...test? The requirement is that the means used by the limiting law fit (or are rationally connected to) the purpose the limiting law was designed to fulfill. The requirement is that the means used by the limiting law can realize or advance the underlying purpose of that. Accordingly, if the realization of the means does not contribute to the realization of the “laws” purpose, the use of such means would be disproportional. There must be a rational connection between proper purpose and the sub-constitutional limitation.

24. The next component of proportionality is the “necessity test.” It is also referred to as the requirement of “the less restrictive means.” According to this test, the legislator has to choose – of all those means that may advance the purpose of the limiting law – that which would least limit the human right in question.

25. The last test of proportionality is the “proportional result” or “proportionality *stricto sensu*.” “This test requires a balancing of the benefits gained by the public and the harm caused to the constitutional right brought the use of the means selected by law to obtain the proper purpose. Accordingly, this is a test balancing benefits and harm. It requires an adequate congruence between the benefits gained by the law’s policy and the harm it may cause to the constitutional right.

11. Keeping in view the true import of doctrine of proportionality, it is the bounden duty of this Court that a balancing interpretation is struck while interpreting Rule 17-A in a manner that it strikes a balance between the benefits gained by the public from a particular law under interpretation and the harm to a constitutional right caused by such law. Similarly, this Court is also of the view that while interpreting Rule 17-A, the purposive interpretation needs to be considered as well. A learned Full Bench of this Court in judgment reported as Independent Newspapers Corporation (Pvt) Ltd and others v. Federation of Pakistan and others (PLD 2017 Lahore 289)

has held that while putting on purposive interpretation, the objective and subjective purpose is to be considered. It has been held that the objective purpose of the statute will involve the interests, values, objectives and functions, which the law seeks to protect and its interpretation must reflect the fundamental values and principles that the law maker wishes to preserve. The subjective purpose will be seen in the context of the statute and its purpose. Thus, the objective purpose encompasses the larger canvass of underlying values.

12. Having spelled out the above tools of interpretation i.e., proportionality and the objective purposive interpretation, I venture to interpret Rule 17-A and its applicability to the present case. There is no cavil to the proposition that Rule 17-A is a beneficial legislation with the underlying rationale is to assist and provide financial aid to the family of a government servant, who might plunge into financial abyss on account of the death or invalidation/incapacitation of the government servant by way of provision of employment to one of his family members i.e., a child or wife/widow. It is to be seen that the object of the Rule 17-A and the purpose it seeks to achieve lies in the immediacy of relief as the death or incapacitation of a government servant may leave his family or the servant himself in immediate financial stress and potential loss of earning hand to sustain the family. Therefore, the family member i.e., one of his children or widow/wife, as the case may be, may seek appointment under Rule 17-A, which is to be operative and implemented even during the period when there might be a ban on the recruitment/appointment. It is such ban on recruitment/appointment or such like eventualities that have been rendered subservient to the right of appointment under Rule 17-A by the use of words “at any time, even during a ban”. To put on it an interpretation that the use of words “at any time” means that such right can be enforced or claimed at any time even after lapse or efflux of a long period of 28 years would mean and amount to interpretation, which is disproportionate to the object sought to be achieved by Rule 17-A and the harm caused to the fundamental right

embodied under Article 25 of the Constitution. The contention of learned counsel for the petitioner that the Letter itself allows the exercise of the right “at any time” seems to have been conjured out of wishful imagination as the use of words “at any time” is followed by “even during a ban”, which reflects that “at any time” has not been used to connote timescale or timeframe sense rather the same connotes the attending conditions such as ban at the time when such right is accrued in favour of a person and the intended enforcement of such right. The argument of learned counsel for the petitioner fails to instill any persuasive impact in view of the principle embodied in the legal maxim “*Noscitur a sociis*” (it is known by its associates), meaning thereby that the word should be known from its accompanying or associating words. It is not a sound principle in interpretation of statutes to lay emphasis on one word disjointed from its preceding and succeeding words. The words ‘at any time’ when put in juxtaposition with the words ‘wife/widow/one child’ as well as the words ‘even during a ban’ clearly lead to one interpretation i.e., when an employee dies or is incapacitated during service and is retired, his widow or wife, as the case may be, or one child can immediately get the relief by way of an appointment in a particular class even if the ban is imposed at that point of time. Had the relief not intended to be of immediate nature, the words ‘even during a ban’ were not required as in that eventuality, the appointment could be deferred till such time the ban was removed. Similarly, the words i.e., “without observance of formalities prescribed” used in Rule 17-A reinforce the said interpretation inasmuch as in order to extend immediate relief to the family of the employee, even formalities prescribed are not required to be observed. The primary difficulty in accepting the line of submissions that the word “at any time” envisaged under the Letter means whenever the child of the retired or deceased employee considers right for him is the fact that said interpretation runs counter to the primary objective of contemplating Rule 17-A, which being a compassionate move is intended to enable the family of a deceased

employee to tide over the crisis, which is caused as a result of the death or invalidation of an employee. As is evident from the factual canvass of the instant case, the father of the petitioner stood retired on account of invalidation on 22.01.1989, when the applicant was not even born. Rather he was born on 01.06.1998 and the first recourse to invoke the benefit of Rule 17-A was in the year 2017, nearly, 28 years after retirement of father of the petitioner due to invalidation. The efflux of such a long time itself nibbles away the immediacy in redressing financial constraints of the family, which is the object underlying Rule 17-A.

13. There is yet another aspect of the matter, which is imperative to be considered while interpreting Rule 17-A in relation to the case of the petitioner. Such an interpretation as put forward by learned counsel for the petitioner would engender a situation where an unborn child of deceased or incapacitated employee would come to this world with an assurance of job on attaining majority. This would not only be counter-productive to the society but would also retard the said child from utilizing his faculties to the fullest level as job assurance in a world characterized by competition would lead to permeation of complacency in such a child. He might have been conferred by nature with much exalted faculties and abilities to be an asset to the society but the job assurance of BS-1 to BS-7 may curtail and curb his faculties and abilities. Therefore, such an interpretation would do more harm not only to the individual child but also the society as a whole, which runs the risk of being deprived from the utilization and benefits thereof to the society, which is an essential element of human and social advancement.

14. The ratio laid down in *Nasir Abbas supra* is not applicable to the instant case as the facts of said case are distinguishable from the instant *lis* inasmuch as in the former case benefit of Rule 17-A was granted to petitioners therein who were children of employees of Local Council but later on appointments made were withdrawn on the ground that Rule 17-A was not applicable to employees of the Local

Council whereas in the instant case, the matter involved is not the applicability of Rule 17-A but the timeframe with which right under Rule 17-A can be exercised.

15. Therefore, I am of considered opinion that the essence of the claim under Rule 17-A read with the contents of the Letter lies in the immediacy of the need of the family of the deceased or retired employee upon his death or invalidation, as the case may be. In the instant case, the petitioner not even born when his father stood retired on account of invalidation, is not entitled to employment in terms of Rule 17-A as the underlying rationale of immediacy of redressing financial stress is conspicuous by its absence due to efflux of 28 years.

16. In view of the above discussion, the instant constitutional petition is devoid of merits and hence, **dismissed** with no order as to cost.

17. Before parting with, this Court feels appropriate to observe that the issue as to what amounts to reasonable time for applying for appointment in terms of Rule 17-A as an immediate relief needs to be properly determined. This aspect is certainly a policy decision and/or a legislative function *qua* which this Court considers it appropriate to leave it to the wisdom of the policy makers and the legislature to fix the time period that would amount to a cut-off date within which the successor-in-interest of the deceased or retired employees of the Government of the Punjab can avail the benefit of Rule 17-A while considering the underlying rationale of the said Rule i.e., immediacy of financial need of the family of the deceased or retired employee.

(Anwaar Hussain)
Judge

Approved for reporting

JUDGE