

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Maqbool Baqar
Mr. Justice Munib Akhtar
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Appeal No.797 of 2013

*(Against judgment dated 27.2.2013
passed by the Lahore High Court
Lahore in I.C.A. No.89 of 2011)*

***Province of Punjab through Executive District
Officer (Education) Rawalpindi & another***

...Appellant(s)

Versus

Ruqia Islam

...Respondent(s)

For the Appellant(s): Mr. Mushtaq Ahmad Mohal,
Additional Advocate General Punjab.
Ikram Abbasi, L.O., C.E.O.

For the Respondent(s): In Person

Date of hearing: 23.1.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Ruqia Islam, respondent herein, figured at Sr. No.15 of the merit list of successful candidates for the post of Educators in pursuance to advertisement dated 7.10.2008; she alongwith other female teachers was, however, denied assumption of charge in the Government Boys High School Thata Khalil, Taxila, purportedly, on the basis of Policy No.SO (S-IV)2-34/2018 dated 23rd of August, 2008; relying upon an earlier judgment of the High Court, striking off an identical policy, she successfully impugned departmental denial through Writ Petition No.2700 of 2002; the High Court *vide* judgment dated 29.3.2011 directed the department to consider her for appointment in the aforesaid educational institution. An Intra Court Appeal by the Province was dismissed *vide* impugned

judgment dated 27.2.2013, *vires* whereof are being assailed through the present appeal by leave of the Court.

2. Learned Additional Advocate General Punjab contends that in the face of the Recruitment Policy of Educators in the Government Schools 2008-2009, placing complete ban on the appointment of female candidates to apply against any category of post in Boys High/Higher Secondary School, the High Court had no jurisdiction to direct the department to accommodate the respondent in a school meant for boys; he next argued that the impugned policy is well within the remit of law inasmuch as it is designed to ensure a conducive educational environment without offending the principle of equal opportunity; he has invited attention to the eligibility of female candidates for the post of Elementary School Educator and Senior Elementary School Educator (Science/Arts) in Boys Primary and Middle Schools to argue that the impugned policy is balancedly founded upon reasonable classification, recognized by law to appropriately accommodate female teachers; he placed reliance on the cases reported as Asadullah Mangi and others Vs. Pakistan International Airlines Corporation and others (2005 SCMR 445) and Dossani Travels Pvt. Ltd. Vs. Messrs Travels Shop (Pvt.) Limited (PLD 2014 Supreme Court 1) to conclude that the High Court had no occasion to interfere with an administrative policy affair.

3. Heard.

4. We are not impressed by the position taken by the learned Additional Advocate General Punjab nor have found his reliance on the *supra* judgments, relevant to the facts of the present case, being rendered in an entirely different contextual backgrounds. In the *supra* case of Abdullah Mangi & others, candidates for the job of flight stewards, despite initial selection and training, nonetheless, were found by the respondent-air line, ineligible on account of their failure to successfully compete with their competitors and as such the argument of discrimination by the Court was repelled. Similarly, case of Dosani Travels Pvt. Ltd. is structured upon vastly distinguishable facts as well as issues arising therefrom. Before us is a female, otherwise eligible on all fours, being denied a position despite having successfully

competed for the job as an Educator in the same category of post/functional group in Boys High/Higher Secondary School, however, with a relegated opportunity to serve in the same capacity in the primary and middle sections. The foregoing stipulation/classification, founded on her gender alone, apparently sans any rational basis except for a dogmatic and subjective belief that she would not be able to handle students placed in a slightly higher age group, an apprehension oriented more chauvinistically than on any objective foundation, therefore, the impugned policy cannot be viewed as prudent or expedient nor reflects *intelligible differentia* so as to qualify the precondition of being reasonable. On the contrary, it is grievously retrogressive besides being violative of Constitutional commands.

5. Half of the human resource in the Republic comprises of women; they are mentoring, par excellence in every walk of life; it is a treasure which must be utilized for a better future. The Constitution of the Islamic Republic of Pakistan preambles rights that include equality of status as well as of opportunity; Article 27 reads as under:-

"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"

Under the Principles of Policy, it is further emphasized in Article 34 of the Constitution that:-

"Steps shall be taken to ensure full participation of women in all spheres of national life."

The Constitution commands the Government to take meaningful and effective steps and formulate policies conducive to tap this most important human resource by ensuring congenial working environments, free from harassment or discrimination so as to facilitate female participation in the national life for a better and

prosperous future. These cherished goals envisaged by the Supreme Law cannot be set at naught through "*policies*" inherently flawed as well as discriminatory. A policy manifestly inconsistent with the Constitutional commands, retrogressive in nature, and discriminatory *inter se* the populace is not immune from judicial review. View taken by the High Court, being well within the remit of law, does not call for interference. Appeal fails. Dismissed.

Judge

Judge

Judge

Islamabad, the
23rd January, 2020
Not approved for reporting
Ghulam Raza/-