

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

18/19

Present:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE IJAZ UL AHSAN

(D.J) AFR

4. Civil Petition No.2350 of 2015

(On appeal from the Judgment/Order
24.06.2015 of the Islamabad High Court,
Islamabad passed in F.A.O. No.93/2013).

Abdullah Nawaz Cheema

Petitioner(s)

VERSUS

Federal Public Service Commission (FPSC),
Islamabad and another

Respondent(s)

For the Petitioner(s) Mr. G.M. Chaudhry, ASC

For the Respondent(s) Mr. Nayyab Hassan Gardazi, DAG
Mr. Haroon-ur-Rashid, Dy. Dir.

Date of Hearing 17.12.2018.

ORDER

IJAZ UL AHSAN, J.- The Petitioner seeks leave to appeal against the Order dated 24.06.2015 passed by the Islamabad High Court, Islamabad in F.A.O. No. 93 of 2013. Through the impugned order, the appeal filed by the Petitioner was dismissed.

2. The controversy leading up to this matter is that a vacant seat in the CSS Women's quota was given to a female candidate who had secured a lower merit position than the Petitioner. The Petitioner had taken and qualified the 2012 CSS examination wherein he secured 673rd Position. However, he could not be allocated a group.

Thus, aggrieved, he filed a representation before the Federal Public Service Commission ("FPSC"), which by placing reliance on the Judgment of this court in CP. No. 941 of 2010, dismissed the same *vide* orders dated 11.10.2013. Dissatisfied, the Petitioner filed a Review Application which met the same fate and was dismissed *vide* orders dated 05.11.2013. The Petitioner approached the Islamabad High Court against the said order. However, the Learned Single Judge of the said Court dismissed his appeal *vide* the Impugned Order dated 24.06.2015.

3. The Learned Counsel for the Petitioner contended that the posts reserved on Open Merit Quota basis cannot be allocated to women in any case unless they qualify and attain the necessary merit position. That the process and procedure adopted by Respondent No.1 is aimed at giving women an unfair benefit. There is no differentiation between genders in allocation of groups from the Open Merit Quota for any Province or Region, as such allocation is entirely dependent on the Merit Position of the candidate. He argued that there was nothing in the Rules for Competitive Examination (CSS), 2012 (the "**Rules**"), in particular within Rule 25 of the same, that allowed for the '*trickle down*' of vacancies. Furthermore, the Order, dated 03.06.2010, in Civil Petition No. 941 of 2010, relied on by the High Court, was limited by the particular and distinguishable facts and circumstances of that case as it pertained to the first intake of female candidates after reservation of their 10% quota over open merit, amongst all seats, and this was not applied the following year.

4. According to the Learned Counsel, the Learned High Court had misinterpreted Paragraph 7 of the Appendix-II of the Rules which provides for carrying forward of vacant Posts to the next year and that it was intended for circumstances where there were no qualified and eligible candidates available. However, since the Petitioner was available to be allocated a post that was meant for Open Merit, the posts could not be carried forward. He stated that there was no concept of a "*Trickle Down*" effect in the Rules. He referred to a Press Note dated 20.08.2013 regarding details of merit Vacancies wherein

there were 4 vacancies in the Postal Group of which 2 had been filled and 2 were still vacant but had not been allocated to candidate available on Open Merit when Rule 25(i) of the Rules provides for it.

5. Responding to the submissions, the Learned Counsel for the Respondents submitted that the Merit in the 2012 CSS Examination closed at Merit Position No.661 for the Vacancies in Sindh (Urban) whereas the Petitioner's position was at No.673 and resultantly he could not be allocated any group or service group. He pointed out that another candidate at the Merit Position No.662, just shy of the closing position, was also not allocated, being lower than the closing position.

6. According to press release dated 26.07.2013, there were 39 vacancies reserved for Sindh (Urban) for CSS examination 2012. Qualified candidates were initially allocated against 32 Open Merit Seats according to their merit position, availability of vacancies and order of preference. The Petitioner was at Position No. 673 and thus, could not be allocated to any group.

7. This Court, in its Judgment dated 03.06.2010 in Civil Petition No.941 of 2010 had laid down the principle, that a female candidate, if she secures a higher Merit in the Open Merit Quota may be adjusted in higher group from the Women Quota compared to a lower group in the Open Merit that she held, and that seat which fell vacant in a lower group in open merit may be transferred to the Women Quota once she has taken the higher seat in the same. Keeping this in view, four female candidates at merit 242, 260, 629 and 641 were adjusted in higher groups from the Women Quota and in lieu of that allocation, the lower seats vacated by them were transferred to the Women Quota replenishing the available reserved seats in the same. Of the 5 vacancies in Sindh (Urban) Women Quota, only one female candidate at Merit Position No.775 qualified and was allocated to RCTG as per her merit position. Remaining 04 seats were carried over to the next year. The Learned Counsel submitted that the female candidate was adjusted against a seat left

vacant due to adjustment of another female candidate at Merit Position No. 242 against the Women Quota, therefore the claim of the Petitioner is meritless.

8. We have heard the learned counsel for the parties and examined the record with their assistance. At the very outset it is pertinent to clarify in light of the Judgment of this Court in *FPSC etc Vs. Ms.Nargis Shazia Chaudhry*, Civil Petition No. 941 of 2010, the mechanism whereby the Women Quota seats can be allocated. For ease of reference the relevant part of the judgment is produced below:

"4. It is to be noted that as far as the criteria laid down in the above rules are concerned those are not coming in the way of respondents since she had also passed her examination and was among those who had qualified to be considered against reserved seats for females as per criteria. Problem started when she was not accommodated and instead a female candidate from general/open seats preferred for DMG group on account of her higher merit, stately, was accommodated against a seat available in similar group in reserve quota for females and in open merit seat a male candidate was accommodated. Actually it should have been the other way round, such as, to recognize the higher merit of female candidate she must have been accommodated against the seat meant for DMG group in a reserved quota but, at the same time the seat which, stately, fell vacant in next available group in open merit on account of her adjustment should have been transferred to the female quota to ensure availability of 19 vacancies in order to achieve the objective of reserved quota. It is, thus, evident that by changing the form, in essence, the substance was changed with the result that on one hand a male candidate was accommodated in open merit seat and on the other a seat of females in reserved quota was cut down. The learned High Court, therefore, having taken into consideration these aspects of the case as well as the rules which have been heavily relied by the learned counsel for the petitioner had rightly granted the writ in favour of the respondent."

As a result of the above, if a female candidate secures sufficient merit to be allocated a group on the Open Merit, she may opt for a better group, if that is available in the Women Quota. Once she has opted for a better group, the one she had previously been allocated in Open Merit will be left vacant. This vacant group seat is then transferred to the Women Quota which was short a seat when the candidate had opted for the then available better seat. This allows for there to be a constant number of reserved seats in the Women Quota without depriving deserving Female Candidates, higher on the merit list, better group seats.

9. The submission of the Petitioner that the vacated seats ought to be allocated to available candidates is misconceived. It ignores the fact that this Court held in the aforementioned case, that male candidates otherwise not qualifying for allocation on open merit cannot be given the benefit of allocation in the result of upgradation permissible to Open Merit female candidates. As the record shows, the Petitioner secured a Merit Position of 673 whereas the Merit closed at 661. Irrespective of the quota seats, he could not be allocated to any group considering his merit position.

10. The objection of the Petitioner to the allocation of a seat to the female candidate at merit Position No.775 is without merit. The Candidate was allocated against a reserved seat for Women and as she held the next highest merit position, she was eligible for the same. The record shows that as a result of the "Trickle Down" effect, discussed in the aforementioned case, 01 post of RCTG, 02 Posts of IG and 02 Posts of POSTG were converted to Women Quota when female candidates at Merit Positions 242, 260, 629 and 641 availed better seats available in the Women Quota. The female Candidate at merit position No. 775 was then allocated a seat against the available seats and the rest were carried over for the next intake. There is no substance in the Petitioners objection that the vacant seats in the Women Quota ought to be filled by the qualifying male candidates. As was correctly observed by the High Court, the vacancies were to be carried over to the next intake pursuant to Appendix-III para 07 of the Rules. The said Rules state that the vacancies are to be carried over to the next years examination for the candidates in whose quota the vacancies are so reserved. The Petitioner failed to show us why such allocation was improper, illegal, or unjust.

11. Above are the reasons for our short order dated 17.12.2018 which for the ease of reference is reproduced below: -

"We have heard the learned counsel for the parties and carefully perused the record. We Notice that four women in the merit table for 39 vacancies reserved for Sindh (Urban) have been given better groups on account of their merit under the rule laid down in Federal Public Service Commission etc. versus Ms. Nergis Shazia Chaudhry (Civil Petition No. 941 of 2010) vide judgment dated 03.06.2010; the

said seats are transferred to the women quota. The contention of the learned counsel for the petitioner is invalid that the seats ought to be filled on the basis of the open merit. Pursuant to the said judgment, if the seats remain unfilled these are transferred to the next channel. Consequently, for reasons to be recorded later, this petition is dismissed and leave to appeal is refused."