

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

AJR
Civil Appeal No.359 of 2020

And

Civil Petition No.14 of 2020

Against judgment dated 30.10.2019 of
Lahore High Court, Lahore, passed in Writ
Petition No.243917 of 2018.

Punjab Public Service Commission, etc
Samra Gull

Appellant(s)

Petitioner

Versus

Husnain Abbas, etc

Respondent(s)

For the Appellant(s): Barrister Qasim Ali Chouhan,
Addl.AG, Punjab.

For the Petitioner(s):
R.2 in CA. 359/20 Mr. Mudassar Khalid Abbasi, ASC
Ch. Akhtar Ali, AOR

For the Respondent(s):
R.1 in CA. 359/20 Mian Shah Abbas, ASC via
video link from Lahore

For R.1 in CP. 14/20 : In person.

Date of Hearing: 16.03.2021.

JUDGMENT

IJAZ UL AHSAN, J-. Through this single judgment, we propose to decide Civil Appeal No.359 of 2020 (*filed by Punjab Public Service Commission, etc*) and Civil Petition for Leave to Appeal No.14 of 2020 (*filed by Samra Gul*) as both these matters involve common questions of law and fact and arise out of the same impugned judgment of Lahore High Court, Lahore dated 30.10.2019, passed in Writ Petition No.243917 of 2018

(filed by Husnain Abbas, Respondent No.1 in Civil Appeal No.359 of 2020).

2. The instant appeal by leave of the Court arises out of a judgment of Lahore High Court, Lahore dated 30.10.2019. Through the impugned judgment, a Writ Petition filed by Respondent No.1 (*Husnain Abbas*) was allowed and the corrigendum dated 26.09.2018 issued by Punjab Public Service Commission ("PPSC") was set aside alongwith the merit list issued consequent to the said corrigendum. The Appellants were directed to appoint Respondent No.1 against the post of Senior Chemist (BS-17) immediately as per the initial merit list.

3. Aggrieved of the impugned judgment, the PPSC approached this Court by way of filing Civil Petition No.3724-L of 2019 in which leave to appeal was granted vide our order dated 16.03.2020 in the following terms:

"Learned Additional Advocate General, Punjab (AAG) contends that the advertisement for appointment to the post of Senior Chemist (BPS-17) was published on 30.05.2018 and the date for test and interview was fixed as 17.07.2018. The merit list was prepared on 09.10.2018, where the name of respondent No.1 (the respondent) was shifted from Serial No.4 to that of Serial No.8. He contends that such merit list was made pursuant to the corrigendum dated 26.09.2018, issued by the Punjab Public Service Commission (the PPSC) and such was done in modification of the advertisement dated 30.05.2018, pursuant to Notification dated 25.05.2018. He contends that eligibility of the person for being appointment is considered on the basis of the

law, which is available at the time of appointment and until such appointment is made, no vested right accrues to a candidate. In this regard he has relied upon the judgment of this Court in the case of Mushtaq Ahmad Mohal and others vs. The Honourable Lahore High Court, Lahore and others (1997 SCMR 1043).

2. The submissions made by the learned AAG require consideration. Leave to appeal is granted, inter alia, to consider the same.

4. Ms. Samra Gull, one of the Respondents before the High Court and before us also in Civil Appeal No.359 of 2020 was also aggrieved of the impugned judgment and has filed CPLA No. 14 of 2020.

5. Briefly stated the facts of the case are that PPSC advertised four posts for appointment as Senior Chemists (BS-17) in the Forestry, Wildlife and Fisheries Department, Government of the Punjab. The advertisement in this regard was published on 30.05.2018. Respondent No.1 (*Husnain Abbas*) applied for the post, qualified the written test and was called for interview. He claims to have been placed at Sr.No.4 in the merit list. However, he did not receive any appointment letter and instead another merit list dated 09.10.2018 was prepared by the PPSC on the basis of a corrigendum issued by it on 26.09.2018. The corrigendum was issued for partial modification of the advertisement dated 30.05.2018 to the effect that 20% of the total vacancies

were reserved for *bona fide* residents of Special Zones in view of the fact that the modified merit list was based upon the corrigendum which was issued on the basis of two notifications issued by the Government of Punjab, both dated 25.05.2018 giving effect to the Government Policy that 20% of total vacancies were to be allocated against Zonal Quota. In consequence, out of four posts of Senior Chemists (BS-17), one post being 20% of the quota in question was allocated to the Proforma Respondent namely Samra Gull (*who is also the petitioner in CPLA No. 14 of 2020*). We have been informed that Ms. Samra Gull was not only given the appointment letter but she had also taken charge of the post in question in 2019 and continues to work for the Forestry Department.

6. The learned Additional Advocate General, Punjab appearing for the Appellants submits that the learned High Court has not considered the fact that the Appellants were well within their powers to change the terms and conditions for appointment to be made as per requirement of the Government. He further maintains that mere appearance of the name of the Respondent in the merit list does not confer any right for appointment. He argues that the impugned judgment of the High Court does not consider the law settled by this Court in various pronouncements to the effect that no vested right accrues

in favour of a candidate merely by the reason of appearance of his name in the merit list.

7. Learned ASC for Respondent No.1 (*Husnain Abbas*) on the other hand submits that the High Court considered all material facts and circumstances of the case and was justified in striking down the impugned corrigendum dated 26.09.2018 as the same took away a right that had already accrued in favour of the Respondent. He further submits that in any event the corrigendum gave effect to a notification which is violative of Article 27 of the Constitution of Islamic Republic of Pakistan, 1973 in view of the fact that 40 years period provided in the said Article from the commencing day permitting the Departments to reserve posts for persons belonging to any class or area to secure their adequate representation in the service of Pakistan has since elapsed. Therefore, while defending the impugned judgment of the High Court he submits that the Respondent had a right to be treated in accordance with law as well as the Constitution and cannot be deprived of an appointment to which he had clearly qualified.

8. We have heard the learned Additional Advocate General, Punjab as well as learned ASCs for the parties and gone through the case record. Facts of the matter are not in dispute and in any event have briefly been

repeated. These need no elaboration as nothing turns on them.

9. The Constitutional and legal questions that fall for determination by this Court are that:

- i) *is the impugned corrigendum a violative of Article 27 of the Constitution or the provisos thereto; and*
- ii) *whether by reason of being placed at Sr.No.4 in the merit list, Respondent No.1 (Husnain Abbas) was entitled to be appointed against the post for which he had applied.*

10. As far as the first question is concerned, it would be advantageous to reproduce Article 27 of the Constitution which for convenience sake is as follows:

"27(1) 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:

Provided that, for a period not exceeding [forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan:

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

Provided also that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament).

(2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority."

It is clear and obvious that the Article in question provides protection against discrimination in respect of appointments in the service of Pakistan on the ground only of race, religion, caste, sex, residence or place of birth. Although the first proviso existed in the original text of the Constitution, subsequently by way of an amendment the word "twenty" was substituted for the original period by virtue of Constitution (Sixteenth Amendment) Act, 1999. The said period was further substituted by Constitution (Eighteenth Amendment) Act, 2010 by the word "Forty". In addition, a third proviso was added authorizing the Parliament to put in place laws to ensure that under representation of any class or area in the service of Pakistan may be redressed. This essentially means that Majlis-e-Shoora (Parliament) has been authorized to put in place steps, measures and a

legal framework to ensure that under representation of any class or area in the service of Pakistan is represented.

11. A perusal of notification dated 25.05.2018 would show that the same has been issued in exercise of powers conferred under Section 23 of the Punjab Civil Servants Act, 1974 ("Act of 1974"). The Governor of Punjab thereby was pleased to direct that Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 ("Rules of 1974") may be amended. The amendment that was introduced was incorporated in Rule 20 of the Rules, 1974 which reads as follows:

"GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT (REGULATIONS WING)

Dated Lahore, the 25th May, 2018

NOTIFICATION

No.SOR.III(S&GAD)1-28/2018. In exercise of the powers conferred under section 23 of the Punjab Civil Servants Act, 1974 (VIII of 1974), Governor of the Punjab is pleased to direct that in the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, the following further amendment shall be made:-

AMENDMENT

In the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, for rule 20, the following shall be substituted as under:-

"20. Vacancies in various posts shall be filled in accordance with merit on all Punjab basis from amongst the persons domiciled in the Punjab; but, the Government may, by notification in the official Gazette, reserve posts for persons belonging to any class or area to

secure their adequate representation in the service of Pakistan."

Sd/-

DR. MUHAMMAD SALEH TAHIR
Secretary (Regulations),
Government of the Punjab,
Services and General Administration
Department"

Pursuant to the amendment in question, the Services and General Administration Department of Government of the Punjab issued a notification to the effect that 20% Special Zones' quota was to be allocated to all zonal candidates. This translated into one seat out of four seats advertized by PPSC on requisitions made by different Departments. There is no denial of the fact that Ms. Samra Gul (*petitioner in CPLA No.14 of 2020 and the proforma Respondent in Civil Appeal No.359 of 2020*) hailed from district Mianwali which was a part of the Zones specified by Government of the Punjab vide its notification dated 25.05.2018. For ease of reference, the said notification is reproduced as follows:

"GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT (REGULATIONS WING)

Dated Lahore, the 25th May, 2018

NOTIFICATION

No. SORIII(S&GAD) 1-28/2018, Pursuant to the powers confronted under rule 20 of the Punjab Civil Servants (Appointment & Conditions of Services) rules, 1974 read with section 23 of the Punjab Civil Servant Act, 1974, Governor of the Punjab is pleased to direct that:

- (a) The area comprising Bahawalpur Division, Dera Ghazi Khan Division, Multan Division and District Bhakar and District Mainwali of

- Sargodha Division in the Punjab shall constitute the 'special zone'
- (b) Eight percent of the vacancies in BS-16 and above shall be filled in accordance with merit on all Punjab basis from amongst the persons domiciled in Punjab; and
- (c) Twenty percent of such vacancies shall be reserved for bona fide residents of special zone;

Provided that if no suitable candidate is available from special zone, the vacancies may be filled in the manner provided in clause (b)

Sd/-

DR. MUHAMMAD SALEH TAHIR
Secretary (Regulations),
Government of the Punjab,
Services and General Administration Department

Perusal of the initial notification as well as the notification relating to Zones clearly and unambiguously indicate that a Zonal Quota was provided by way of Government policy in exercise of powers under the Act of 1974 and a notification to that effect was issued by the concerned Department. The fact that there was an error on the part of PPSC in the advertisement published by it cannot have the effect of depriving candidates from areas for whom a reserved quota had been created under constitutional and statutory fiat on the basis of the aforesaid policy which has been put in place pursuant to the powers available in terms of third proviso to Article 27 of the Constitution.

12. The argument of learned counsel for the Appellants that 40 years period provided in the Constitution has expired is misconceived and fallacious. It is evident from a plain reading of third proviso to

Article 27 of the Constitution that necessary amendments have been made in the Rules of 1974 in accordance with the mandate provided by the Constitution and the same has been found by us to be in consonance with the provisions of Article 27(1) of the Constitution. This aspect of the matter was considered by a three member Bench of this Court in Constitution Petitions No.34 & 71 of 2007, 10 & 11 of 2018 and Civil Petition No.1750 of 2018. Vide judgment dated 06.12.2018, this Court came to the conclusion that legislation put in place by the competent legislature for redressal of under representation of any class or area in the service of Pakistan is neither ultra vires nor violates Article 27(1) of the Constitution. Reference in this regard may also usefully be made to a judgment of this Court reported as Mushtaq Ahmed Mohal v. Honourable Lahore High Court (1997 SCMR 1043).

13. As far as the second question is concerned, it is an established principle of law that the rules applicable and the conditions required to be specified are those which were in force on the date of appointment and not those which were obtained earlier i.e. at the time of inviting applications, etc. This very question has repeatedly been considered by this Court in various judgments including Habibur Rehman v. West Pakistan

Public Service Commission (PLD 1973 SC 144) and Nusrat Baig Mirza v. Government of Pakistan (PLD 1992 FSC 412). In this regard, reference may also usefully be made to the cases of Abdul Jabbar Memon (1996 SCMR 1349) and Governor NWFP v. Gul Naras Khan (1987 SCMR 1709).

14. The legal position that emerges is that the laws, rules and regulations which were prevalent and in place at the time that the advertisement dated 30.05.2018 appeared was the notification dated 25.05.2018 which was required to be implemented through PPSC. The PPSC was therefore justified in issuing the impugned corrigendum to give effect to the relevant notifications and on the basis thereof to issue a fresh merit list.

15. There is no denial of the fact that Ms. Samra Gull, the proforma Respondent in Civil Appeal No.359 of 2020 was on top of the merit list considering the zonal quota and was therefore entitled to seek appointment against one post of Senior Chemist (BS-17) which was to be filled against zonal quota. We have also found the argument of learned counsel for Respondent No.1 (*Husnain Abbas*) in Civil Appeal No.359 of 2020 that he was entitled to be appointed against the forth post of Senior Chemist because he had been placed at Sr.No.4

(albeit erroneously) in the earlier merit list which was subsequently revised pursuant to the corrigendum dated 26.09.2018 and he was relegated to Sr.No.8 on the merit list and was therefore deprived of the appointment, to be without substance.

16. As stated above, no vested right had or could have accrued in favour of Respondent No.1 (*Husnain Abbas*) by virtue of an erroneous merit list which had clearly been prepared on the basis of an erroneous advertisement which had been published in violation of the Government Policy, rules and regulations put in place by virtue of notification dated 25.05.2018. Only by reason of an error on the part of PPSC, it would neither be fair nor just to deprive a candidate from one of the Zones who had admittedly topped the merit list for zonal quota to be deprived of an appointment. Even on a balance of equities, the right of the proforma Respondent (*Samra Gull*) stands on a better footing based upon Constitutional as well as legal protections as incorporated in the notifications in question. Compared to her case, the case of Hussain Abbas at best stands on the foundation of a legitimate expectancy which cannot be allowed to override or overshadow another right which is based upon constitutional protections and statutory

provisions put in place on the basis of an unmistakable constitutional mandate.

17. We note that the learned High Court held that although the Respondent (*Husnain Abbas*) did not have any vested right with reference to the selection process but he did have a legitimate expectancy that the recruitment process will be guided as per the terms and conditions provided in the initial advertisement. Having come to the conclusion that there was no vested right and doubtlessly being clear to the effect that the candidature and appointment of Samra Gull was based upon a valid and lawful policy of the Government of Punjab and resultant notifications, the act of striking down the impugned corrigendum dated 26.09.2018 on the basis of vague and unexplained reference to the concept of "legitimate expectancy" has been found by us to be arbitrary, without lawful justification and in excess of jurisdiction. The reasoning adopted by the High Court does not take into consideration settled principles of law on the subject, perhaps on account of lack of proper assistance in the matter. Reference in this regard may usefully be made to the case of Mushtaq Ahmed Mohal (*ibid*).

18. We also notice that while accepting the writ petition filed by Respondent No.1 (*Husnain Abbas*), the

learned High Court set aside the corrigendum dated 26.09.2018 without in any manner ruling on the legality or vires of the notifications dated 25.05.2018. It may be noted that since the notifications were kept intact and were not found to be ultra vires the law or the Constitution, it is hard to understand how and on what basis could the corrigendum dated 26.09.2018 be struck down only on the touchstone of "legitimate expectancy". Finally, a direction has been issued to the Appellants to appoint Respondent No.1 (*Husnain Abbas*) against the post of Senior Chemist (BS-17) immediately as per the initial merit list. It may be noted that only the official Respondents in the Writ Petition before the High Court were the PPSC and its Chairman. Neither of the said Respondents had the power or authority to appoint Respondent No.1 (*Husnain Abbas*) against any post in view of the fact that mandate of the PPSC and its Chairman is limited only to making recommendations to the concerned Departments for appointment against available posts. We therefore find that in such view of the matter, the impugned judgment of the High Court dated 30.10.2019 even otherwise suffers from a patent error and is unsustainable in law as well as fact. It is accordingly set aside. The recommendation of the Appellants which has already been implemented by the

Government of Punjab shall stay intact. The listed Civil Appeal is accordingly allowed in the above terms.

19. For the same reasons as recorded above, Civil Petition No.14 of 2020 filed by Samra Gull is converted into an appeal and allowed.

Sd/- — HCJ
Sd/- — J

ISLAMABAD, THE
16th of March, 2021.
ZR/*
'Not Approved For Reporting'