

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

Civil Appeals No.712 & 713 of 2020

(Against the judgment dated 22.02.2018 passed by the
Peshawar High Court, Peshawar in Writ Petitions No.5304-P
and 5305-P of 2017).

Government of Khyber Pakhtunkhwa through Chief
Secretary, Peshawar and others.

...Appellant(s)

Versus

Zahoor Ahmed Khalil.
(in CA.712 of 2020)

Muhammoad Arshad.
(in CA.713 of 2020)

...Respondent(s)

For the Appellant(s):

Mr. Zahid Yousaf Qureshi,
Addl. A. G. KP.
Mr. Shahid Iqbal, Litigation
Officer, KP, PSC.
Mr. M. Tufail Khattak, Addl.
Secy., Establishment, KP.
(in CAs.712 & 713 of 2020)

For the Respondent(s):

In person.
(in CA.712 of 2020)

Mr. Ishtiaq Haider, ASC.
(appeared without filing enter appearance on
behalf of Respondent but appeared with
Court permission).
(in CA.713 of 2020)

Date of Hearing:

01.02.2021.

JUDGMENT

IJAZ UL AHSAN, J.- Through this single
judgment, we propose to decide Civil Appeal No.712 of 2020
and Civil Appeal No.713 of 2020 as they both arise out of the

same impugned judgment of the Peshawar High Court, Peshawar dated 22.02.2018.

2. These appeals by leave of the Court are directed against a judgment of the Peshawar High Court, Peshawar dated 22.02.2018 through which constitutional petitions filed by the Respondents were allowed.

3. Briefly stated the facts necessary for disposal of this *lis* are that on 01.12.2017 Khyber Pakhtunkhwa Public Service Commission ("*KP Service Commission*") advertised 69 posts of Officers in Provincial Management Service (BS-17). Such posts were required to be filled through competitive examination. However, 10% quota was reserved for in-service candidates. The Respondents who were serving as Caretakers (BS-11) in the Chief Minister's Secretariat, Government of Khyber Pakhtunkhwa were not allowed to participate in the PMS examination on the ground that they were not entitled to avail the benefit of 10% quota reserved for in-service candidates. Aggrieved of such refusal on the part of KP Service Commission to allow them to participate in the competitive examination for appointment against 10% quota, the Respondents approached the High Court in its constitutional jurisdiction. Through the impugned judgment dated 22.02.2018, such constitutional petitions of the Respondents were allowed.

4. Leave to appeal was granted by this Court vide order dated 17.08.2020 in the following terms:

"The Government of Khyber Pakhtunkhwa Public Service Commission (the petitioner) advertised 69 posts of Provincial Management Service (PMS) in BPS-17, for competitive examination. Ten per cent quota was reserved for in service candidates. Khyber Pakhtunkhwa Provincial Management Service Rules, 2007 (the Rules of 2007) has described the post of 'in service candidates' and such has been enumerated as Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks. The private respondents in C.Ps. No.349-P and 350-P of 2018 were employed as Caretakers (BPS-11) and their posts were not enumerated in the Rules of 2007. They filed writ petitions in the Peshawar High Court which vide impugned judgment came to be allowed. The petitioner in C.P. No.260-P of 2019, also filed writ petition in the Peshawar High Court which was disposed of vide impugned judgment.

2. The learned AAG contends that there being no mention of post of Caretaker in the Rules of 2007, the respondents in C.Ps. No.349-P and 350-P of 2018 and petitioner in C.P. No.260-P of 2019 could not have been allowed to undertake the competitive examination and further relies upon the judgment of this Court in the case reported as Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Hayat Hussain and others (2016 SCMR 1021).

3. The submissions made by the learned AAG require consideration. Leave to appeal is, therefore, granted in all the petitions to consider, inter alia, the same. The appeal stage paper-books be prepared from the available record with liberty to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, the Office is directed to fix these appeals expeditiously, preferably after three months."

5. The learned Additional Advocate General, Khyber Pakhtunkhwa has pointed out that the Khyber Pakhtunkhwa Provincial Management Service Rules, 2007 ("Rules, 2007") describe the posts of in-service candidate as Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks, etc. He

maintains that the Respondents did not fall in any of the said categories nor were they covered by the Rules, 2007. He maintains that the Respondents fall in the definition of Household staff and in terms of Rule 10(2) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 they have specifically been excluded from the application of Rules, 2007. He further maintains that the Respondents being attached with the Chief Minister's Secretariat are not borne on the cadre of the Provincial Secretariat. As such, the High Court erred in law in extending the benefit of 10% quota in question to the Respondents. To substantiate his contentions, the learned Law Officer has placed reliance on a judgment of this Court reported as Government of Khyber Pakhtunkhwa v. Hayat Hussain (2016 SCMR 1021) in which the questions involved in these appeals has elaborately been dealt with.

6. The learned ASC for the Respondents on the other hand submits that exclusion of the Respondents constitutes discrimination. He maintains that on their representation the Chief Minister had made a recommendation that they may be allowed to participate in the competitive examination of PMS and avail the benefit of 10% quota. However, such direction was not implemented. The learned counsel further submits that the Respondents have no channel of promotion and it would cause injustice to them in case they are not allowed to avail the benefit of the quota as prescribed in Rules, 2007.

7. We have heard the learned Additional Advocate General, Khyber Pakhtunkhwa, learned ASC for the Respondent in Civil Appeal No.713 of 2020, the Respondent in person in Civil Appeal No.712 of 2020 and have gone through the record with their assistance. For ease of reference, it would be appropriate to reproduce hereinbelow Schedule-I of the Rules, 2007 which prescribes the quota in question:

"Ten percent by selection on merit, on the basis of competitive examination, to be conducted by the Commission in accordance with the provisions contained in Schedule VII, from amongst persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks who possesses post graduate qualification from a recognized University and have at least five years service under Government."

A plain reading of the relevant Rule makes it abundantly clear that it is specific to a certain class of employees of the Government. It is not couched in language which may inclusive in its meaning and content or may permit an expensive and wider interpretation. The Rules, 2007 provide 10% quota for persons holding specific posts and such posts have been spelt out as "Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks". A further condition is that such persons must possess Postgraduate qualification from a recognized University and should have at

least five years service under the Government. Although, the learned High Court has noticed the said provision, it has misdirected itself in interpreting the Rules, 2007 in a manner which in essence amounts to reading language in the Rules which is not there and a class of employees have specifically, intentionally and deliberately been excluded for policy reasons.

8. It is abundantly clear to us that the Rules, 2007 specifically created a class of Government employees to whom the benefit of 10% quota was provided to the exclusion of others and if the interpretations given by the High Court were to be accepted it would amount to not only reading in something which is not there but also extending and expanding the scope of the Rule which is the domain of the Executive and cannot lightly be interfered with without recording strong, cogent and compelling reasons. Such reasons have neither been recorded nor in our humble opinion were available in the instant matters.

9. We further notice that the High Court has misread the Rules, 2007 and taken them out of context in observing that the Rules do not prescribe as to what should be the nature of experience required to participate in the competitive examination for appointment against the 10% quota posts. We are unfortunately unable to subscribe to that view. It is settled law that provisions of the Statutes and Rules have to be read in their context and unless otherwise provided or

there are compelling and lawful reasons to do otherwise the Rule of *ejusdem generis* has to be followed. Even otherwise, the Rule of *ejusdem generis* does not support in any manner the interpretation adopted by the High Court. A plain reading of the relevant Rule read in the context of its ordinary meaning and scope would show that five years experience under the Government was relatable to the titles/job descriptions mentioned in the earlier part of the Rule. Therefore, holding that because there was no specific and elaborate description of the sort of experience that was required, a totally unrelated experience, (in the present case working as a Caretaker / Household staff) would also count as experience of Government service has appeared to us to be without sound legal basis and for that matter any basis at all. We also note that the Respondents had not altogether been excluded from participating in the competitive examination insofar as if they met the criteria for participation that they are not precluded from doing so by competing in open merit. Further and for the same reason we have not found any discriminatory treatment because the Respondents are not similarly placed vis-à-vis the persons/posts identified and specified in the rules and such persons/posts constitute a separate class, there being qualitative difference between the two fulfilling the requirement of intelligible differentia.

10. The Respondent in the connected matter (*Civil Appeal No.714 of 2020*) has frankly conceded before us that he had participated in open merit a number of times but

could not succeed on account of being placed lower in the merit list as against the available seats. We are afraid that does not constitute justification to expand the scope of the quota to include all members of ministerial staff whether or not they fell in the categories provided in the Rules, 2007.

11. We have also gone through the judgment of this Court in the case of Government of Khyber Pakhtunkhwa (*ibid*) cited by the learned Additional Advocate General, Khyber Pakhtunkhwa and find that the same directly deals with the question of appointment/promotion against the posts of PMS. It has clearly and categorically been held by this Court in the said judgment that determination of eligibility criteria, etc is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government (as in this case) and interference with such matters by the Courts is not warranted. In this context, it has been held as follows:

"It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down."

Further, in the case of Central Board of Revenue, Government of Pakistan v. Asad Ahmed Khan (PLD 1960 SC 81) it was held as follows:

"In the circumstances it cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ."

12. Admittedly, the Respondents do not constitute ministerial staff and are also not borne on the cadre/strength of the Provincial Secretariat. These were two additional reasons why the Respondents could not claim the benefit of Rules, 2007 and the criteria laid down for PMS (BS-17) quota posts reserved for a specific class of Government employees. In the circumstance, we find that the learned High Court has failed to appreciate and correctly interpret the relevant Rules on the subject and passed the impugned judgment in a slipshod manner, which is not sustainable and is liable to be set aside.

13. For reasons recorded above, we allow these appeals and set aside the impugned judgment of the Peshawar High Court, Peshawar dated 22.02.2018.

Sd/- H.C.J.
Sd/- J
Sd/- J

ISLAMABAD.

01.02.2021.

ZR/

'Not Approved For Reporting'