

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Qazi Faez Isa
Mr. Justice Syed Mansoor Ali Shah

Civil Appeals No. 49 to 54 of 2022

(On appeal from the judgment dated 23.12.2020 of the Lahore High Court, Lahore passed in ICA Nos. 39525/19, 50156/19, 50158/19, 24172/20 and 24791/20)

Muhammad Tayyab Bukhari. (in CA. 49/22)
Waseem Ullah Khan. (in CA.50/22)
Abdul Ghaffar and others. (in CA.51/22)
Province of Punjab thr. Secretary, Services and
General Administration Department, Lahore etc. (in CA. 52/22)
Province of Punjab thr. Secretary (Admin), Services
and General Administration, Lahore and another. (in CA. 53/22)
Dr. Anees ur Rehman. (in CA. 54/22)
... Appellants

Versus

Dr. Anees-ur-Rehman and others. (in CA. 49/22)
Govt. of Punjab thr. Chief Secretary, Lahore and others. (in CA. 50/22)
Punjab Public Service Commission thr. its Chairman etc. (in CA. 51/22)
Dr. Shahbaz Mujtaba Ghauri and others. (in CA. 52/22)
Ahmed Sher and others. (in CA. 53/22)
Dr. Shahbaz Mujtaba Ghauri and another. (in CA. 54/22)
... Respondents

AND

Civil Misc. A. Nos. 2987, 2988 and 11073/21 in CP NIL/21

[For permission to file and argue]

Zeeshan Zafar and others. (in CMA. 2987/21)
Mazhar Hussain and others. (in CMA. 2988/21)
Mst. Jameela Bibi and another. (in CMA. 11073/21)
... Applicants

Versus

Dr. Anees-ur-Rehman and others. (in CMA. 2987/21)
Ahmed Sher and others. (in CMA. 2988/21)
Punjab Public Service Commission and another. (in CMA. 11073/21)
... Respondents

AND

Civil Misc. Application No. 10683/21 in Civil Appeal No.53/22

[For impleadment Usama Naqi and others as respondents in the title Civil Appeal]

Province of Punjab thr. Secretary (Admin), Services
and General Administration, Lahore and another. ... Applicants

Versus

Ahmed Sher and others. ... Respondents

For the Appellants: M. Tayyab Bukhari, In-person.
(In CA. 49/2022)

Mr. Mudassar Khalid Abbasi, ASC.
Ch. Akhtar Ali, AOR.
(In CAs. 50, 51, 54/22 & CMA. 11073/21)

Mr. Shaukat Rauf Siddiqui,
Additional Advocate-General, Punjab.
Mr. Suleman Aakash, Law Officer,
Special Education Department, Punjab.
Mr. Faheem Ahmed Khan, Addl. Secretary,
Services and General Administration
Department, Punjab.
Hafiz Arshad Ahmed, Law officer, Services and
General Administration, Department, Punjab.
(In CAs. 52 and 53/22)
(and also for Respondents in all other cases)

For the Applicants: Mr. Mubeen-ud-Din Qazi, ASC.
(In CMAs. 2987-2988/21)

For the Applicants: Mr. Mushtaq Ahmed Mohal, ASC.
(In CMA. 10683//21)

For the Respondents: Mr. Iftikhar Ahmed Mian, ASC.
a/w Rai Azhar Iqbal, ASC.
(R. No. 2 in CA. 49/22 and
R. No.1 in CAs. 52 and 54/22)

Mr. Salman Mansoor, ASC.
(R. No. 1 in CA. 53/22)

Date of Hearing: 05.09.2022.

JUDGMENT

Qazi Faez Isa, J. These cases assail judgment dated 23 December 2020 passed in Intra Court Appeals, which were dismissed by a Division Bench of the Lahore High Court, Lahore and the judgment of the learned Single Judge was upheld.

2. The private respondents had challenged notification dated 25 May 2018 issued by the Government of the Punjab, Services and General Administration Department (Regulations Wing) ('**the Notification**'), which is reproduced hereunder:

Dated Lahore, the 25th May, 2018

NOTIFICATION

No.SORIII(S&GAD)1-28/2018. Pursuant to the powers conferred under rule 20 of the Punjab Civil Servants

(Appointment & Conditions of Service), Rules 1974 read with section 23 of the Punjab Civil Servants 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 Bhakkar and District Mianwali of Sargodha Division in the Punjab shall constitute the 'special zone';
- (b) eighty per cent 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 the Punjab; and
- (c) twenty per cent of such vacancies shall be reserved for bona fide residents of the special zone;

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

3. The Notification was successfully challenged on the ground that reserving a certain percentage of vacancies in respect of certain areas of the Province of Punjab violated Article 27(1) of the Constitution of the Islamic Republic of Pakistan (**'the Constitution'**). The impugned judgments further held that the Notification was in excess of the delegated powers prescribed in section 23 of the Punjab Civil Servants Act, 1974 (**'the Act'**).

4. The Notification was issued in purported exercise of the powers under Rule 20 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 (**'the Rules'**) read with section 23 of the Act, therefore, it would be appropriate to reproduce the said provisions of the Act and the Rules as under:

Section 23 of the Act:

23. **Rules.** (1) The Governor, or any person authorized in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.

(2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in-so-far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.

Rule 20 of the Rules:

20. Vacancies in various posts shall be filled from persons domiciled in the Province of the Punjab in accordance with merit: provided that for a period not exceeding 20 years from the commencing day of Constitution of the Islamic Republic of Pakistan, such posts may be reserved for persons domiciled in such areas as may be specified.

The aforesaid rule 20 of the Rules, through Notification dated 13 June 2018,¹ was substituted with the following:

20. Vacancies in various posts shall be filled in accordance with merit on all Punjab Basis from amongst the person domiciled in the Punjab; but, the Government may, by notification in the official Gazette, reserve posts for person belonging to any class or area to secure their adequate representation in the service of Pakistan.

5. The learned counsel representing the appellants submitted that employment offered by the Government of the Punjab constituted '*Service of Pakistan*', as defined in Article 240 of the Constitution. And, though the period of forty years stipulated in the first proviso to Article 27(1) of the Constitution had expired, however, by virtue of its third proviso, inserted through a constitutional amendment,² the Notification and rule 20 of the Rules are sustained. Learned counsel also placed reliance upon the cases of *Muhammad Saleem v Federal Public Service Commission*,³ *Punjab Public Service Commission v Hasnain Abbas*⁴ and an unreported order of this Court in the case of *Aitzaz Alam Malik v Federation of Pakistan*.⁵

The learned Additional Advocate-General, Punjab ('**AAG**') supported the submissions of the learned counsel representing the appellants.

6. The learned counsel representing the private respondents submitted that the concurrent judgments of the Lahore High Court accorded with the Constitution and the law and no valid reason has been given to justify setting them aside. He submitted that the third proviso of

¹ Issued by the Government of the Punjab Law and Parliamentary Affairs Department, published by the Punjab Gazette, Extra-ordinary, 14 June 2018.

² Section 10 of the Constitution (Eighteenth Amendment) Act, 2010.

³ 2020 SCMR 221.

⁴ 2021 SCMR 1017.

⁵ Order dated 6 December 2018 passed in Const. Petition Nos. 34 and 71 of 2017, etc.

Article 27(1) of the Constitution would not save rule 20 of the Rules and the Notification as these were not issued under any law. It was further submitted that section 23 of the Act grants rule making power, however, rules made thereunder must not be inconsistent with the provisions of the Act; the Act does not permit separating posts with regard to the purported '*under-representation of any class or area*'. Section 23 of the Act confers rule making power '*for carrying out the purposes of this Act*', but seeking adequate representation of any under-represented class or area was not provided in the Act. The learned counsel further stated that rule 20 of the Rules could not expand the scope of the Act and that neither the Act nor any other law in the Province of Punjab had reserved posts for persons belonging to any class or area to secure their adequate representation in the service of Pakistan. With regard to the cited case of *Punjab Public Service Commission v Hasnain Abbas*,⁶ relied upon by the appellants' counsel, he submitted that it did not constitute a precedent with regard to the controversy in hand as it had held that, the High Court had not decided '*on the legality of vires of the notification dated 25.05.2018*', that is, the Notification. However, in the impugned judgments (challenged before us) this has been done; the learned single Judge and the learned Judges of the Division Bench of the Lahore High Court held that the rule 20 of the Rules and the Notification were *ultra vires* the law and the Constitution. With regard to the cited case of *Muhammad Saleem* the learned counsel states that it is not relevant. As regards the unreported one page order of this Court he submitted that the same states that, '*we find that all the questions noted and raised in the orders dated 13.09.2018 have become irrelevant*', however, the referred to orders dated 13.09.2018 were not produced to provide context to the said order and to make clear what was determined in that case, as it is not evident.

7. We have heard the learned counsel for the parties, examined the documents on record, the referred to provisions of the Constitution, the Act, the Rules and the cited decisions of this Court. To properly understand the submissions of the learned counsel it would be appropriate to reproduce Article 27(1) of the Constitution and its three provisos, as under:

⁶ 2021 SCMR 1017.

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).

It is noteworthy that Article 27(1) of the Constitution commences by safeguarding against discrimination in the *service of Pakistan* but then proceeds to create certain exceptions. Its first proviso permitted that for a period of forty years from the *commencing day* posts for persons belonging to any class or area may be reserved to secure their adequate representation in the service of Pakistan. The *commencing day* of the Constitution is 14 August 1973,⁷ therefore, forty years stood expired on 14 August 2013, making the first proviso inconsequential. The second proviso is not applicable as it is with regard to services which can only be provided by a member of a particular sex, which is not the case of the appellants. The third proviso uses language similar to the language of the first proviso in that if there is under-representation of any class or area in the *service of Pakistan* 'it may be determined by an act of Majlis-e-Shoora (Parliament).' It was debated whether the envisaged legislation could also be provincial but we need not concern ourselves with this since, admittedly, neither the Province of Punjab nor the Federation has legislated with regard thereto.

8. The Government of Punjab took it upon itself to insert rule 20 in the Rules and issued the Notification by, wrongly, assuming that it could do so, and in doing did not act in accordance with the third proviso to Article 27(1) of the Constitution. We are dismayed at the level of

⁷ Article 265(2) of the Constitution of the Islamic Republic of Pakistan.

understanding of the government, expressed in this case through the Secretary (Regulations) of the Services and General Administration. If someone had bothered to read the third proviso to Article 27(1) of the Constitution the folly of issuing the Notification and enacting rule 20 of the Rules would have been avoided. Such lack of attention resulted in the needless wasting of time, money and effort of both the appellants and the respondents, not to mention that of three Courts. The impugned judgments fully accord with the Constitution and the law. Neither the Notification nor rule 20 of the Rules accorded with the law or the Constitution. As regards the reported precedents the learned counsel representing the private respondents has correctly distinguished the same. And, with regard to the unreported order of this Court we need not dilate thereon as the facts of that case were not brought before us. In any event, to constitute a binding precedent this Court should have decided a *question of law* or its decision be *based upon or enunciates a principle of law*,⁸ which the said order did not.

9. Therefore, for the reasons mentioned above these appeals are dismissed, but there shall be no order as to cost as the appellants should not be burdened because of the Punjab Government's lack of understanding of the Constitution and the Act. Copy of this judgment be sent to the Secretary (Regulations), Services and General Administration Department, Government of Punjab, who had issued the Notification and enacted rule 20 of the Rules, for information and reflection.

Chief Justice

Judge

Judge

Islamabad:
05.09.2022
(M. Tauseef)

Approved for Reporting

⁸ Article 189 of the Constitution of the Islamic Republic of Pakistan.