

Judgment Sheet
IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.2225-P/2023

JUDGMENT

Date of hearing..... 23.5.2024

Petitioner.

(Hazoor Ali Khan):

By: Mr. Nasir Mahmood,
advocate.

Respondents.

(Govt. of KP thr. C.S. etc):

By: Mr. Niaz Muhammad, AAG with Mahtab
Gul, Law Officer, KP PSC.
Mr. Javed Iqbal Gulbela, advocate for
respondent No.7.
Respondent No.6 in person.

WIQAR AHMAD, J.- Through this single order/judgment

recorded in W.P.No. 2225-P/2023 (titled Hazoor Ali Khan Vs
Govt. of KPK through Chief Secretary and others), we are also
going to dispose of connected W.P.51-P/2023 (titled Hazoor Ali
Khan Vs KPK Public Service Commission etc) as in both
petitions, petitioner has disputed appointment of respondent
Imrana Khan as Assistant Public Prosecutor (BPS-17).

2. Hazoor Ali Khan, petitioner herein, has filed this
petition under Article 199 of the Constitution of Islamic
Republic of Pakistan 1973, with following prayer :-

*“It is respectfully humbly prayed that on
acceptance of this writ petition, an appropriate writ
may please be issued :-prated that on acceptance of*

this writ petition, this Honourable Court may declare that the petition is entitled to the benefit of his previous service rendered as Office Manager w.e.f. 12.4.2009, the day he was appointed as Office Manager. This Honourable court may direct the respondents to reckon the service of the petitioner as Office Manager w.e.f. 12.4.2009 for all intents and purposes i.e. seniority, increments, promotion and pension etc."

3. Brief facts necessitating filing of instant petition are that in response to advertisement inviting applications from candidates from all zones of KPK for filling 14 posts of Assistant Public Prosecutor (BPS-17), petitioner (hailing from zone-IV) also applied for same and participated in the process of selection wherein he got 35 marks in the screening test while respondent Imrana Khan got 32 marks and as per criteria set by the Commission, a candidate scoring minimum 33 marks was to be called for interview. But a female candidate was rejected, therefore, the threshold to qualify for female quota was reduced to 32 marks, where under respondent Imrana Khan was called for interview. It is further averred in the petition that in this way, respondent Imrana Khan was called for interview against female quota and became top scorer in the female quota but surprisingly, she was not selected against quota meant for

females but against general quota of Zone-IV, thus depriving the the petitioner of his rights and the respondents selected one Saba Jehangir against female quota. Accordingly, respondent Imrana Khan was shown to have qualified for the post of Assistant Public Prosecutor on Zone-IV quota which , according to averment of petition, was illegal requiring interference of this court. Hence, instant petition with prayer reproduced in Paragraph-1 above.

4. Comments were asked from the respondents which have been furnished.

5. Learned counsel for petitioner contended that respondent Imrana Khan had not obtained minimum threshold score but subsequently one of the candidates called for interview against Female quota had been dropped and therefore, she being next was called for interview by lowering the threshold score for women quota. Learned counsel for petitioner further added that despite the fact that she has been called for interview on the minimum threshold score of women quota seat, she was subsequently adjusted against the seat of Zone-IV while newly added respondent, namely, Ms Saba Jehangir was placed in

women quota. Learned counsel concluded his arguments by stating that the Commission should have placed respondent Imrana Khan in women quota and not in the General quota reserved for Zone-IV and by doing so, seat of Zone-IV should have been allocated to the petitioner from which he has wrongly been deprived.

6. Learned Assistant Advocate General contended in rebuttal that in order to ensure that 10% extra quota was availed by female candidates, respondent No.3 had been placed in the General quota of Zone-IV as she was able to get a position of appointment in the general quota (both male and female) and that one seat available in female quota was offered to a candidate next on merit in female quota list. Learned counsel for respondent also contended that the Commission had made an appropriate decision where-under proper quota had been ensured

to have been given to women folk otherwise with appointment of respondent Imrana Khan on women quota, no extra seat would have been allocated to female quota for the reason that said respondent was otherwise qualifying on merits in general cadre quota .

7. We have heard learned counsel for the petitioner, learned Assistant Advocate General (assisted by representative of Public Service Commission), learned counsel for respondent and have gone through record with their valuable assistance.

8. Perusal of record reveals that petitioner had obtained total of 73 score while respondent No.3 had also obtained total of 73 but her marks obtained in interview were 21 while that of petitioner were 17 and thereby respondent No.3 was having an edge over the petitioner, under the relevant Regulations of KPK Public Service Commission. The newly added respondent, namely, Ms Saba Jehangir had obtained score of 72. Since total 14 seats had been advertised, therefore, according to Zonal allocation formula, three seats had been reserved for merit, two seats for Zone-I, two seats for Zone-II, two seats for Zone-III, one seat for Zone-IV, one seat for Zone-V, one seat for Female quota, One seat for disabled Quota and one seat for minority quota. Zonal allocation of seats in this case is not disputed. It is also an admitted fact that respondent Imrana Khan had first achieved minimum threshold score but since one of the five candidates (called for interview on female

quota) had been dropped, therefore, by relaxing minimum threshold of female category quota, respondent Imrana Khan had been called for interview. She scored well in the interview where she obtained 21 marks and therefore, her name was found falling in the merit of Zone-IV (General quota seat) where against she was offered appointment instead of appointing her from female quota. In the female quota list, she was also on the top of merit list while Ms Saba Jehangir (newly added respondent) was runner up with score of 72. Now the commission was facing a question of placement of respondent Imrana Khan i.e., whether she should be placed in the general quota of Zone-IV or she should be placed in the female quota. In this respect, the commission opted for placing respondent Imrana Khan in general quota seat of Zone-IV and relied on the instructions of the Establishment Department regarding filling of 10% quota seat fixed for female candidates. Relevant instruction has also been reproduced in the comments which is also reproduced herein below for ready reference :-

“ii). 10% quota has also been fixed for female candidates in all the Provincial Services which are filled up through initial recruitment in

addition to their participation in the open merit. However, it shall not be applicable to cadres exclusively reserved for females. The vacancies reserved for women for which qualified women candidates are not available shall be carried forward and filled by women.”

9. Learned counsel for petitioner contended that the instruction had not been properly followed and that the words “open merit” used at the end of first sentence in above reproduced para , would mean those seats which were reserved for competition on merit (which were open for people of whole province). In other words, learned counsel for petitioner was of the opinion that if a female candidate scores well in the seats reserved for merit (3 posts in the instant case) only then such appointment of female should not be counted against female quota and that such female should be given a post on open merit; and otherwise a female candidate should be allowed appointment on the female quota seats only. Placing of such interpretation on the instructions would amount to rendering reservation of 10% for women, as redundant. The general quota seats are always for both genders (male and female) as well as candidates from minorities female quota etc. If a female

candidate secures a position against general quota seat, then she was to be appointed against such post. 10% quota has been reserved for those female candidates who are not able to compete with general lot in the general quota . General quota seats are then further divided into merit seats and those seats which are reserved for 5 zones according to the zonal allocation formula which are to be followed according to Regulation 33 of the KPK Public Service Commission Regulations, 2003 (hereinafter referred to as "Regulations"). The words "open merit" would therefore mean those seats in the general quota which are open to all the candidates for appointment and same would include seats allocated to merit as well as seats allocated to various Zones, according to the instructions of the Establishment Department, reproduced above. The words "in addition to their participation in the open merit" used in the ibid notification should be read as a whole with the fact that 10% quota has been reserved for female candidates in all the provincial services were sufficient to signify that 10% quota be construed to give it effect over and above the already available seats in the general quota to the female candidates. Only then the

purpose of reserving this quota for female candidates may be achieved, otherwise reservation of such quota for female would not be meaningful in most of the cases.

10. While interpreting the instrument, its purpose cannot be lost sight of, particularly when there is an ambiguity in the text. Such instrument shall be construed in such meaning so as to advance the purpose for which the instrument has been issued. The purpose of notifying the instrument of reserving 10% female quota in all the governmental services of Khyber Pakhtunkhwa, was no other than to redress under representation of women folk in government services. In the authoritative treatise of Interpretation of Statutes i.e. “Maxwell on The Interpretation of Statutes- Twelfth Edition by : P.St.J.Langan”, it was opined;

“Where the language a statute, in its ordinary meaning and grammatical construction, lead to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing

from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: "the canons of construction are not so rigid as to prevent a realistic solution."

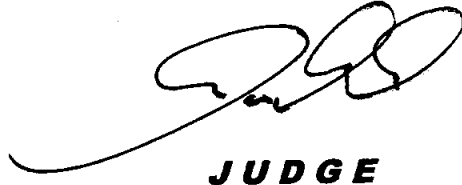
11. Guidance from the above passage may well be taken for interpreting the instrument issued by the competent authority in executive or quasi-legislative capacity. Such principle may well be borrowed for purposive construction of the instrument in the case in hand. The act of the Public Service Commission whereby they have placed respondent Imrana Khan

in the general quota seats of Zone-IV so as to afford an opportunity to another female from the female quota seats, was therefore, found to be in accordance with the instructions of the Establishment Department and was best serving spirit of the legal instrument where-under 10% quota has been reserved for women folk.

12. So far as the contention of learned counsel for petitioner that respondent Imrana Khan had been called for interview in women quota, is concerned, it is important to be noted that there are two distinct activities; one is short-listing for the purpose of calling candidates for interview under Regulations 24(a) of the Regulations while the other is placing of candidates at the conclusion of the recruitment process in accordance with Regulation 33 of the Regulations on the basis of zonal and other quota allocations. If a person is called for interview by keeping in view the respective lower threshold against quota seat for which he or she is called but if during the interview if she/he obtains goods marks, and is placed on such a position of the merit that placement of such person is required in general quota seats, then mere fact that the person had initially

been called for interview in reserve quota would not divest the Commission of an authority to make a placement in accordance with Regulation 33 of the Regulations. This contention of learned counsel for petitioner was also found to be holding no water.

13. In light of what has been discussed above, instant writ petition as well as connected W.P.No.51-P/2023 were found lacking any substance and both are accordingly dismissed.



JUDGE



JUDGE

Date of hearing and announcement
Of Judgment23.5.2024

Date of Preparation and signing of
Judgment 27.05.2024