

Cost of Rs. 2000/- received in Service Appeal No. 221/2022,

Titled Hussain Akbar vs. Establishment

in the office of Assistant Registrar, Vide Order 19/12/23, Submitted on 11/01/24 Dated: 11/01/2024.

11/01/24  
Assistant Registrar  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA,**  
**SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 221/2022

Mr. Hussain Akbar, Assistant DC Office Mardan/Divisional Coordinator Revenue Department  
Mardan ..... **Appellant**


**VERSUS**

Chief Secretary, Khyber Pakhtunkhwa & Others ..... **Respondents**

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Dated: 29.11.2023

  
**Deponent**  
CNIC No: 17301-6272682-3  
Contact No: 0315-5737137

295  
1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR**

**Service Appeal No. 221/2022**

Hussain Akbar, Assistant DC Office Mardan/Divisional Coordinator Revenue  
Department Mardan .....(Appellant)

**Versus**

Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa &  
others .....(Respondents)

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS** Khyber Pakhtunkhwa  
Service Tribunal

Respectfully Sheweth,

Diary No. 10502

**PRELIMINARY OBJECTIONS:**

Dated 11-1-2024

1. The appeal is not maintainable being hit by the well-settled Principle of res judicata. As admitted vide Para-13 of the "Facts" of the instant Appeal, the appellant had filed a Writ Petition No. 4157-P/2020 which was dismissed as withdrawn by Hon'ble Peshawar High Court vide order dated 15.10.2020, however, the Respondents were directed to dispose of the representation of the petitioner; and as admitted vide Para-14 of the "Facts", in compliance with directions of the Hon'ble Court, order dated 25.05.2021 (Annex-I) was passed on appellant's representation by the Competent Authority which was duly communicated to the appellant vide letter 27.01.2022 (Annex-II).
2. As admitted by the appellant vide Para-15 & 16 of the "Facts", the matter agitated before the Hon'ble Tribunal in the instant appeal i.e, a similar question of law/proposition has already been settled by the august Supreme Court of Pakistan in the case of **Government of KP through Chief Secretary vs Hayat Hussain** (in Civil Appeal No.1213/2014) vide judgment dated 25.02.2016 (Annex-III) wherein the Apex Court held: *"the amendment was made in rules in order to clarify certain anomalies, which had duly been taken care of, as such no mala fide can be attributed to the government as per the settled principles the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the government which does not warrant interference by the courts. Resultantly the appeals are allowed and impugned judgment of the High Court is set aside."* Apropos, a matter/question of law which has already gained finality/ adjudicated upon by the competent courts (the Hon'ble Peshawar High Court, Peshawar and the august Supreme Court of Pakistan), cannot be pursued by the appellant by filing an appeal agitating the same question of law being hit by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 which stipulates **"No entertainment of appeal in certain cases:- The Tribunal shall not entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction"**.
3. Similarly, in a more recent case, concerning the question of law, directly related to the one raised in the instant appeal, the august Supreme Court of Pakistan in the

case of Government of KP through Chief Secretary vs Zahoor Ahmed Khalil & Muhammad Arshad (in Civil Appeal No.712 & 713 of 2020) vide judgment dated 01.02.2021 (Annex-IV) held: "*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 benefits of Rules, 2007 and the criteria laid down for PMS (BS-17) quota posts reserved for a specific class of Government employees. In the circumstances, 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.*"

4. That the appellant has got no fresh cause of action/locus standi to file the instant appeal against the respondents. By filing the instant appeal, the appellant is praying to declare the amendment dated 04.10.2010 ultra vires and directions to the Respondent No.03 to complete necessary process on the withheld result; both are past and closed transactions as clarified in the above raised objections.
5. That the appellant has presented the facts in a manipulated form which disentitles him for any relief whatsoever.
6. That the appeal is barred by law/time.
7. That the appellant has concealed material facts from the Tribunal.
8. That the appellant has not come to the Tribunal with clean hands.
9. That the appellant is estopped by his own conduct to file the instant appeal.
10. That the appeal is hit by laches.

**Reply to Facts:**

1. The appellant in support of his present appointment/ post has added nothing with the appeal for clarification of his mode of appointment to the post. Additionally each and in every post in various departments has different Service Rules, which provide qualification, experience, method of recruitment and eligibility criteria for appointment/ promotion framed under relevant governing laws. Moreover, these rules are not applicable to each and every department employees. Since he is working against a district cadre post, therefore, it cannot be termed as Secretariat Cadre post.
2. Correct that the Honourable Chief Minister, Khyber Pakhtunkhwa being competent authority in terms of Section 26 of Civil Servant Act, 1973, merged two Provincial Civil Service Groups/Cadres i.e. (Executive group & Secretariat group) regulated under NWFP Civil Service (EG Rules) 1997 and NWFP Civil Service (SG Rules) 1997, to form a single/unified cadre of PMS officers of the Province in consultation with concerned departments. For carrying out proper administration of this prestigious Administrative cadre/service, Provincial Management Service (PMS) Rules, 2007 were framed and promulgated.
3. Incorrect, in the West Pakistan Secretariat (Section Officer), Service Rule 1962 and the West Pakistan Civil Servant (Executive Branch) Rules, 1964 the post were

required to be filled 50% by initial recruitment and 50% by promotion. Moreover upon merger of the both the cadres into PMS in 2007 and to ensure better service delivery through competitive mode, 10% quota was reserved in the PMS Rules, 2007 for Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerk borne on the cadre strength of Secretariat who possess 2nd Class Bachelor's Degree from a recognized University with at least five years service as such. Consequently, the promotion quota of Tehsildars/ Superintendents were fixed 40%. The contention of the appellant has, however, misperceived, misinterpreted, irrelevant and past/ closed transactions.

4. Incorrect, as explained in para-3 above, misperceived, misinterpreted, irrelevant to the appellant and past and closed transactions.
5. As explained in Para-2 above, the Hon'ble Chief Minister, Khyber Pakhtunkhwa being the competent authority, in accordance with law, with a view to removing ambiguity/ clarifying certain anomalies with regard to eligibility of ministerial staff 10% In-Service quota was reserved in the PMS Rules, 2007, that *"Ten per cent by selection on merit, on the basis of competitive examination, to be conducted by the Commission in accordance with the provisions contained in Schedule-VIII, from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerk borne on the cadre strength of Secretariat who possess 2nd Class Bachelor's Degree from a recognized University with at least five years service as such."*
6. Correct that in the PMS In-Service 10% quota certain posts were advertised in 2010, however, as clarified vide Para-5 above, the same were withdrawn with a view to amend PMS Rules, 2007 to clarify eligibility of Ministerial Staff for In-Service quota.
7. Correct to the extent that the General Secretary of the Secretariat employees coordination council made a representation before the competent authority stating therein that 10% quota actually slashed their share by reducing their promotion quota and only the employees of Secretariat have a right to be appointed against the said quota. The said representation had already be disposed of and the 10% quota is still in the filed.
8. Incorrect as laid. As responded vide Para-2 & 5 above. The Hon'ble Chief Minister, Khyber Pakhtunkhwa being competent authority in terms of Section 26 of Khyber Pakhtunkhwa Civil Servants Act, 1973 (amended from time to time) can make amendment to PMS Rules as appear to him to be necessary or expedient for carrying out proper administration of the cadre/service. However, in a similar nature case the august Supreme Court of Pakistan in the case of **Government of KP through Chief Secretary vs Hayat Hussain** (in Civil Appeal No.1213/2014) vide judgment dated 25.02.2016 (Annex-III) has held that *"the amendment was made in rules in order to clarify certain anomalies, which had duly been taken care of, as such no mala fide can be attributed to the government as per the settled principles the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the government which does not warrant interference by the courts. Resultantly the appeals are allowed and impugned judgment of the High Court is set aside."*

Likewise, in a more recent case, concerning the question of law, directly related to the one raised in the instant appeal, the august Supreme Court of Pakistan in the case of **Government of KP through Chief Secretary vs Zahoor Ahmed Khalil & Muhammad Arshad** (in Civil Appeal No.712 & 713 of 2020) vide judgment dated 01.02.2021 (Annex-IV) held: *"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 benefits of Rules, 2007 and the criteria laid down for PMS (BS-17) quota posts reserved for a specific class of Government employees. In the circumstances, 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."*

- 9. As responded vide Para-2, 5 and 8.
- 10. As responded vide Para-2, 5 and 8.
- 11. Correct to the extent that 69 posts meant for PMS In-Service Quota were advertised on 01.12.2017 with eligibility criteria restricted to Ministerial staff borne on the cadre strength of Secretariat as provided in the PMS Ruls, 2007 and also admitted by the appellant that PMS Rules, 2007 were amended on 04.10.2010 (Annex-V).
- 12. As responded vide Para 2, 5, 8 and 11, PMS In-Service 10% Quota advertised on 01.12.2017 was meant for Ministerial staff borne on the cadre strength of Secretariat. The appellant being an employee of DC Office Mardan was not eligible for the said posts, therefore, the Khyber Pakhtunkhwa, Public Service Commission withheld his result and did not call for interview, due to his misleading/incorrect information provided to the Commission.
- 13. As admitted by the appellant Writ Petition No. 4157-P/2020 filed by appellant was dismissed as withdrawn by Hon'ble Peshawar High Court vide order dated 15.10.2020, however, the Respondents were directed to dispose of the representation of the petitioner; and as admitted vide Para-14 of the "Facts", in compliance with directions of the Hon'ble Court, order dated 25.05.2021 (Annex-I) was passed on appellant's representation by the Competent Authority which has already been communicated to the appellant vide letter 27.01.2022 (Annex-II).
- 14. As responded vide Para-13 above.
- 15. As explained in Para-8 above
- 16. Correct as laid. As admitted by the appellant, the judgment of Peshawar High Court dated: 28.05.2014 was challenged before the august Supreme Court of Pakistan in the case titled **Government of KP through Chief Secretary vs Hayat Hussain** (in Civil Appeal No.1213/2014) which was disposed of vide judgment dated 25.02.2016 and held therein: *"the amendment was made in rules in order to clarify certain anomalies, which had duly been taken care of, as such no mala fide can be attributed to the government as per the settled principles the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the government which does not warrant interference by the courts. Resultantly the appeals are allowed and impugned judgment of the High Court is set aside."*
- 17. Incorrect as laid.
- 18. The appellant is not aggrieved person in true sense, has got no valid locus standi and therefore, is not entitled for any relief. The appeal, being devoid of merit, is liable to be dismissed in limine.


Reply to Grounds:


- A. Incorrect. As responded vide para-2, 5, 8,11, 13 and 16 of the **FACTS**.
- B. Incorrect. As responded vide Para 8 of the **FACTS**.
- C. As responded vide preceding paras.
- D. Incorrect. As responded vide para 12, 13 and 16 of the **FACTS**.
- E. As responded vide para-2, 5, 8,11, 13 and 16 of the **FACTS**.
- F. Incorrect. As responded vide preceding paras.
- G. Incorrect as laid. At present there are 77 posts in PMS BS-17 falling to the share of In-Service quota; all of them have been filled up through three competitive exams conducted by the Commission in 2018, 2020 and 2022 respectively.
- H. As responded vide preceding paras.
- I. Not reflected in the Appeal.
- J. Not reflected in the appeal.
- K. Incorrect. In fact, it was on the request/application of All Employees Coordination Council, Civil Secretariat, Khyber Pakhtunkhwa Peshawar that comments/views of Board of Revenue were solicited with regard to reduction of 20% promotion quota of Tehsildar cadre being disproportionately higher than their actual strength and giving the same to Superintended/PA cadre of the Secretariat. However, Board of Revenue did not concur to that and as a result the request was filed/regretted. The rest as responded vide para-2, 5, 8,11, 13 and 16 of the **FACTS**.
- L. As responded vide para-2, 5, 8,11, 13 and 16 of the **FACTS**.
- M. Correct as laid.
- N. In correct. As responded vide para-2, 5, 8,11, 13 and 16 of the **FACTS**.
- O. As responded vide preceding paras the matter in question has already gained finality/ adjudicated upon by the competent courts (the Hon'ble Peshawar High Court, Peshawar and the august Supreme Court of Pakistan), cannot be pursued by the appellant by filing an appeal agitating the same question of law being hit by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 which stipulates "**No entertainment of appeal in certain cases:-The Tribunal not shall entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction**".
- P. Incorrect as laid. As responded above, in a more recent case, concerning the question of law, directly related to the one raised in the instant appeal, the august Supreme Court of Pakistan in the case of **Government of KP through Chief Secretary vs Zahoor Ahmed Khalil & Muhammad Arshad** (in Civil Appeal No.712 & 713 of 2020) vide judgment dated 01.02.2021 (**Annex-IV**) held: "*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 benefits of Rules, 2007 and the criteria laid down for PMS (BS-17) quota posts reserved for a specific class of Government employees. In the circumstances, 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."

Q. The respondents seek permission to adduce additional grounds/documents at the time of arguments.

It is, therefore, humbly prayed that on acceptance of these Parawise comments, the instant appeal being devoid of merit may very graciously be dismissed with cost in limine.

  
Secretary to Govt. of Khyber  
Pakhtunkhwa  
Establishment Department  
(Respondent No.2)  
(Zubair Ahmad)

  
Chairman  
Khyber Pakhtunkhwa  
Public Service Commission  
(Respondent No.3)  
Sikandar Dayan

  
Chief Secretary  
Khyber Pakhtunkhwa  
(Respondent No.1)  
Nadeem Aslam Chudhry



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**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE  
TRIBUNAL, PESHAWAR**

Service Appeal: 221/2022

Mr. Hussain Akbar.....Appellant

**VERSUS**

Chief Secretary Khyber Pakhtunkhwa & Others .....Respondents

**AFFIDAVIT**

I, Zubair Ahmad, Special Secretary Establishment Department do hereby solemnly affirm and declare on that oath contents of the accompanying parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.



**DEPONENT**

**Zubair Ahmad**

**Special Secretary Establishment**

**Contact: 0332-4545054**

*Respondent No-2*

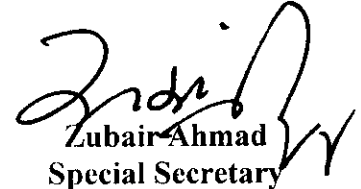


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**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(Judicial Wing)**

**AUTHORITY LETTER**

Mr. Riaz Khan, Superintendent (Litigation-III Section) Establishment Department is hereby authorized to submit Affidavit to The Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 221/2022 titled as "**HUSSAIN AKBAR VS GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS**" on behalf of The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa being (Respondents No.01)

  
**Zubair Ahmad  
Special Secretary  
Establishment**

(58)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

Dated Peshawar the May 25, 2021

ORDER

NO.SOE-H(ED)3(81)2020: WHEREAS Mr. Hussain Akbar, Assistant, President APCA Local unit DC Office, Mardan submitted an application, wherein, he has shown grievance that 69 posts of PMS In-service were advertised through KP-PSC on 01.12.2017, wherein he appeared in the exam but KP-PSC did not declare his result. Being aggrieved he filed Writ Petition No.5390/2018, which was withdrawn. However, after submitting several applications to Chief Secretary, Khyber Pakhtunkhwa and Secretary Establishment for the said purpose, he filed Writ Petition in Peshawar High Court, Peshawar which was also dismissed with the direction the respondents to dispose of the appeal of the petitioner with explicit result within a period of thirty days.

AND WHEREAS the applicant has requested that a clarification may be issued in the Scheduled-II, of PMS Rules 2007 of column 05, and right of ministerial staff of revenue department and its subordinate offices may be restored in the said quota ab-initio. He further requested that KP-PSC may be approached to retain him and complete his recruitment process.

AND WHEREAS as per PMS Rules 2007, 10% In-Service quota in PMS (BS-17) posts is specified for the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks borne on the cadres strength of Secretariat, while, attached departments having career progression in their respective departments, can apply in general PMS. As far as issues regarding amendment in the PMS Rules, 2007 is concerned Supreme Court of Pakistan has clear Judgment dated 25.02.2016 in the same matter, saying therein "The amendment was made in the Rules in order to clarify certain anomalies, which had duly been taken care of, as such no malafide can be attributed to the Government and as per the settled principle the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the Government which does not warrant interference by the Courts. Resultantly, these appeals are allowed and the impugned judgment of the High Court is set aside".

Attested  
Superintendent  
Govt. of KPK  
Estab: Deptt:

*[Handwritten Signature]*  
25/5/2021

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AND WHEREAS, In light of the Supreme Court of Pakistan Judgment dated 25.02.2016 and relevant rules/ policy, the request of the applicant regarding restoration of quota in PMS In-service for ministerial staff of Revenue Department/ subordinate attached offices is not tenable. In this connection, KP-PSC is justified in withholding the result of the applicant being ineligible for the PMS In-Service quota under PMS Rules, 2007.

NOW THEREFORE, after due consideration of all the points voiced in the application and record, rules / policies in vogue, the competent authority has found no reason to accede to the request of the applicant, which is regretted being devoid of merit.

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

Endst. No. & Date even

Copy forwarded to the:-

1. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
2. PSO to Chief Secretary, Khyber Pakhtunkhwa.
3. PS to Chief Secretary, Khyber Pakhtunkhwa.
4. PS to Secretary Establishment.
5. PS to Special Secretary (Estt.), Establishment Department.
6. Applicant concerned.
7. Manager, Government Printing Press.

MUHAMMAD IRFAN USMAN  
SECTION OFFICER  
(ESTABLISHMENT-II)

Attested  
Superintendent  
Govt. of KPK  
Estab: Depts

ESTABLISHMENT-II



Reg

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(HRD WING)

Annex-II

No. SO (HRD-II/ED)/10/2021 (RTI)/Hussain Akbar  
Dated Peshawar the 27<sup>th</sup> January, 2022

To

Mr. Hussain Akbar (Assistant),  
President APCA Local Unit, DC Office, Mardan.

Subject: PROVISION OF INFORMATION UNDER THE KP RTI ACT, 2013.

I am directed to refer to your application dated 07-01-2022 on the above subject noted above and to forward herewith copy of the requisite information under Right to Information Act 2013 for information.

Encl: As above:

*Attended*  
*AW*

Superintendent  
Govt. of KP  
Estab: Deptt:

*A*  
Public Information Officer (PIO)  
Establishment Department



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

6

NO.SOE-II(ED)/1-3/2021  
Dated Peshawar the January 26, 2021

2022

To

The Section Officer (HRD-II),  
Establishment Department (HRD Wing).

Subject:

PROVISION OF INFORMATION UNDER RTI ACT, 2013

S/c

I am directed to refer to your letter No.SO(HRD-II)/ED/1-10/2022 (RTI)/Akbar Hussain dated 12.01.2022 on the subject noted above and to state that the requester may be apprised that Competent Authority has regretted/ filed your latest representation dated 22.06.2021 as the matter-in-question has once for all been decided by passing a speaking order 25.05.2021 (copy enclosed), on his earlier representation/application and the same has already been communicated to him.

*[Signature]*  
SECTION OFFICER (E-II)  
2022

ENDST: NO & DATE EVEN

Copy forwarded to the:-

- 1) PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
- 2) PS to Special Secretary (Estt), Establishment Department,
- 3) PA to Additional Secretary (Estt), Establishment Department,
- 4) PA to Deputy Secretary (Estt); Establishment Department

*Atty*  
Superintendent  
Govt. of P.K  
Estab: Deptt:

*[Signature]*  
SECTION OFFICER (E-II)  
2022

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

Annex-III

14

PRESENT: Mr. Justice Mian Saqib Nisar  
Mr. Justice Amir Hani Muslim  
Mr. Justice Iqbal Hameedur Rahman

**Civil Appeals No. 1213 & 1214/2015**  
(On appeal against the judgment dated 28.05.2014  
passed by the Peshawar High Court, Peshawar,  
in W. Ps. No. 3857 & 4423/2010)

Govt. of KPK through Chief Secretary,  
Peshawar, etc. (in both cases) Appellant(s)

Versus

Hayat Hussain, etc. (in C. A. 1213/2015)  
Abdul Basir, etc. (in C. A. 1214/2015) Respondent(s)

For the Appellant(s)  
(in both cases): Mr. Waqar Ahmed Khan, Addl. AG.

For the Respondent(s): In-person.

Date of Hearing: 25.02.2016.

**JUDGMENT**

Iqbal Hameedur Rahman, J. Through this single judgment, we intend to decide the listed appeals. The instant appeals are directed against the judgment dated 28.05.2014 passed by the Peshawar High Court, Peshawar, in W. Ps. No. 3857 & 4423/2010 whereby the said petitions filed by the respondents have been accepted.

2. Through the above mentioned writ petitions, the respondents had sought a declaration that orders dated 18.08.2010, 09.09.2010 & 04.10.2010 be declared as illegal, unconstitutional, without lawful authority, ultra vires to their rights and based on malafides and also sought that a direction be given to the appellants to proceed with the process as per the advertisement dated 20.07.2010. The precise facts are that the appellants requisitioned 53 posts in BPS-17 in the Provincial Management

Attested  
M

Superintendent  
Govt. of KPK  
Estab: Deptt:

ATTESTED

Court Associate  
Supreme Court of Pakistan  
Islamabad

Service (PMS). The said requisition was forwarded to the Khyber Pakhtunkhwa Public Service Commission (hereinafter to be referred as "the Commission"), who thereafter advertised the said posts on 20.07.2010. Pursuant to the advertisement, the respondents, Hayat Hussain, Superintendent, KPK Public Service Commission, Peshawar, and Abdul Basir, Office Assistant, Board of Revenue, KPK Peshawar, applied under 10% reserved quota for ministerial staff as per the Provincial Management Service Rules. Later on vide order dated 18.08.2010 it was conveyed by the KPK Establishment Department to the Secretary of the Commission that the matter with regard to 10% reserved quota in PMS (BPS-17) had been examined by the KPK Establishment Department and it is clarified that the same is meant only for ministerial staff serving in the Administrative Departments of KPK Civil Secretariat excluding the employees of attached departments/subordinate offices. The said letter was followed by another letter dated 09.09.2010 wherein it was intimated to the Commission that requisition of 53 posts of PMS officers (under 10<sup>th</sup> in-service quota) is withdrawn by issuing notification dated 04.10.2010 through which Khyber Pakhtunkhwa Provincial Management Service Rules, 2007 (hereinafter to be referred as "the Rules") have been amended and 10% reserved quota had been restricted to persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks borne on the cadres strength of Secretariat who possess post graduate qualification from a recognized University with at least five years service as such. The said orders and notification gave rise to a grievance to the respondents, who being employees of attached departments and who have been excluded from 10% reserved quota as previously provided in the Rules as such they had challenged the said

*Attested*

Superintendent  
Govt. of FPK  
Estab. Deptt.

ATTESTED

*[Signature]*  
Court Associate  
Supreme Court of Pakistan  
Islamabad



order and notification before the High Court by filing writ petitions contending therein that discriminatory treatment is being given to them in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, as they were performing the same functions as that of Secretariat employees as such they cannot be excluded because they fulfilled the qualification and experience. The High Court took their contentions into consideration and vide impugned judgment held that they being similarly placed persons have been treated differently as such it constituted a sheer discrimination and further held that it was not a case where rules have been challenged by a person in service rather it was a case where blessings have been given to a class of employees by depriving others through special amendment introduced in the Rules in the garb of interpretation and misinterpretation of rules, which smacks of malafide on the part of the appellants and accordingly struck down the notification dated 04.10.2010 and restored earlier rules framed in the original form as per rule-3 of Schedule-I of the Rules; which entitled the respondent to compete on 10% reserved quota on the basis of competitive examination to be conducted by the Commission from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government. Being aggrieved, the appellants approached this Court by filing Civil Petitions No. 442-P & 443-P/2014 wherein leave was granted vide order dated 20.11.2015. the relevant portion therefrom is reproduced herein below:-

*Handwritten signature*

The learned Additional Advocate General appearing on behalf of the petitioners contended that it is well beyond the domain of jurisdiction

*Handwritten signature*  
 Superintendent  
 Govt. of F.P.K  
 Estab. Deptt.

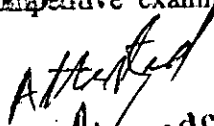
**ATTESTED**  
*Handwritten signature*

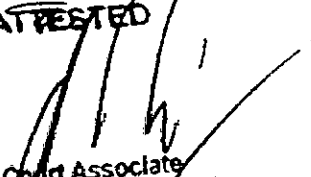
of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan to sit in judgment over the vices of the rules or notifications in view of the judgment rendered in the case titled L.A. Sharwan vs. Government of Pakistan (1991 SCOR 1041) and that the High Court could not impute mala fides to the legislature when there was absolutely nothing on the record as could even reasonably suggest that the rules were amended to benefit one and impair the rights of the other."

3. It would be pertinent to reproduce here the relevant portions of the Rules prior to amendment as provided in Schedule-I:-

S. No.	Nomenclature of posts	Minimum qualification for appointment by initial recruitment	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5
1	PMS (BS-17) as per detail at Schedule-II	2 <sup>nd</sup> Division Bachelor Degree from a recognized University.	21-30 year	<p>1) Fifty per cent by initial recruitment on the recommendations of the Commission based on the result of competitive examination to be conducted by it in accordance with the provisions contained in Schedule-VII.</p> <p>2) Subject to rule 7, by promotion in the following manner:</p> <p>(a) twenty percent from amongst Tehsildars, who are graduates, on the basis of seniority-cum-fitness, having five years service as Tehsildar and have passed the prescribed Departmental Examination; and</p> <p>(b) twenty percent from amongst the Superintendents/Private Secretaries on seniority-cum-fitness basis, who are graduate and have undergone a training course of 9-weeks at the Provincial Management Academy/Provincial Staff Training Institute. A joint seniority list of the Superintendents and Private Secretaries shall be maintained for the purpose of promotion on the basis of their continuous regular appointment to the respective posts.</p> <p>3) 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, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government.</p>

That according to the original Rules, 10% of selection on merit on the basis of competitive examination was to be made from amongst the persons

  
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 Supreme Court of Pakistan  
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holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government. From the perusal of the same it is apparent that the same had not been restricted only to Secretariat employees. The Rules have been amended through notification dated 04.10.2010, which reads as under: -

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

Date Feshawar, the 04.10.2010

NOTIFICATION

No. SOE-II(ED) 2(14)/2009: In exercise of the powers conferred by Section 25 of the North-West Frontier Province Civil Servants Act, 1973, (NWFP Act No. XVIII OF 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendments shall be made namely:

AMENDMENT

In Schedule I, against Serial No. 1 in Column No. 5 for Clause (3) the following shall be submitted, namely:

- (3) Ten per cent 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 the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service as such.

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA"

By virtue of the above mentioned amendment, the respondents being employees of attached departments have been excluded to be eligible for 10% quota selection on the basis of competitive examination.

5. The learned Additional Advocate General for the appellants argued that the said amendment had been made in order to clarify that appointments to the posts of PMS (BPS-17) in 10% quota was meant only for the ministerial staff of the Secretariat so as to encourage talented lower

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Govt. of KPK  
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staff. Moreover, the respondents could still compete in open merit as such there was no discrimination. He further argued that the appellants were duly competent to amend the Rules and the Rules were amended strictly in accordance with law.

6. On the other hand, the respondents appearing in-person submitted that through the amendment they were deprived of their right. They further submitted that the Secretariat employees are already covered under Schedule-I subsection 2)(b) for promotion as such the 10% quota actually meant for other attached departments.

7. In the facts and circumstances of the case and in the light of the arguments advanced by the learned Additional Advocate General as well as the respondents in-person, it is to be considered whether amendment in the Rules could be effected by the Government regarding restricting the reservation of 10% quota only for ministerial staff of Civil Secretariat KPK and whether it is justifiable, secondly, whether amendment was mala fide made in order to exclude and deprive the respondents from future prospects of their promotion moreso when they are performing the same functions and duties as such whether it is a discrimination and do the respondents have a vested right to challenge the same. In the above perspective, whether the High Court has the jurisdiction in the matter to strike down rules relating to Civil Servants regarding their appointment and promotions and amendments made therein. The stance of the appellants is that amendment in the relevant provisions of the Rules was quite justified as the employees of attached departments get sufficient chances of promotion in their cadres against the quota reserved specifically for them under their respective service rules, whereas the employees of Civil Secretariat cannot appear in those examinations, for instance the Sub Accountants in the District Accounts Offices accorded promotion after qualifying SAS examination.

*A. H. Khan*  
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Similarly, the Junior Instructors (BS-14) of Technical Education Department with diploma of Engineering i.e., equal to FA/F.Sc are promoted to BS-17 within 5 to 10 years period. Likewise, Sub-Engineers (BS-11) of C&W, PHE and Irrigation Department having B.A. degree are considered or accelerated promotion to the post of Assistant Engineer (BS-17) after qualifying the departmental exam prescribed under their respective service rules, as such the respondents are entitled to get further promotion to the post of PMS BS-17 in their own service cadre. Further justification given by the appellants was that the ministerial staff of Civil Secretariat is transferable in different departments of Civil Secretariat which make them well acquainted with the nature of job of PMS Officers. Whereas, the employees of other departments/cadre are experts in their own field and their job profile is quite different from that of PMS Officers. Thus reserving 10% quota for ministerial staff of Civil Secretariat is justified as these posts cannot be used as learning place for others.

8. 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 as held by this Court in the case of The Central Board of Revenue, Government of Pakistan vs. Asad Ahmad Khan (PLD 1960 SC 81), the relevant portion therefrom is reproduced herein below: -

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in our opinion the High Court made the above error without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the Inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time the pay scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. 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." (emphasis supplied)

As far as the contention of the respondents that the rules could not be changed to affect them adversely is concerned, the said proposition has also been settled by this Court in the case of Muhammad Umar Malik and others vs. Federal Service Tribunal and others (PLD 1987 SC 172), wherein the proposition that the rules of promotion could not have been changed so as to affect adversely those already on the eligibility list i.e., combined list of U.D.Cs and S.G.Cs, was repelled by observing that, "No such vested right in promotion or rules determining eligibility for promotion exists", and held as under.

" Mr. Abid Hasan Minto, Advocate, when called upon to address arguments on merits, urged that the rules of promotion should not have been changed so as to affect adversely those already on the eligibilities list i. e. the combined list of the U.D.Cs. and S.G.Cs. In other words he was claiming a vested right in promotion for all the U.D.Cs. borne on the joint cadre on the date of its separation. The position of law on the subject is clear in view of numerous decisions of this Court, e.g. *Government of West Pakistan v. Fida Muhammad Khan* (1) *Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan* (2), *Province of West Pakistan v. Muhammad Akhtar* (3), *Manzur Ahmad v. Muhammad Ishaq* (4). No such vested right in promotion or rules determining eligibility for promotion exists."

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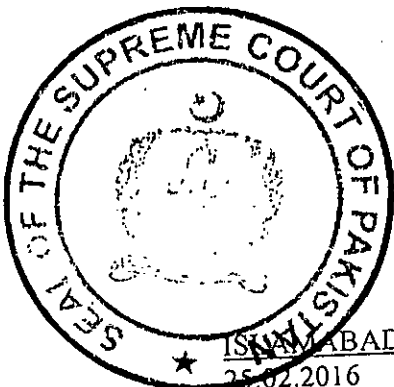
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9. In the facts and circumstances of the case and in the light of the case law cited above, it is quite apparent that the advertisement earlier made had subsequently been withdrawn and thereafter an amendment was made in the Rules and as yet the respondents have not appeared either in the examination or in any interview or selection, therefore, there appears to be no vested right created in their favour and accordingly any change made in the Rules cannot furnish a cause to the respondents. Moreover, the amendment was made in the Rules in order to clarify certain anomalies, which had duly been taken care of, as such no malafide can be attributed to the Government and as per the settled principle the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the Government which does not warrant interference by the Courts. Resultantly, these appeals are allowed and the impugned judgment of the High Court is set aside.

Sd/- Mian Saqib Nisar, J  
 Sd/- Amir Hani Muslim, J  
 Sd/- Iqbal Hameedur Rahman, J

Certified to be true Copy

Court Associate  
 Supreme Court of Pakistan  
 Islamabad



ISLAMABAD  
 25.02.2016  
 (Farrukh)

Not Approved for Reporting.

*[Signature]*

3902/16

GR No: \_\_\_\_\_ Civil Appeal

Date of Presentation: 22.2.16

No of Words: 2260

No of Folios: 22

Requisite: 5.00

Copy Fee: 16.75

Court Fee: 21.75

Date of Copy: 7.3.16

Prepared by: [Signature]

5-3-16

*[Signature]*

Superintendent  
 Govt. of FPK  
 Estab: Deptt:

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

Annex-IV

PRESENT:  
MR. JUSTICE QULZAR 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 22.08.2018 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 Khali,  
*(in CA. 712 of 2020)*

Muhammad 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 CA. 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. 712 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

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Estab. Deptt.

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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:

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Supreme Court of Pakistan  
Islamabad

"The Government of Khyber Pakhtunkhwa Public Service Commission (the petitioner) advertised 69 posts of Provincial Management Service (PMS) in UPS-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.

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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

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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 proscribed in Rules, 2007.

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Supreme Court of Pakistan  
Islamabad

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-1 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 possess 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 be inclusive in its meaning and content or may permit an expansive 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

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Islamabad

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Govt. of KPK  
Estab. Deptt.

hand by given service under the Government. Although, the learned High Court has noticed the said provision, it has misdirected itself in interpreting the Rule, 2007 in a manner which is contrary to reading language in the Rule 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 Rule, 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

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Supreme Court of Pakistan  
Islamabad

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

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Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

Superior Court  
Civil Appeal No. 714 of 2020  
Islamabad

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.

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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;

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*"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:

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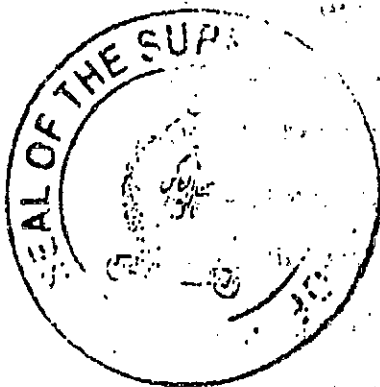
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Supreme Court of Pakistan  
Islamabad

"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-CJ  
Sd-J  
Sd-J

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01.02.2021.

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Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

Attorney General  
Supreme Court  
Govt. of Sindh  
Estab: Depts:



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GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

Dated Peshawar the 04/10/2010

Annex - V

NOTIFICATION

No. SOE.II (ED) 2(14)/2009. - In exercise of the powers conferred by Section 26 of the North-West Frontier Province Civil Servants Act, 1973 (NWFP Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules, 2007, the following further amendments, shall be made, namely:-

AMENDMENT

In Schedule I, against Serial No.1, in Column No. 5, for clause (3), the following shall be substituted, namely;

"(3) Ten per cent by selection on merits on the basis of competitive examination, to be conducted by the Commission in accordance with the provisions contained in Schedule-VIII, from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks, borne on the cadres strength of Secretariat who possess post-graduate qualification from a recognized University with atleast five years service as such."

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

Endst. No. & date even

Copy of the above is forwarded to:-

1. Additional Chief Secretary, P&D Deptt., Khyber Pakhtunkhwa.
2. Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. All Administrative Secretaries, Khyber Pakhtunkhwa.
5. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
6. Secretary (Administration & Coordination), Civil Secretariat PATA.
7. Chairman, Khyber Pakhtunkhwa Public Service Commission.
8. Accountant General, Khyber Pakhtunkhwa, Peshawar.
9. Director, SIT, E&A Department.
10. Secretary Khyber Pakhtunkhwa Public Service Commission.
11. Manager, Govt. Printing Press, Khyber Pakhtunkhwa, Peshawar for publication in the official gazette at an early date with the request to supply 20 printed copies to the undersigned.
12. All Section Officers in E&A Department.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. PS to Secretary Establishment.
15. PAs to all Additional Secretaries/Deputy Secretaries in list, Deptt.
16. ~~Other relevant files.~~

*(Signature)*  
(ABDUL WAHED)  
SECTION OFFICER (E.II)

*Attended*

Supdt. Establishment  
Govt. of K.P.K  
Estab. Deptt.



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

No. SO(Policy)/E&AD/Misc/2020  
Dated Peshawar, the December 24, 2020

To

1. The Director STI, E&A Department.
2. All Additional Secretaries in E&AD.
3. All Deputy Secretaries in E&AD.
4. All Section Officers in E&AD.
5. The Estate Officer/Programme Officer (Computer Cell) in E&AD.

Subject:

SIGNING OF PARAWISE COMMENTS ETC IN SERVICE  
APPEALS.

Dear Sir,

I am directed to refer to this Department letter No. SOR-VI/E&AD/1-23/2005 dated 12-01-2008 (copy enclosed) on the subject, the Competent Authority has been pleased to authorize the Special Secretary (Establishment) Establishment Department to sign the para-wise comments in cases of service appeals filed by the Civil Servants before the Khyber Pakhtunkhwa Service Tribunal on behalf of Chief Secretary, Khyber Pakhtunkhwa and Secretary, Establishment Khyber Pakhtunkhwa.

Yours faithfully,

SECTION OFFICER (POLICY)

ENDST: NO. & DATE EVEN

Copy forwarded to:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Law Department
2. Registrar Peshawar High Court Peshawar.
3. Advocate General Khyber Pakhtunkhwa, Peshawar.
4. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
5. PS to Chief Secretary, Khyber Pakhtunkhwa
6. PS to Secretary Establishment, Khyber Pakhtunkhwa
7. PS to Special Secretary (Establishment) Establishment Department
8. PS to Special Secretary (Reg). Establishment Department.

*Atty to of*  
*Mj*  
Superintendent  
Govt. of KPK  
Estab: Deptt:

SECTION OFFICER (POLICY)