

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In the matter of

Service Appeal No. **612/2023.**

Muhammad Rasool (Ex-Sweeper) S/O Muhammad Ayub attached at District Jail Timergara Dir Lower.

.....**Appellant.**

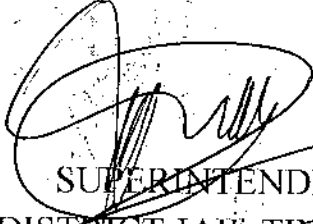

VERSUS

1. The Government of Khyber Pakhtunkhwa, through Secretary Home and Tribal Affairs Department Peshawar.
2. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Director (E) Prisons, Khyber Pakhtunkhwa, Peshawar.
4. The Superintendent, District Jail Timergara, Dir (Lower).

.....**Respondents.**

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SUPERINTENDENT
DISTRICT JAIL TIMERGARA
Superintendent
District Jail Timergara 

①

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PESHAWAR.

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4. The Superintendent, District Jail Timergara, Dir (Lower).

.....Respondents.

SUBJECT: JOINT PARA WISE COMMENTS OF RESPONDENTS No.01 TO 04

Respectfully Sheweth:-

Khyber Pakhtunkhwa
Service Tribunal

PRELIMINARY OBJECTION:

Diary No. 16081

- i. That the present service appeal is incompetent in its present form.
- ii. That the appellant has got no locus standi to file the instant appeal.
- iii. That the appellant has estopped by his own conduct to file appeal.
- iv. That the appellant has not come to this Honorable Service Tribunal with clean hands.
- v. That the present appeal is bad for mis-joinder and non-joinder of necessary parties.
- vi. That the present appeal is badly Time-barred.
- vii. That the present appeal is not based on solid grounds liable to be dismissed with cost.

Dated 26-09-24

OBJECTION ON FACTS:

1. Correct to the extent that the appellant was serving as Sweeper in District Jail Timergara, Dir (Lower). The appellant was awarded minor punishment of Stoppage of two (02) annual increments in 2022 as the appellant was found guilty of gross misconduct as defined *vide rule 2(1)(i)(ii.iii)*, "**misconduct include, "(i), Conduct prejudicial to good order or service discipline" or (ii) conduct contrary to the Khyber Pakhtunkhwa, Province, Government Servants (Conduct) Rules 1987. for the time being in force, or (iii) conduct unbecoming of a Government Servant and a gentleman etc.(Copy of the relevant rule attached as Annexure-A).**
2. Admitted to the extent that a **Show cause Notice vide No. 1436/ dated 29/07/2011** was served upon the appellant for failing to perform his duties efficiently and effectively.
3. Pertains to record.
4. Incorrect, misleading and not admitted as the appellant was served an Explanation Notice vide No. 561/dated 25.07.2022 (**Copy of explanation attached as Annexure-B).**

5. Correct and admitted as the appellant was charge sheeted and Statement of Allegation was issued and an Inquiry Committee was constituted as required under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011 for violation of rules and gross misconduct on his part and the appellant was given an ample opportunity to defend his case. **(Copies of Statement of Allegation and Charge Sheet are attached as Annexure-C).**
6. Incorrect, misleading as Respondent, 04, is competent authority under Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011, who constituted an Inquiry Committee and the Inquiry Committee concluded Inquiry proceedings on 15.09.2022 and recommended imposition of major penalty of "Compulsory Retirement from Service" **(Copy of Inquiry Report attached as Annexure-D).**
7. Pertains to record.
8. Correct and admitted. The appellant was rightly awarded minor penalty of stoppage of two annual increments for violation of rule 804 of the Khyber Pakhtunkhwa, Prison Rules 2018 i.e., **"Strict attention to sanitary matters. Strict attention shall be paid to all sanitary arrangements, especially to conservancy, care being taken that the latrine are cleaned immediately after use. The number of Sweepers in case of any epidemic disease, shall be increased". (Copy of the rule is attached as Annexure-E)** as well as violation of rule 1109-B of the ibid rules wherein, it is stated that; **"every member of Prison Staff must act in conformity with these rules and obey any lawful instructions of the Superintendent and inform the Superintendent promptly of any breach of these rules and any abuses or impropriety" (Copy of relevant rule as Annex-F).**
9. Admitted to the extent that the appellant preferred departmental appeal before the Inspector General of Prisons Khyber Pakhtunkhwa Peshawar being the appellate authority against the order ibid wherein, the decision of the competent authority was upheld an appeal of the appellant was hereby dismissed being without any substance vide Inspector General of Prisons office order dated 26/01/2023**(copy enclosed as Annex-G).**
10. No comments.


GROUND.

- A. Incorrect, misleading as order of the competent authority dated 20.10.2022 and order of the Appellate authority dated 26.01.2023 are correct, judicious, in accordance with the law and Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011, based on facts and are not liable to be set aside.
- B. Incorrect, misleading as the appellant was provided an ample opportunity of hearing, defense by the Inquiry Officer during the inquiry proceedings as evident from the Inquiry Report, personally heard by the competent authority as well as by the Appellate authority as required under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 and the final order was passed by the competent authority is according to law and rules and are not violation of the fundamental rights of the appellant.

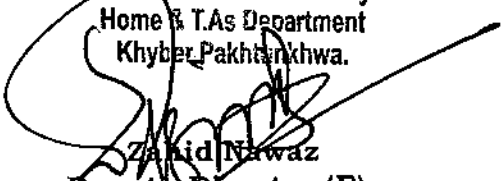
- (3)
- C. Incorrect, misleading as the appellant has been treated by the competent authority and appellate authority in accordance with the law, rules and the orders have been passed after observing all legal formalities as laid down in the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011. An opportunity of fair trial was provided to the appellant and the competent authority associated him in whole proceeding, hence no violation of the Constitution of Islamic Republic of Pakistan has been committed by the respondents.
- D. Incorrect, misleading as order of the competent authority is in accordance with the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011 and the appellant has been awarded minor penalty of stoppage of two annual increments. **(Copy of office order dated 20.10.2022 attached as Annexure-H).**
- E. Incorrect, misleading and not admitted as the appellant was provided an ample opportunity of hearing, defense and statements of the witnesses were recorded in the presence of the appellant. However, reply of the appellant was confessional in nature as he contended that cleaning of flush system is not his duties and that a Christian is required to be appointed for cleaning of toilets and drains **(Statement of the appellant attached as Annexure-I)**. This very contention is not only violation of Article 25 of the Constitution of Islamic Republic of Pakistan 1973 but also contradictory to the orders of the Supreme Court of Pakistan dated 18.11.2022 in Civil Petition No. 2045 of 2019 **(Copy of Judgment attached as Annexure-J)**.
- F. Incorrect, misleading and not admitted as it was the gross misconduct, violation of the Khyber Pakhtunkhwa, Prison Rules 2018 and inefficiency of the appellant which culminated into the imposition of minor punishment of stoppage of two annual increments.
- G. The respondents would also seek permission of the Honourable Services Tribunal to raise additional objection at the time of arguments.


PRAYER :


It is, therefore, most humbly prayed that on acceptance of this instant reply/joint para wise comments of the respondent No.01 to 04, the appeal of the appellant may kindly be dismissed with cost.



Mr. Abid Majeed
Secretary Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar

(Respondent No.01)
 Assistant Chief Secretary
 Home & T.As Department
 Khyber Pakhtunkhwa.


Zakid Nawaz
Deputy Director (E)
Prisons Khyber Pakhtunkhwa Peshawar
 (Respondent No.03)


Muhammad Usman
Inspector General Of Prisons
Khyber-Pakhtunkhwa, Peshawar
 (Respondent No.02)


Riaz Mohmand
Superintendent
District Jail Timergara Dir Lower
 (Respondent No.04)


Superintendent
District Jail Timergara

(4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
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In Service Appeal No. **612/2023**.

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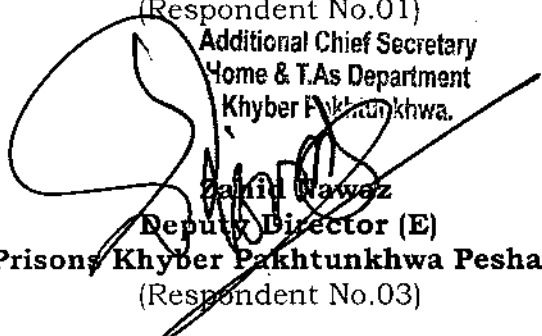
.....Respondents.

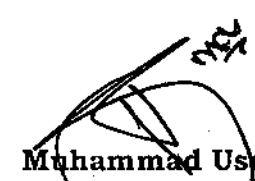
COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENTS No. 1 to 4.

We, the following undersigned respondents do hereby solemnly affirm and declare on oath that the contents of the Reply/Para-wise comments in the above cited appeal are true and correct to the best of our knowledge and belief and that no material/facts have been kept concealed from this Honorable Service Tribunal. We further state on oath that the answering respondents does not placed ex-parte nor their defense have been struck off.

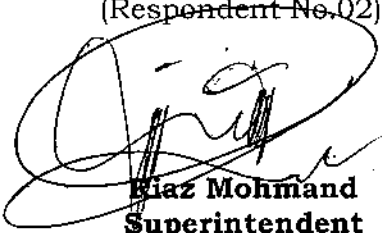

Mr. Abid Majeed
Secretary Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar


(Respondent No.01)


Zahid Nawaz
Deputy Director (E)
Prisons Khyber Pakhtunkhwa Peshawar
(Respondent No.03)


Muhammad Usman
Inspector General Of Prisons
Khyber-Pakhtunkhwa, Peshawar

(Respondent No.02)


Riaz Mohmand
Superintendent
District Jail Timergara Dir Lower
(Respondent No.04)


Superintendent
District Jail Timergara

26 SEP 2024



**GOVERNMENT OF THE KHYBER PAKHTUNKHWA ESTABLISHMENT
AND ADMINISTRATION DEPARTMENT.**

NOTIFICATION

Peshawar dated the 16th September, 2011.

NO.SO(REG-VI) E&AD/2-6/2010.-In exercise of the powers conferred by section 26, of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

1. **Short title, application and commencement.**—(1) These rules may be called the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(2) These shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service or post in connection with affairs of the Province.

(3) These shall come into force at once.

2. **Definitions.**—(1) In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

(a) "accused" means a person in Government service against whom action is initiated under these rules;

(b) "appellate authority" means the authority next above the competent authority to which an appeal lies against the orders of the competent authority;

(c) "appointing authority" means an authority declared or notified as such by an order of Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and the rules made thereunder or an authority as notified under the specific laws/rules of Government;

(d) "charges" means allegations framed against the accused pertaining to acts of omission or commission cognizable under these rules;

(e) "Chief Minister" means the Chief Minister of the Khyber Pakhtunkhwa; (f) "competent authority" means-

(i) the respective appointing authority;

(ii) in relation to a Government servant of a tribunal or court functioning under Government, the appointing authority or the Chairman or presiding officer of such tribunal or court, as the case may be, authorized by the appointing authority to exercise the powers of the competent authority under these rules;

Provided that where two or more Government servants are to be proceeded against jointly, the competent authority in relation to the accused Government servant senior most shall be the competent authority in respect of all the accused. (g)

"corruption" means-

(i) accepting or obtaining or offering any gratification or valuable thing, directly or indirectly, other than legal remuneration, as a reward for doing or for bearing to do any official act; or

(ii) dishonestly or fraudulently misappropriating, or indulging in embezzlement or misusing Government property or resources; or

(iii) entering into plea bargain under any law for the time being in force and returning the assets or gains acquired through corruption or corrupt practices voluntarily; or

(iv) possession of pecuniary sources or property by a Government servant or any of his dependents or any other person, through his or on his behalf, which cannot be accounted for and which are disproportionate to his known sources of income; or

Deputy Superintendent
District Jail Timergara

- (v) maintaining a standard of living beyond known sources of income; or
- (vi) having a reputation of being corrupt;
- (h) "Governor" means the Governor of the Khyber Pakhtunkhwa;
- (i) "inefficiency" means failure to efficiently perform functions assigned to a Government servant in the discharge of his duties;
- (j) "inquiry committee" means a committee of two or more officers, headed by a convener, as may be appointed by the competent authority under these rules;
- (k) "inquiry officer" means an officer appointed by the competent authority under these rules;
- (l) "*misconduct*" includes-
 - (i) conduct prejudicial to good order or service discipline; or
 - (ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or
 - (iii) conduct unbecoming of Government servant and a gentleman; or
 - (iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or
 - (v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or
 - (vi) making appointment or having been appointed or promoted on extraneous grounds in violation of any law or rules; or
 - (vii) conviction for a moral offence by a court of law.

(3) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber

Deputy Superintendent
District Jail Trawalgare



~~Annexure-A~~
OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL TIMERGARA
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Page 7

No. 1 / dated: 3/8 / 2022.**DISCIPLINARY ACTION**

I, Amin Shuaib, Superintendent District Jail Timergara, as competent authority, am of the opinion that **Muhammad Rasool Khan Sweeper (BPS-3)** attached to district jail Timergara has rendered himself liable to be proceeded against, as he committed the following acts/commission, within the meaning of rule 3 of the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011.

STATEMENT OF ALLEGATIONS

تم کوٹش کے اندر صفائی کے کام پر مقرر کیا گیا تھا۔ دوران ذیونی تم کو پیکر چیف لعل رحمان ویز دارڈ نے ناسے کی صفائی کرنے کو کہا تو تم نے کام کرنے سے انکار کیا۔ اس دوران تم نے پیکر چیف سے بدگمانی کی اور بات بات پائی تک پہنچی۔ اس کے علاوہ 25.07.2022 کو تم بغیر اجازت کے ذیونی سے غیر حاضر ہوئے۔ اس اقدام کے بنا پر تم نے حکومت خیر بہتون خواہ کے سول سروسٹ رول 2011 کی خلاف ورزی کی ہے۔

2. For the purpose of inquiry proceeding against the above named accused with reference to the above allegation, an inquiry Officer/inquiry committee consisting of the following is constituted under rule 10(1)(a) if said ibid rules.

1. Mr. Bakht Rawan Deputy Superintendent (Convener) District Jail Timergara.

2. Mr. Muhammad Ilyas Computer Operator (Member) District Jail Timergara

3. The inquiry officer/inquiry committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make within Sixty days of the receipt of this order recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join proceeding on the date, time and place fixed by the inquiry officer/inquiry committee.

Endst. No. 599-6011

SUPERINTENDENT
DISTRICT JAIL TIMERGARA

Deputy Superintendent
District Jail Timergara

Copy of the above is forwarded to:-

1. The Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information, please.

2. Mr. Bakht Rawan Deputy Superintendent (Convener Officer) and Mr. Muhammad Ilyas Computer Operator (Member) District Jail Timergara for initiating proceedings against the above named accused Sweeper under Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011.

3. Muhammad Rasool Khan Sweeper (accused) District Jail Timergara with the direction to appear before the Inquiry Officer for the purpose of inquiry proceedings.

SUPERINTENDENT
DISTRICT JAIL TIMERGARA

CHARGE SHEET

I, Muhammad Shuaib, Superintendent District Jail Timergara, as competent authority, hereby charge your Muhammad Rasool Khan Sweeper (BPS-30 as follows:

That you, while posted at District Jail Timergara as Sweeper committed the following irregularities:

تم کو جیل کے اندر صفائی کے کام پر معذور کیا گیا تھا۔ دوران ڈیوٹی تم کو چکر چیف لعل رحمان ہیڈ وارڈرنے نالے کی صفائی کرنے کو کہا تو تم نے کام کرنے سے انکار کیا۔ اس دوران تم نے چکر چیف سے بدکلامی کی اور بات ہاتھ پائی تک پہنچی۔ اس کے علاوہ 25.07.2022 کو تم بغیر اجازت کے ڈیوٹی سے غیر حاضر ہوئے۔ اس اقدام کے بنا پر تم نے حکومت خیبر پختون خواہ کے سول سرونٹ رول 2011 کی خلاف ورزی کی ہے۔

2. By reason of the above, you appear to be guilty of Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to any of the penalties specified in rule 4 of the rule ibid.

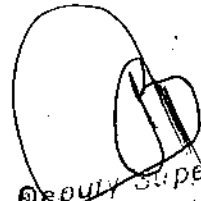
3. You are, therefore, required to submit your written defence within ten days of the receipt of this Charge Sheet to the inquiry officer/inquiry committee, as the case may be.

4. Your written defence, if any, should reach the inquiry officer/inquiry committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. Statement of allegation is enclosed.


SUPERINTENDENT
DISTRICT JAIL TIMERGARA


Deputy Superintendent
District Jail Timergara

Annexure - D

10



OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL TIMERGARA
Phone/Fax: 0945-9250095
Email: districtjailtimergara@gmail.com

No. 781 / dated: 15/09/2022

To,

The Superintendent,
District Jail Timergara.

Subject: INQUIRY REPORT.

R/Sir,

Reference letter No. 598 dated 03.08.2022 and to submit herewith Inquiry Report along with complete File in respect of the Sweeper (BPS-03) *Muhammad Rasool Khan* attached to District Jail Timergara Dir Lower for further necessary action for further disposal please.

BAKHT RAWAN (Inquiry Officer)
DEPUTY SUPERINTENDENT
DISTRICT JAIL TIMERGARA

Deputy Superintendent
District Jail Timergara

(1)

INQUIRY REPORT

The instant inquiry was ordered by the Superintendent, District Jail Timergara Dir(Lower), the Competent authority, against Muhammad Rasool, Sweeper (BPS-03) vide order No. 598/ dated 3-8-2022 under rule 3 of the Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules 2011. A committee under the same order was constituted to inquire into the allegations leveled against the accused official, consisting of Bakht Rawan, Deputy Superintendent Jail (Convener) and Muhammad Ilyas, Computer Operator(Member).

It had been alleged that the accused official, namely Muhammad Rasool, Sweeper (BPS-03):

"While performing his duties inside the Jail on 24.07.2022, he refused to clean the drains when he was directed by the Lal Rahman, Head Warder/Chief Chakkar and that he also abused Chief Chakkar and even quarreled with him and that he remained absent from duties on 25.07.2022 without permission and sanction of leave from the Competent authority" (Annexure-A)

To provide a reasonable opportunity of hearing and defense, the accused official was directed on 19.08.2022, to appear before the Inquiry Committee on 23.08.2022 at 11:00am along with evidences, if any. The Lines Muharror was also directed to ensure presence of all staff members on date and time fixed for inquiry proceeding (Annexure-B).

As per schedule, the accused official appeared before the Inquiry Committee on 23.08.2022. Other staff members and prisoners also appeared before the Committee. Statement of the accused official and other staff members and prisoners were recorded, gist of which is reproduced in the following lines.

The accused official *Muhammad Rasool, Sweeper (BPS-03)* stated on oath that he was busy in loading hand cart from garbage dump inside the Jail that in the mean time he was called in by Lal Rehman, Chief Chakkar for cleaning the flush system to which he replied that cleanliness of commodes and flush system is not his responsibility and that it is the work to be carried out by the Christian Sweeper which resulted into exchange of abusive words and that he was beaten by Taj Muhammad and Lal Rahman, Chief Chakkar with a stick of plastic pipe and that he neither used abusive language nor indulge in quarreling and that due to illness he could not attend his duties on 25.07.2022.

(Signature)

(Signature)

(Signature)
Deputy Superintendent
District Jail Timergara

Replying to a number of question the accused official replied that he has been appointed as Sweeper and that cleanliness of commodes and flush system is not fall under his duties and responsibilities and that it is the work to be carried out by the Christian Sweeper and that he was beaten by Lal Rahman and that he will perform the duties of cleaning of flush system if it will be performed by all the sweepers. (Annexure-C).

Habib, Sweeper (BPS-03) stated on oath that he performing his duties inside the Jail and that he was assigned the duties by Lal Rahman, Chief to monitor the cleanliness of flush system and that in the meantime Sweeper Muhammad Rasool came who was ordered by Lal Rahman to monitor cleanliness of the drain of flush system but reused to stay and said that he will shift the garbage dump first and that both of them quarreled and Muhammad Rasool was beaten with a stick of plastic pipe (Annexure-D).

Muhammad Naeem, under trial prisoner, produced by Muhammad Rasool as a witness, stated on oath that he was waiting outside the PCO for a call that in the meantime of pipe of flush system blocked and that Lal Rahman, HW and Taj Muhammad, HW quarreled with Muhammad Rasool and that Muhammad Rasool was beaten with a plastic pipe. Replying to a number of questions he stated that Muhammad Rasool refused to clean the drainage of flush system and said that cleanliness of flush system is the work to be carried out by the Christians (Annexure-E).

Lal Rahman, Chief Chakkar/Head warder stated on oath that on 21.07.2002 at about 10:00am he was present outside the barrack No. 08, along with Taj Muhammad HW and under trial prisoners of the barrack rectifying drainage pipe of flush system and that in the meantime Sweeper Muhammad Rasool came and that he inquired him about the cleanliness of the drains of the Jail to which he became furious and said that he is not Christian to clean the drains and at once pulled out his shoulder badges and that the Sweeper was taken away by Taj Muhammad HW toward Dewry of the Jail. (Annexure-F).

Replying to a number of questions, Lal Rahman stated that he has not beaten the accused official and that he had directed the accused official to monitor the work of cleanliness of the blocked pipe of flush system.

Taj Muhammad, Sector Incharge /Head warder stated on oath that on 21.07.2002 at about 10:00am he was present outside the barrack No. 08, along with Lal Rahman, Chief Chakkar/HW and under trial prisoners of the barrack rectifying drainage pipe of flush system and that in the meantime Sweeper Muhammad Rasool came and that he inquired him about the cleanliness of the drains of the Jail to which he became furious and said that he is not Christian to clean the drains and at once pulled out his

Deputy Superintendent
District Jail Tinsukia

[Signature]

shoulder badges and that the Sweeper was taken away by him towards Dewry of the Jail (Annexure-G).

Ghulam s/o Ghulam Muhammad, under trial prisoner stated on oath that on 21.07.2002 at about 10:00am he was present outside the barrack No. 08, along with Lal Rahman, Chief Chakkar/HW and under trial prisoners of the barrack rectifying drainage pipe of flush system and that in the meantime Sweeper Muhammad Rasool came and that Lal Rahman Chief Chakkar inquired him about the cleanliness of the drains of the Jail to which he became furious and said that he is not Christian to clean the drains and at once pulled out shoulder badges of Lal Rahman and used abusive language and Sector Incharge Taj Muhammad said that it is your duty to clean the drains for which are being paid salary and that the Sweeper was taken away towards Dewry of the Jail by Taj Muhammad, HW/Sector Incharge (Annexure-H).

Nowsherawan s/o Malizay, under trial prisoner stated on oath that on 21.07.2002 at about 10:00am he was present outside the barrack No. 08, along with Lal Rahman, Chief Chakkar/HW and under trial prisoners of the barrack rectifying drainage pipe of flush system and that in the meantime Sweeper Muhammad Rasool came and that Lal Rahman Chief Chakkar inquired him about the cleanliness of the drains of the Jail to which he became furious and said that he is not Christian to clean the drains and at once pulled out shoulder badges of Lal Rahman and used abusive language and Sector Incharge Taj Muhammad said that it is your duty to clean the drains for which are being paid salary and that the Sweeper was taken away towards Dewry of the Jail by Taj Muhammad, HW/Sector Incharge (Annexure-I).

Haya Khan S/O Haya Morid Under Trial Prisoner stated on oath that on 21.07.2022 at about 10:00AM the outside sewerage/drainage pipe of our bath room barrack No.8 was damage/blocked for which all prisoners of our barrack along with Chakkar Chief Lal Rahman, Sector Incharge Taj Muhammad were present on spot to fix it. Meanwhile, Muhammad Rasool Khan Sweeper came and the Chief Chakkar Lal Rahman asked about cleaning of the drains, upon which Muhammad Rasool Khan Sweeper got angry and said that I am not Christian. That this is not my job and starts fighting and at once pulled out shoulder badges of Lal Rahman Chief also used abuse words/language. On the spot Incharge Sector Taj Muhammad said to the Sweeper Muhammad Rasool Khan that he is the Chief of the Jail and how you insulted/disrespect him and took him to the main gate of Dewry (Annexure-J).

Deputy Commissioner
District Jail Tinsukia

Ziaullah S/O Bakht Shah Zeb Under Trial Prisoner stated on oath that on 21.07.2022 at about 10:00AM that the outside sewerage/drainage pipe of our bath room barrack

No.8 was damage/blocked for which all prisoners of our barrack along with Chakkar Chief Lal Rahman, Sector Incharge Taj Muhammad were present on spot to fix it. Meanwhile, Muhammad Rasool Khan Sweeper came and the Chief Chakkar Lal Rahman asked about cleaning of the drains, upon which Muhammad Rasool Khan Sweeper got angry and said that I am not Christian and this is not my job. On the spot Incharge Sector Taj Muhammad said to the Sweeper Muhammad Rasool Khan that he is Chief of the Jail and this yours duty to clean the drains and explained them well after that took him to the main gate of the Dewry (Annexure-K).

Fayaz S/O Abdul Karim Under Trial Prisoner stated on oath that on 21.07.2022 at about 10:00AM that the outside sewerage/drainage pipe of our bath room barrack No.8 was damage/blocked for which all prisoners of our barrack along with Chakkar Chief Lal Rahman, Sector Incharge Taj Muhammad were present on spot to fix it. Meanwhile, Muhammad Rasool Khan Sweeper came and the Chief Chakkar Lal Rahman asked about cleaning of the drains, upon which Muhammad Rasool Khan Sweeper got angry and also used abuse language. On the spot Incharge Sector Taj Muhammad said to the Sweeper Muhammad Rasool Khan that he is Chief of the Jail and this is yours duty to clean the drains and explained them well after that took him to the main gate of the Dewry (Annexure-L).

Mauz Khan S/O Mula Gul Under Trial Prisoner stated on oath that on 21.07.2022 at about 10:00 AM that the outside sewerage/drainage pipe of our bath room barrack No.8 was damage/blocked for which all prisoners of our barrack along with Chakkar Chief Lal Rahman, Sector Incharge Taj Muhammad were present on spot to fix it. During this time, Chief Lal Rahman asked Muhammad Rasool Khan Sweeper about cleaning of the drains, upon which Muhammad Rasool Khan Sweeper got angry and also used abuse language. On the spot Incharge Sector Taj Muhammad hold the Sweeper Muhammad Rasool Khan that he is Chief of the Jail and this is yours duty to clean the drains and explained them well after that took away to the main gate of the Dewry (Annexure-M).

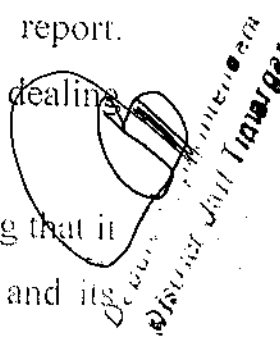
FINDINGS/ANALYSIS OF THE EVIDENCES.

After conducting a thorough inquiry into the allegations leveled against the accused official namely Muhammad Rasool Sweeper (BPS-03), it was found that:

Deputy Superintendent
District Jail Timargara

[Handwritten signatures]

1. A PVC Pipe/ drainage pipe of the toilet in the Northern side of Condemned Prisoners Barrack just in left side of the Chakkar office was blocked, blanketed the nearby atmosphere with an unpleasant smell.
2. The Chakkar Chief noticed the issue and called some prisoners from the barrack to rectify the blocked drainage pipe. In this connection Sweeper Habib and Muhammad Rasool, responsible for cleanliness were also called to be present for assistance and look-after of the prisoners.
3. Sweeper Muhammad Rasool annoyed and refused to comply the lawful orders, pretending that he is carrying the waste outside jail, further saying that this is the work of Christens and that he is a Muslim.
4. He further stated that being a Muslim it is a humiliation and degradation for him; hence he is not ready for the cleanliness of toilets and drains.
5. However, in response to another question he placed the condition that if other sweepers agreed for the same work then he will also ready.
6. The accused official alleged that he was beaten by the Chief Chakkar with a green plastic pipe, while he has also presented two witnesses in his defense, however, there was no medical record to prove the allegation.
7. Chakkar Chief, Lal Rahman, Head warder has also leveled allegations about his pulling out shoulders of the uniform which has also supported by a number of Jail inmates in their statements.
8. The accused official alleged that he was beaten by Lal Rahman, HW/Chief Chakkar and Taj Muhammad HW/Sector Incharge and produced witnesses in support of his allegation. However, could not produced any medical report. However, both the Head warders may be warned to be careful in future in dealing with the employees of the Jail.
9. The accused official pleaded guilty during the inquiry proceeding by saying that it is not his responsibility and duty to clean and rectify the flush system and its drains. Rather he said that he will never clean the flush system.
10. The accused official is of the opinion that cleaning of flush system, commodes and its drains is the work of Christian Sweeper which is a mistaken/misguided/incorrect opinion as cleanliness of wash rooms and its drainage system in the integral/essential/important part of the duties and responsibilities of a Sweeper whether he is Muslim OR Christian.


 District Jail Inspector



CONCLUSION AND RECOMMENDATION.

After conducting a thorough inquiry into the allegations leveled against the accused official namely *Muhammad Rasool Sweeper (BPS-03)*, it was concluded that the allegations leveled against the accused official are FULLY PROVED for which he is liable to be proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011.

It is, therefore, recommended that the accused official may be awarded the major penalty of, "COMPULSORY RETIREMENT FROM SERVICE".

Bakht Rawan(Convener)
DEPUTY SUPERINTENDENT
DISTRICT JAIL TIMERGARA

Fully agreed with the findings, conclusion and recommendations of the Convener of the Inquiry Committee.

Muhammad Ilyas (Member)
COMPUTER OPERATOR
DISTRICT JAIL TIMERGARA

CERTIFICATE

Certified that the report regarding the accused Sweeper (BPS-03) Muhammad Rasool Khan attached to District Jail Timergara is consisting on six (06) pager duly number corrected and signed by me.

Bakht Rawan(Convener)
DEPUTY SUPERINTENDENT
DISTRICT JAIL TIMERGARA.

Deputy Superintendent
District Jail Timergara



OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL, TIMERGARA
Phone/Fax: 0945-9250095
Email: dnt@tdjtimergara@gmail.com

No. _____ / dated 20 / 10 / 2022

~~DISTRICT JAIL, TIMERGARA, DISTRICT JAIL, TIMERGARA, DISTRICT JAIL, TIMERGARA, DISTRICT JAIL, TIMERGARA, DISTRICT JAIL, TIMERGARA, DISTRICT JAIL, TIMERGARA, DISTRICT JAIL, TIMERGARA, DISTRICT JAIL, TIMERGARA~~

OFFICE ORDER

WHEREAS, accused official/ Sweeper (BPS 03) **Muhammad Rasool Khan S/o Muhammad Ayub** attached to District Jail Timergara was charged within the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011 for the charge of the misconduct contained in statement of Allegations/Charge sheet served upon him vide this office endorsement No. vide No.781 dated 18.09.2022 wherein Mr. Bakht Rawan Deputy Superintendent Jail Timergara was appointed as Inquiry Officer,

AND WHEREAS, he appeared before the inquiry committee, who inquired his case, went through the available record and provide him reasonable opportunity of hearing to defend his case.

AND WHEREAS, the accused official was proceeded against under Rule-14 (4) for the Charge of misconduct/as mentioned in the Show Cause Notice No.849-50 dated 28.09.2022.

AND WHEREAS, he furnished his written reply/defence to the Show Cause Notice which was found un-satisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 18.10.2022 as provided for under rules ibid. the accused official failed to defend his case with documentary proof/evidence.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011, having considered the inquiry report, charge levelled against him and evidence on record, the undersigned being competent Authority, orders that he is hereby awarded **minor penalty** of stoppage of **two annual increment** with immediate effect.

Sd/-
SUPERINTENDENT
DISTRICT JAIL TIMERGARA

Endst. No. 892-95

Copy of the above is forwarded to:-

1. The Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information, please.
2. Mr. Bakht Rawan Deputy Superintendent (Convener Officer) and Mr. Muhammad Ilyas Computer Operator (Member) District Jail Timergara for information please.
3. The District Account Officer, Dir Lower at Timergara for information and necessary action please.
4. Muhammad Rasool Khan Sweeper BPS-03 (accused) District Jail Timergara.

Deputy Superintendent
District Jail Timergara

SUPERINTENDENT
DISTRICT JAIL, TIMERGARA

803. Food supplies and vessels to receive attention.---Food shall be constantly inspected to ensure that it is of good quality, cleanly prepared and well cooked. All the edible articles shall be protected from flies. The cookhouse shall be closely supervised by the Senior Medical Officer or Medical Officer, as the case may be, and all garbage shall be removed and burnt in an incinerator. The drains from the cookhouse shall be cleaned daily and liberally dusted with bleaching powder. The cooks shall be inoculated against cholera and small pox. A close watch shall be kept on their state of health.

804. Strict attention to sanitary matters.---Strict attention shall be paid to all sanitary arrangements, especially to conservancy, care being taken that the latrine are cleaned immediately after use. The number of sweepers in case of any epidemic disease, shall be increased.

805. Investigation as to the origin the first case.---In any epidemic it is of the greatest importance to ascertain all the circumstances connected with the occurrence of the first case, and a very careful investigation shall be made in order to discover that how it originated.

806. Measures against small-pox and other communicable diseases.---(1) In the case of small-pox or other communicable diseases, the patient shall be isolated and stopped treated in a separate ward or tent in a remote part of the prison. The contacts shall be vaccinated at once and isolated for fifteen days. The Senior Medical Officer or Medical Officer, as the case may be, shall take immediate steps to vaccinate the entire staff and all the prisoners and start their treatment.

(2) The clothing and personal effects of small-pox patients shall be thoroughly washed in a strong disinfectant and thereafter disinfected in a high pressure steam disinfector or thoroughly boiled.

(3) The barrack in which a case of small-pox has occurred shall be vacated at once, the floors and berths washed with a disinfectant and the walls white-washed and the door and windows left open for a week when it may, if necessary, be reoccupied.

807. Measures against plague.---To prevent the occurrence of plague, the systematic destruction of rats, more specially in grain godown and food stores, shall be carried out throughout the year. The measures, in respect of the isolation and treatment of the patient, the evacuation of infected barrack and the disinfection of clothing are similar to those detailed in the case of small-pox, but on the appearance of plague in a prison, the staff and prisoners shall be inoculated with anti-plague vaccine, a supply of which can be obtained from the District Health Officer.

808. Measures against louse-borne disease, relapsing fever and typhus.---In the case of louse-borne diseases, relapsing fever and typhus, the detection of the first case shall be followed by measures similar to those detailed in the case of plague so far as the isolation and treatment of the patient is concerned. The clothing and personal effects of the

Chapter-45
Warder Establishment

1109.A Prison work as a public service.---(1) Prisons shall be managed within an ethical context which recognizes the obligation to treat all prisoners with humanity and with respect for the inherent dignity of the human person.

(2) Staff shall operate to high professional standards and shall at all times conduct themselves and perform their duties in such a manner as to influence the prisoners by good example and to command their respect. Management shall provide effective leadership for this purpose.

(3) The duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed, through a programme of positive care and assistance.

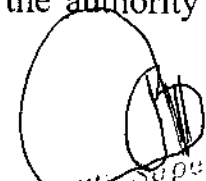
(4) Prison authorities shall give high priority to observance of these rules concerning staff and shall pay particular attention to the management of the relationship between first line prison staff and the prisoners under their care.

1109.B General duty of prison staff.---Every member of prison staff must act in conformity with these rules and obey any lawful instructions of the Superintendent and inform the Superintendent promptly of any breach of these rules and any abuse or impropriety.

1109.C Code of ethics and conduct.--- Government shall approve a code regulating the conduct and discipline of prison staff. The code shall include procedures which may be invoked where it is suspected that the acts or omissions of a member of prison staff may constitute misconduct and the rights to fair hearing and of appeal of any such member of prison staff.

1109.D Specific prohibitions.---Prison staff are prohibited from,-

- (i) taking part in any contract, business or financial transaction with, or on behalf of, a prisoner;
- (ii) bringing in or taking out, or attempting to bring in or take out, or knowingly allowing to be brought in or taken out, to or for any prisoner any item whatsoever, except with the authority of the Superintendent;


Deputy Superintendent
District Jail Timargarh



OFFICE OF THE *Annexure-5 (20)*
INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

☎ 091-9210334, 9210406 📠 091-9213445

No.Estb/Ward-/Orders/ 3897 /-

Dated 26-01-2023 /-

ORDER:

WHEREAS, Muhammad Rasool S/O Muhammad Ayub Sweeper posted at District Jail Timergara was awarded the minor penalty of **"withholding of two annual increments"** by the Superintendent District Jail Timergara vide his office order No. 891-95 dated 20-10-2022 due to his misconduct.

AND WHEREAS, the said official preferred his departmental appeal for setting-aside the penalty awarded to him.

AND WHEREAS, he was afforded an opportunity of personal hearing on 24-01-2023. The appeal was examined in light of the available record of the case and it was observed that the charges leveled against the appellant were proved and all legal and codal formalities were fulfilled by the competent authority. During the course of hearing, he explained his position but failed to prove and justify his innocence.

NOW THEREFORE, keeping in view the facts on record, the provision of rules in vogue and in exercise of powers conferred under Rule-17 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 read with Rule-05 of Khyber Pakhtunkhwa Service Appeal Rules 1986, the decision of the Superintendent District Jail Timergara, the competent authority is upheld and appeal of the appellant is hereby dismissed being without any substance /facts.

**INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA, PESHAWAR**

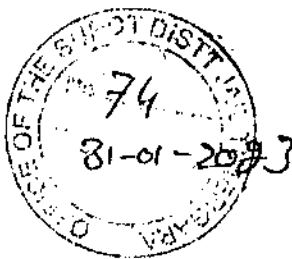
Endst; No. 3898 - 900 /-

Copy of the above is forwarded to:

1. The Superintendent District Jail Timergara for information and necessary action with reference to his letter No. 1042 dated 13-12-2022. He is requested to inform the appellant accordingly and make necessary entry in his Service Book under proper attestation.
2. The District Accounts officer concerned for information and necessary action.
3. Appellant concerned C/O Superintendent District Jail Timergara for information.

Regd.

for necessary action and entry in his service book



**DEPUTY DIRECTOR
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR**

[Signature]
Deputy Superintendent
District Jail Timergara



OFFICE OF THE
SUPERINTENDENT
DISTRICT JAIL, TIMBARGAIA
PHONE/TEL: 0945-9250095
E-MAIL: distjailtimbargaia@punjab.gov.pk

No. / dated 20/10/2022

OFFICE ORDER

WHEREAS, accused official/ sweeper (M/S 03) Muhammad Rasool Khan S/o Muhammad Ayub attached to District Jail Timergara was charged with the meaning of Rule-3 of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011) for the charge of the misconduct contained in statement of Allegations/Charge Sheet served upon him vide this office endorsement No. vide No.781 dated 15.09.2022 wherein Mr. Bakht Kawan Deputy Superintendent Jail Timergara was appointed as Inquiry Officer.

AND WHEREAS, he appeared before the inquiry committee, who inquired his case, went through the available record and provide him reasonable opportunity of hearing to defend his case. AND WHEREAS, the accused official was proceeded against under Rule-14 (4) for the Charge of misconduct/us mentioned in the Show Cause Notice No.549-50 dated 28.09.2022.

AND WHEREAS, he furnished his written reply/defense to the Show Cause Notice which was found unsatisfactory.

AND WHEREAS, the undersigned being competent authority granted him the opportunity of personal hearing on 18.10.2022 as provided for under rule 14(b), the accused official failed to defend his case with documentary proof/evidence.

NOW THEREFORE, in exercise of powers conferred under Rule-14(5) of Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline Rules, 2011, having considered the inquiry report, charge levelled against him and evidence on record, the undersigned being competent Authority, orders that he is hereby awarded minor penalty of stoppage of two annual increment with immediate effect.

Copy of the above is forwarded to:-

1. The Worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar for information, please.
2. Mr. Bakht Kawan Deputy Superintendent (Convener Officer) and Mr. Muhammad Ilyas Computer Operator (Member) District Jail Timergara for information please.
3. The District Account Officer, District Jail Lower at Timergara for information and necessary action please.
4. Muhammad Rasool Khan Sweeper B/S-03 (accused) District Jail Timergara.

SUPERINTENDENT
DISTRICT JAIL, TIMBARGAIA

Enst. No. 892-95

Deputy Superintendent
District Jail Timergara

SUPERINTENDENT
DISTRICT JAIL, TIMBARGAIA

Signature - H

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District Jail Timor-gara
Deputy Superintendent

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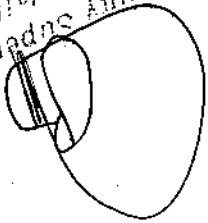
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Handwritten signature or name.

Deputy Superintendent
District Jail Timor Gare



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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Shahid Waheed

Civil Petition No.2045 of 2019.

(Against the judgment of Lahore High Court, Lahore dated 08.03.2019, passed in W.P No.20429 of 2016)

Mubarik Ali Babar

..... **Petitioner**

Versus

Punjab Public Service Commission through its Secretary & others

...**Respondent(s)**

Petitioners: In person.

Respondents: N.R.

Date of hearing: 18.11.2022

ORDER

Syed Mansoor Ali Shah, J. – The petitioner has challenged the seats reserved for minorities and persons with disabilities (“PWDs”) in the Combined Competitive Examination, 2015 (“CCE”) conducted by the Punjab Public Service Commission, Lahore (“PPSC”). In the advertisement issued by the PPSC for the post in the Provincial Management Service (BS-17) (“PMS”) under the Services and General Administration Department, Government of the Punjab (“S&GAD”), out of 62 posts, 53 posts were on open merit, 06 posts for PWDs and 03 posts for minorities. The petitioner challenges the legality of the allocation and reservation of seats for the above two classes of persons and also prays that if this quota remains unfilled in a particular year, the seats reserved against this special quota be made available to other deserving candidates applying under the general quota on open merit. The said claim of the petitioner was dismissed by the High Court through the impugned judgment dated 08.03.2019. Hence this petition.

2. We have heard the petitioner and have gone through the record of the case. It is important to begin with the constitutional scheme. The preamble of our Constitution¹ provides that it is the “will of

¹ The Constitution of the Islamic Republic of Pakistan, 1973.

the people” of Pakistan to establish an “Order”. The term “will of the people of Pakistan” is an inclusive term signifying all citizens irrespective of religion, caste, creed, race, sex, place of birth or personal abilities. Therefore, such a “will” is incomplete without including the will of the minorities and PWDs. The “Order” is a result of our collective vision and aspirations. The “Order” established by the “will of the people” is pillared on principles which form our constitutional values, providing for freedom, equality, tolerance, social justice and democracy; adequate provision for the minorities to freely profess and practice their religions and develop their cultures; safeguards to protect the legitimate interests of minorities, backward and depressed classes; fundamental rights including equality of status and opportunity, social, economic and political justice; freedom of thought, expression, belief, faith, worship and association, subject to law and public morality. Tolerance, freedom, equality, social justice and democracy are central to our constitutional values which promote inclusion and abhor apartheid, exclusion, apartness, racism, bias and bigotry. These constitutional principles and values form an integral part of the Objectives Resolution which is a substantive part of the Constitution under Article 2-A and is to be given effect accordingly. The Constitution is, therefore, a shared voice of its citizenry.

3. The Constitutional values specifically provide for “equality of status, of opportunity,” which means that every person in Pakistan has equal human status and worth and enjoys equal access to opportunities without discrimination based on caste, creed, race, sex, place of birth, etc. Undeniably, equality of status and opportunity includes access to employment to earn a decent livelihood.

4. Fundamental rights under the Constitution actualize these constitutional values; Article 9 provides that every person shall have a right to life and liberty subject to law. “Life” includes all the attributes of a healthy and a meaningful life, while the right to “liberty” provides freedom, agency and choice to a person to be able to design his or her life in any manner he or she wants. Life and liberty of any person in Pakistan is protected and there is no distinction between persons on the basis of religion, sex or creed; Article 14 provides that the dignity of a person is inviolable; Article 18 provides that everyone has a right to a lawful profession or occupation. Articles 20, 22, 26 and 27 of the Constitution provide further safeguards for minorities. Amongst

fundamental rights, the right to dignity stands at the top, like a jewel in the crown of fundamental rights. This unique place is because the right to dignity is an absolute right, is non-negotiable and is not subject to any law. Therefore, the minimum right to dignity of the minorities and PWDs is that they ought to be considered equally with the rest of the majority of Muslims and the majority of persons with fuller abilities. Under the Constitution there is no distinction and therefore, these fundamental rights are fully available to the minorities and PWDs in the country as they are available to all other citizens of Pakistan. Article 36 of the Principles of Policy under the Constitution provides that the State shall safeguard the legitimate rights and interests of minorities including their due representation in the Federal and Provincial services. Article 37(a) proves that the State shall promote with special care the educational and economic interest of backward classes. Article 38(b) of the Constitution provides that all citizens (which undoubtedly includes minorities and PWDs) to be provided within the available resources of the country, facilities for work and adequate livelihood. Article 38(d) provides that the State shall provide basic necessities of life to all citizens (which once again undoubtedly includes PWDs) who are unable to earn their livelihood on account of infirmity or sickness. Review of the above constitutional scheme unfolds that the Constitution uplifts PWDs, gives them additional protection so that every effort (reasonable accommodation) is made to bring differently-abled persons at par with fully-abled persons. Similarly, it mandates that minorities are equal citizens of Pakistan and must be protected from all kinds and forms of discrimination. The Constitution, therefore, not only caters to minorities and PWDs as equal citizens of Pakistan, having equal rights and safeguards, it also provides extra protection to them.

5. "Backward" and "depressed" classes are not defined in the Constitution, therefore going by their simple meaning, they include any class of people who are marginalized, underprivileged, disadvantaged, lacking choice, agency, autonomy, level-playing field and opportunity. The marginalization and discrimination experienced by PWDs is arguably considered to be similar to the apartheid system in terms of segregation and discrimination based on a particular characteristic, leading to limited access to education, employment, and other opportunities, as well as social and economic marginalization, thereby, marginalizing individuals and communities. People with disabilities are segregated from community life and face discrimination due to

(27)

pervasive attitudinal and systemic barriers that the law, policy and practice frameworks have failed to remove, such as inaccessible or unequal facilities of housing, transport and education, segregated settings, barriers in accessing justice and legal systems, and employment and health discrimination.² The effects of such discrimination are further expounded when intersecting with sexism, ageism, racism and other forms of inequality.³ Albie Sachs, the celebrated South African Judge writes: "If there is one thing that the struggle against apartheid has taught us, it is how important it is to manage difference in society. Difference was used as the basis for apartheid. Difference became an instrument of domination and control. What if we can turn difference around to become a source of vitality, of variability, of richness?"⁴ The United Nations, Department of Economic and Social Affairs' flagship "Disability and Development Report"⁵ highlights that the professional potential of PWDs is often misunderstood and remains untapped due to misconceptions, negative societal attitudes and inaccessibility of workplaces, training and vocational skills centers. Lower rates of employment are persistently observed for PWDs. Lower education levels coupled with discrimination, stigma, negative attitudes, inaccessible transport and workplaces, and limited availability of accommodations for PWDs, play a significant role in limiting job opportunities.⁶ Due to these reasons, PWDs are pushed backwards and depressed at the hands of an unfriendly and unaccommodating ecosystem, making them fall under the rubric of the backward and depressed classes, as recognized by the Constitution. Under the Constitution, it is the obligation of the State to attend to the legitimate interests⁷ of these classes. Legitimate interests are all those interests which can help PWDs actualize their fundamental rights

² Disabled People's Organization Australia, Segregation of People with Disability is Discrimination and Must End, Position Paper (September, 2020). https://dpoa.org.au/wp-content/uploads/2020/11/Segregation-of-People-with-Disability_Position-Paper.pdf.

³ Ibid.

⁴ Albie Sachs, We, the People – Insights of an Activist Judge, Page-250, Wits University Press (2016).

⁵ UN Department of Economic and Social Affairs, Disability and Development Report – Realizing the Sustainable Development Goals by, for and with persons with disabilities (2018). <https://social.un.org/publications/UN-Flagship-Report-Disability-Final.pdf>.

⁶ Ibid.

⁷ Indra Sawhney v. Union of India, AIR 1993 SC 477; Muhammad Yousaf v. Chairman, FPSC, PLD 2017 Lahore 406.

under the Constitution and enable them to become effective members of the society.⁸

6. The word "minorities" on the other hand, signifies merely a statistical number, representing a class of people in the country who are Non-Muslims and in no manner does it imply that they are lesser citizens or in any manner less entitled to the fundamental rights under the Constitution. 96.5 % of Pakistan's population is Muslim. Minorities make up approximately 3% of the population.⁹ Our national flag, our badge of honour and national unity, shows the minorities in the white alongwith the green signifying the majority Muslim population. The majority (Muslims) and the minority (Non-Muslims) of Pakistanis together constitute the paradigm of Pakistan. Our national flag stands higher because it represents both the Muslims and the Non-Muslims. Moving towards an inclusive society is getting closer to realizing our constitutional values. "If society is intolerant, embarrassed, exclusionary, its own imaginative heart is being restricted. Its capacity for human empathy is being denied. Exclusion damages the way we understand and characterize the world we live in. Inclusion enhances our humanity."¹⁰

7. Quaid-e-Azam, Muhammad Ali Jinnah repeatedly affirmed that as a foundational principle of Pakistan, rights of all minorities shall be safeguarded and all citizens of Pakistan are equal and have equal rights irrespective of their religion, colour, caste or creed. He assured and asserted that "minorities to whichever community they may belong, will be safeguarded. Their religion or faith or belief will be secure. There will be no interference of any kind with their freedom of worship. They will have their protection with regard to their religion, faith, their life, their culture. They will be, in all respects, the citizens of Pakistan without any distinction of caste or creed".¹¹ At the time of the inception of Pakistan, while asserting the above said principle as the first President of the Constituent Assembly of Pakistan, Quaid-e-Azam

⁸ As per the available disability statistics provided by the Pakistan Bureau of Statistics, the population of PWDs in Pakistan is 3,71,833 (data available up till 28.02.2021).

⁹ Census, 2017, Pakistan Bureau of Statistics. Minorities in Pakistan include Christians, Hindus, Ahmadis, Sikhs, Baha'is, Parsis, Buddhists, Judaists, Kalasha etc.

¹⁰ Albie Sachs, We, the People – Insights of an Activist Judge, Page-250, Wits University Press (2016).

¹¹ Quaid-e-Azam, Muhammad Ali Jinnah, as Governor General designate of Pakistan, at a press conference in New Delhi on 14th July, 1947. (S.M. Burke, Jinnah Speeches and Statements 1947-48, Page-12, Oxford University Press (Fifth Impression, 2009))

unequivocally stated that "you are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed – that has nothing to do with the business of the State ... we are starting with this fundamental principle that we are all citizens and equal citizens of one State".¹² He was conscious of the fact that equal treatment of minorities was not only important for the prosperity and growth of Pakistan, it was a duty cast upon all Muslims by Islam as "the tenets of Islam enjoin on every Musalman to give protection to his neighbours and to the minorities regardless of caste and creed"¹³ ... in Islam there is no difference between man and man. The qualities of equality, liberty and fraternity are the fundamental principles of Islam."¹⁴

8. In order to actualize the constitutional mandate and the vision of our founding father, we have the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 ("Ordinance") which, post 18th amendment, has translated into provincial laws.¹⁵ Provisions of the Ordinance are *pari materia* to the Punjab Law. Section 10 of the Ordinance, as applicable in Punjab, provides that not less than three percent (3%) of the total number of persons employed by an establishment at any time shall be PWDs in the manner and procedure provided under the said Ordinance. Similarly, notification dated 27.3.2010, issued under section 23 of the Punjab Civil Servants Act, 1974 by the S&GAD (Regulations Wing), 5% quota has to be reserved for minorities (Non-Muslims) against the total number of posts advertised in the future, including posts to be filled on the basis of competitive examination to be conducted by the PPSC. Later on through an amendment¹⁶ brought about in the said notification, the vacancies reserved for minorities for which qualified candidates are not available at the time of a particular recruitment process, shall be carried forward

¹² Presidential Address to the Constituent Assembly of Pakistan at Karachi on 11th August, 1947 (ibid, Page-25).

¹³ Speech at a rally at the University Stadium, Lahore on 30th October, 1947 (ibid, Page-70).

¹⁴ Address to the Bar Association, Karachi, on the occasion of the Holy Prophet's (PBUH) birthday on 25th January, 1948 (ibid, Page-97).

¹⁵ In Punjab: the Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012; In Khyber Pakhtunkhwa: the Khyber Pakhtunkhwa Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012. Recent legislation on PWDs in other provinces include the Sindh Empowerment of Persons with Disabilities Act, 2018; the Balochistan Persons with Disabilities Act, 2017; in the ICT, the ICT Rights of Persons with Disability Act, 2020 and in Gilgit-Baltistan, the Gilgit-Baltistan Persons with Disabilities Act, 2019.

¹⁶ Through notification dated 09.2.2015.

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and filled through appointment of persons belonging to minorities (Non-Muslims). We have noted with concern that according to the fact finding report titled "Unequal Citizens, Ending Systemic Discrimination against Minorities" ("**Report**")¹⁷ published in May, 2022 by the National Commission of Human Rights ("**NCHR**") established under the National Commission for Human Rights Act, 2012 with the mandate to promote and protect human rights as provided for in the Constitution and the various international instruments to which Pakistan is a State party or shall become a State party, advertisements published in major newspapers all over the country show that religious minorities have been recruited exclusively for sanitary work. The Report shows that in the advertisements, under eligibility requirements, there is often a clause that states 'Only Non-Muslims Apply.' Such discriminatory advertisements and employment selection process limiting the job quota only for low level posts is offensive to the constitutional values, the fundamental rights of the minorities and the notification mentioned above. The Report recommends ending discrimination against minorities in the employment quota, ending the practice of publishing discriminatory advertisements and ensuring public transparency in the number of minority posts filled across each level of the government.¹⁸ We fully support the said recommendations of the NCHR in the Report and accordingly direct that the respective governments shall ensure that the employment quota of the minorities is maintained at all levels and to strictly avoid discriminatory and demeaning advertisements flouting the dignity and self-respect of the minorities.

9. In order to safeguard the rights of the minorities and PWDs and to provide equality of status and opportunities, the State has to endeavor to bridge the gap and ensure that the differently-abled persons and the Non-Muslim minority in our country get to enjoy their fundamental rights under the Constitution with the same fervour and force as enjoyed by the Muslim majority and majority of persons with fuller abilities. Hence other than the general seats, the additional provision of quota for the PWDs and the minorities reaffirms the constitutional commitment.

10. The argument of the petitioner that in case the said seats are not filled by PWDs and the Non-Muslim minority in a particular

¹⁷ Unequal Citizens – Ending Systemic Discrimination against Minorities. NCHR Fact Finding Report. May, 2022.

¹⁸ Ibid.

year, the said seats should be opened and made available to general quota. This is not permissible as it would offend constitutional values, fundamental rights and the Principles of Policy as discussed above. The seats earmarked for minorities or PWDs must be retained and carried forward. This quota is their constitutional right and cannot be reversed or made available to other citizens.

11. For the above reasons we agree with the final conclusion arrived at by the High Court in the impugned judgment and for the reasons given above, this petition is accordingly dismissed and leave is refused.

12. It is also pointed out that the word "disabled" has already been put to disuse in *Malik Ubaidullah*¹⁹ and, therefore, the PPSC is directed to ensure that the word "disabled" is not used and instead persons with disabilities or persons with different abilities is put to use. We are hopeful that in the future these terms will be incorporated in the official correspondence as well as relevant notifications, including public advertisements, issued by the Government. A copy of this order shall be dispatched to the Chief Secretary, Government of the Punjab as well as the Chief Secretaries of other provinces to ensure that this order is complied with in letter and spirit at the national level.

13. Before parting with this order, we would like to appreciate and commend the valuable assistance provided to us by Muhammad Hassan Ali, Law Clerk in rendering this order.

Judge

Islamabad,
18th November, 2022.
Approved for reporting
Sadaqat

Judge

Judge

¹⁹ PLD 2020 SC 599.



OFFICE OF THE
INSPECTORATE GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR
☎ 091-9210334, 9210406 📠 091-9213445

No. _____

Dated _____

AUTHORITY LETTER

Mr. Sulaiman, Law Officer (BPS-17) attached to the office of Inspector General of Prisons Khyber Pakhtunkhwa Peshawar is hereby authorized to make affidavit, to file comments/reply/report and to attend the Lower Courts, Ombudsperson, Khyber Pakhtunkhwa Service Tribunal, Peshawar High Court Peshawar, Supreme Court of Pakistan Islamabad, Federal Shariat Court, meeting of scrutiny committee at Law Department and also to attend the office of Advocate General Khyber Pakhtunkhwa at Peshawar on each and every date of hearing, on behalf of the Inspector General of Prisons Khyber Pakhtunkhwa.


INSPECTOR GENERAL OF PRISONS
KHYBER PAKHTUNKHWA PESHAWAR

Usman Mehsud