

IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH,
BAHAWALPUR
JUDICIAL DEPARTMENT

W.P. No.5171/2021

Muhammad Ahmad VERSUS Govt. of the Punjab etc.

JUDGMENT

Date of Hearing: 13.10.2021
Petitioner by: Mr. Muhammad Atif Saleem Qureshi, Advocate.
Respondents by: Malik Shah Nawaz Kalyar, A.A.G. alongwith Dr. Muhammad Zubair, Livestock Department.

SAFDAR SALEEM SHAHID, J. — Through this constitutional petition, the petitioner has challenged the vires of impugned report dated 15.03.2021, whereby, the petitioner has been denied the facility of the Punjab Civil Servants (Appointment & Condition of Service) Rules, 1974 in terms of Rule 17-A which reveals that one child of government servant who dies while in service or is rendered physically incapacitated or invalidated is offered a job without the observance of procedural formalities, by way of affirmative action.

2. Saeed Ahmad Bhatti, the father of the petitioner was performing his duty in the capacity as Veterinary Assistant BPS-10 on regular basis in the office of respondent No.4 and he was retired from service w.e.f. 18.11.2020 on medical invalidation certificate "completely and permanently incapacitated for further service of any kind". As such, the petitioner submitted application before respondent No.4 for appointment as Class-IV employee under Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules, 1974 but he has not been considered and appointed on false plea that since petitioner's father was retired on medical grounds for invalidation/incapacitation from government service in category "B" therefore, he is not entitled to get benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of


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Bahawalpur Bench
Bahawalpur

Service) Rules, 1974 and on this ground, the petitioner was refused to give the benefit of Rule 17-A of the act *ibid*.

3. Counsel for the petitioner argued that respondent No.4 was under obligation to appoint the petitioner as Class-IV employee on the regular/permanent basis under Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules, 1974, but he has taken totally illegal stance and has deprived the petitioner from his fundamental right illegally and mala-fidely. Under Articles 4 and 5 of the constitution of Islamic Republic of Pakistan, 1973 each and every citizen of Pakistan is required to act in accordance with law. Therefore, the act of respondent No.4 for denying the fundamental right of the petitioner given by the constitution, is against the law. The administrative instructions dated 03.03.2021 issued by the S&GAD department (Regularization Wing) as is indicated in the impugned report dated 15.03.2021 are in violation of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules, 1974. Moreover, any administrative instructions regarding definition of category of "B" is neither law nor rule, therefore, the petitioner could not be deprived from the appointment under Rule 17-A of the Act. The government servant who were declared incapacitated or invalidated from government service, their children are entitled for having the benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules, 1974. There can be no discrimination regarding the said rule. The administrative instructions as mentioned by respondent No.4 are totally against the constitutional rights.

4. The Assistant Advocate General, on the other hand, resisted the arguments and argued that right of appointment is not extended to those who are medically invalidated in category "B" as this invalidation is not permanent as clarified by the Government of the Punjab S&GAD (Regularization Wing). He further argued that S&GAD is competent to clarify the laws pertaining to service matters. Adds that, no right of the petitioner is infringed rather his

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case is decided in accordance with law/rules for the time being in force.

5. Arguments heard. Record perused.
6. The Assistant Advocate General submitted notification of the Government of the Punjab S&GAD Department (Regularization Wing), the relevant paragraph is being reproduced below:-

"From the above discussion it is quite clear that there is no regularization of any class (a, b, c) in the Pension Rules and the appointment of a child, widow/wife is only in case of a permanent disability as per Rule 17-A of the rules ibid. Therefore, attention is invited towards the said aspect and the Finance Department is of the considered opinion that rules are clear and no change is required in Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules, 1974."

It has been held in so many judgments of the Hon'ble Supreme Court and this court that Rule 17-A was originally not a part of the Punjab Civil Servants (Appointment & Condition of Service) Rules, 1974. In the year 1987, Rule 17-A in its un-amended form was added to the rules. The Rule in its original form was quite narrow and strictly framed. However, gradually over the years the reach, ambit, sweep and scope of the Rule has been considerably and consciously widened so as to reflect a much more beneficial intent, which is in line with the original rationale for introducing such a beneficial Rule. The scope and sweep of Rule 17-A has been widened in order to facilitate the unemployed children, to wife/widows as well. The purpose behind was to facilitate the employees who have served the department and because of the reasons beyond control like death incapacitated medically to work or even on the retirement, the family of the said employee should not be suffered due to unemployment. On the face of it, the Rule does not specify any division, distinction or bifurcation of category of incapacitation or invalidation. Either one is incapacitated or not incapacitated. Likewise, invalidated or not. There is no such thing as being partly invalidated or being semi-incapacitated. The Rule is a beneficial Rule and has to be construed

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liberally and, of course, departmental instructions cannot be allowed to make inroads thereon. In fact, the instruction in the form of the notification of S&GAD also recognizes this stark fact. However, it even then goes on to justify the existence of categorization of incapacity and invalidation and its consequential effect on the extension of the benefit contemplated by Rule 17-A. This it does by taking into account an absolutely irrelevant consideration of possible misuse of the facility. This renders the notification illegal. The spirit of instructions on the administrative side, if it defeats the fundamental rights of any citizen, given by the constitution, cannot be appreciated in any way. Moreover, the entire purpose of the Rule is defeated by creation of categories at an administrative level. If these instructions are allowed to supersede the statutory rules/laws, this will certainly defeat the object of Rule 17-A, which was the fundamental right of the employee and his family given by the statute.

7. In view of above, the impugned report dated 15.03.2021 is rejected and respondent No.4 is directed to entertain the application of the petitioner under Rule 17-A of the Punjab Civil Servants (Appointment & Condition of Service) Rules, 1974, without making any discrimination under the administrative instructions of the Government of the Punjab S&GAD Department (Regularization Wing). This petition is allowed.

sdt
(Safdar Saleem Shahid)
Judge

Naveed*

Application No 9610
Date of Presentation 13-7-21
Date of Receipt of Fee _____
No. of Pages 5
Copying Fee _____
Ingruent Fee 10
Registration & Postage Fee _____
Court Fee on Application _____
Date of Completion of Court 12
Date of Receipt of File 19-10-21
Date of Completion of Court 18 OCT 2021
Date of Completion of Court 23-10-21

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IN THE LAHORE HIGH COURT BAHAWALPUR BENCH BAHAWALPUR.

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W.P.NO. 517 /21/BWP.

1. Muhammad Ahmad son of Saeed Ahmad Bhatti, r/o Bhatta
No.4, Street No.1, Bahawalpur city.

Petitioner

Versus.

- Adc*
1. Government of the Punjab, through its Secretary, Livestock & Dairy Department, Lahore.
 2. Director General (Ex. Production & Research) Livestock & Dairy Department South Punjab, Bahawalpur.
 3. Director Livestock Bahawalpur Division, Bahawalpur.
 4. Additional Director Livestock District, Bahawalpur.
 5. District Accounts Officer, Bahawalpur.

...Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973.

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Assistant District Officer
Livestock District
Bahawalpur
Bahawalpur.