JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 1146 OF 2019

MUHAMMAD HAMZA

VS

FEDERATION OF PAKISTAN & 02 OTHERS

Petitioner by : Mr. Nadeem Ahmed Awan, Advocate.

Respondents by : Raja Zamir-ud-Din, AAG.

Date of hearing : 11.03.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), Muhammad Hamza **("Petitioner")** seeks issuance of direction to the respondent No.2 to appoint him in BS-4 as per office memorandum dated 12.07.2010, 24.06.2015 and 17.04.2018 issued by the respondent No.2 and setting aside of impugned order dated 26.11.2018.

2. The brief facts of the case as per the memo of petition are that the Petitioner's father namely Muhammad Abdul Razzaq was appointed as Daftri BPS-04 in the office of Director General Immigration & Passport Office (Headquarter), Islamabad on 06.02.1976 and was retired from Govt. Service on 30.07.2002 on medical ground as he sustained severe heart ailment during his service. The Petitioner's father during his lifetime applied for the appointment of the Petitioner in pursuance of the letter dated 12.07.2010 issued by Respondent No.3. The Petitioner's father made efforts from pillar to post to get the employment of the Petitioner on merit in pursuance of the policy of Government mentioned supra, but in vain. The Petitioner's father died on 30.01.2016 leaving behind the Petitioner and the legal heirs. As per judgment and decree dated 05.05.2017 passed by learned Civil Judge Rawalpindi, the Petitioner was declared one of the legal heirs along others. The Petitioner subsequently after the

death of his father also submitted application dated 12.06.2017, 03.03.2017, 09.05.2017 with diary No.1872, 15487, 3901 respectively but no legal action was initiated and grievance of the Petitioner was not redressed. Hence, the instant Writ Petition.

3. Learned counsel for the Petitioner argued that the Petitioner filed Writ Petition No.3817/18 against the Respondents before this Honourable Court which was disposed of vide order dated 12.10.2018 with the direction to Respondent No.2 to decide pending application of the Petitioner in accordance with law preferably within 30 days from the date of order; that the Petitioner in pursuance of said order, had approached to Respondent No.2 to comply with the order mentioned supra and to decide the said application but Respondent No.2 in sheer violation of order dated 12.10.2018, further marked the said application for its disposal to Respondent No.3 who issued the memorandum dated 26.11.2018 which is *corum non judice* and without lawful authority, hence, the Petitioner challenged the order dated 26-11-2018; that the Respondent No.2 has violated the order dated 12.10.2018 passed by this Court in Writ Petition No.3817/18 in which the Petitioner's pending application for his appointment as employee's son under Prime Minister Assistance Package had to be decided but the cognizance on said application was illegally taken and decided by Respondent No.1 in violation of principle "Persona designate" as the said lis had to be decided by all means by the Respondent No.2 itself, hence, impugned order on this score alone is passed without lawful authority and jurisdiction; that the Petitioner has the vested rights to get employment in view of his qualification as ICS/Intermediate in the same scale BPS-4 in the light of office memorandum mentioned supra; that the action of Respondents is against Article 4, 10-A of the Constitution of Islamic Republic of Pakistan, 1973; that the Respondent No.3 has not attended the phraseology of the judgment cited in 2012 PLC CS 137; that the Respondents did not decide the applications dated 12.06.2017, 03.03.2017, 09.05.2017 with diary No.1872, 15487, 3901 as per its contents rather in a mechanical fashion, the applications were dismissed; that the findings of the Respondent No.3 regarding the age of Petitioner as 21 years and time framed for applying for the said post is not the mandate of the Notification dated 12.07.2010, 24.06.2015 and 17.04.2018. In the last, learned counsel prayed that instant Writ Petition may kindly be accepted and the Respondent No.2 be directed to appoint the Petitioner

in BS-4 as per Office Memorandum dated 12.07.2010, 24.06.2015 and 17.04.2018 issued by the Respondent No.2 and the impugned order dated 26.11.2018 may kindly be set aside being illegal and without lawful authority.

4. Learned Assistant Attorney General argued that the instant petition is not maintainable as order dated 12.10.2018 passed by this Court in Writ Petition No. 3817/2018 has already been complied by Respondent No.1 to 3; that it is clarified that the Respondent No. 2 is not competent authority to make appointment; that the Respondent No. 2 & 3 submitted the case of the Petitioner to the Administrative Head of the Department (Respondent No.1) for consideration; that after taking into consideration relevant rules, and all facts/ circumstances of the case, a decision was conveyed to the Petitioner vide Memorandum dated 26.11.2018 with the approval of Director General Immigration & Passports (Respondent No. 1); that the Respondent No. 2 in any way has not violated/frustrated the order dated 12.10.2018 passed in W.P No 3817/2018; that the Petitioner has no genuine cause of action to file the petition; that the instant petition is based on wrongful assumptions of facts and Law; that the petitioner has not approached this Court with clean hands thus the petition is liable to be dismissed; that the Petitioner has attempted to mislead this Court by concealment of facts and to create confusion so as to avail undue advantage; that no application from the Petitioner or his father was received in the Directorate General Immigration & Passports regarding contract appointment of the Petitioner; that the contention of the Petitioner is totally incorrect and misleading; that the Petitioner has wrongly referred and misquoted the rules which are not related to his case; that the father of the Petitioner was retired from Govt. Service on medical grounds whereas the rules mentioned by the Petitioner pertains only to contract appointment of the widow/widower or a child of a Civil Servant who dies during service; that in terms Of Establishment Division's O.M No. 8/13/2016-E-2 dated 17.04.2018, the Petitioner had not applied for contract appointment within one year of attaining the specified age limit of 18-years rather he applied beyond the age of 21 years, which is not tenable under the relevant rules; that the Petitioner is not entitled for employment at this stage as he was required to apply for contract appointment in terms of Establishment Division O.M. No 4/1/2005-CP-1 dated 13.04.2005 within one year from the date when he attained the age of 18-years in the year 2014; that Petitioner actually

applied for contract employment after attaining the age of 21-years as such his claim is not covered under the relevant rules; that according to the prescribed procedure, recruitment is made through advertisement of vacancies; that the petitioner is supposed to apply for a suitable post as and when the vacancies are to be advertised in the Press/Media; that the filing of Writ Petition is not justified in this behalf; that the case of Petitioner does not fall within the ambit of relevant rules/policy of the Government of Pakistan circulated by the Establishment Division; that no relief is warranted to the Petitioner due to misleading of facts. In the last, he prayed that the instant petition being frivolous and having no merits may graciously be dismissed with costs.

5. I have heard the learned counsel for the Parties and perused the record with their able assistance.

6. The petitioner filed Writ Petition No.3817/2018 before this court in which directions were issued to the respondent to decide the pending application of the petitioner in accordance with law expeditiously preferably within 30 days from the date of the order. The petitioner is the son of Muhammad Abdul Razzaq Hashmi who got retired from Service on medical grounds and later on died after retirement. The petitioner seeks employment on the ground that his father being a former employee, who retired on medical grounds. Attention is drawn towards an Office Memorandum dated 13 April, 2005 with the subject "Contract Appointment" issued by the Cabinet Secretariat, Establishment Division, Government of Pakistan, which is reproduced as under: -

> *"The undersigned is directed to refer to Establishment Division's Office Memorandum No.8/10/2000-CP-1 dated 21st March, 2000 (amended from time to time) on the above subject and to state that the Prime Minister has been pleased to approve substitution of Para 1 (iii) (c) of the said O.M with the following: -*
>
> > *The condition of open advertisement may also be relaxed by the Prime Minister for the purpose of appointment on contract basis of widow/widower of one child of a deceased civil servant who dies during service and wife/husband or one child of a serving civil servant who becomes "permanently disabled during*

service" and he/she takes retirement from service provided that such special dispensation may be allowed only for appointment to posts in BS-10 and below.

"Provided further that the widow/widower or a child of a civil servant who dies during service and wife/husband or a child of a serving civil servant who becomes "permanently disabled during service" and he/she takes retirement from service will have to apply for contract appointment within one year after the death of a civil servant or retirement of a permanently disabled civil servant in case of a minor child of a civil servant, the one year period will start from the date he/she attains the age of 18 years".

7. Similarly, according to Office Memorandum dated 12 July, 2010 vide which Assistance Package for Families of Government Employees who died in service, was extended. As per the said Office Memorandum Para No.1,

"*Assistance Package provided employment only in service death and security related death for posts in Bs-1 to 15 on two years contract without advertisement. This Divisions O.M No.4/1/2005-CP-1 dated 13.04.2005, provides that the condition of open advertisement may also be relaxed by the Prime Minister's for the purpose of appointment on contract basis wife/husband or one child of a serving civil servant who becomes "permanently disabled during service" and he/she takes retirement from service provided that such special dispensation may be allowed only for appointment to posts in BS-10 and below".*

8. Similarly, attention is drawn to Office Memorandum issued by the Cabinet Secretariat, Establishment Division, Government of Pakistan, dated 17 April, 2018 with the subject "Revision of Prime Minister's Assistance Package for Families of Government Employees who die in service", which says that: -

"The condition to apply for employment within one year under the Assistance Package as notified by the Establishment Division vide O.M No.8/10/2000-CP-1 dated 6th August, 2004 and O.M No.

4/1/2005-CP-1 dated 13th April, 2005 is amended to the extent that: the widow/widower or a child of a civil servant who dies during service may be entitled to apply for contract appointment as per maximum age limit prescribed for initial appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 1993".

9. With this revised Office Memorandum dated 17 April, 2018, the condition to apply for contract appointment within one year after the death of a civil servant or retirement of a permanently disabled civil servant, in case of a minor child of a civil servant the one year period will start from the date he/she attains the age of 18 years, has been changed and the maximum period to apply for contract appointment was made "*as per maximum age limit prescribed for initial appointment to civil posts (relaxation of upper age limit) Rules, 1993*".

10. Now the question before this court is that the Assistance Package which was introduced on 13 April, 2005 vide Office Memorandum of the Cabinet Secretariat, Establishment Division while the father of the petitioner got retired from service on 30.07.2002 on the basis of medical ground and as to whether the Assistance Package will benefit retrospectively or prospectively. The Package was introduced in the year 2005 while the father of the petitioner got retired on medical grounds in the year 2002, meaning thereby that at the time of the retirement of Muhammad Abdul Razzaq Hashmi, the said Assistance Package was not in field. The petitioner has made reliance in a reported judgment cited in 2012 PLC (CS) 137) in which it is held as under: -

"*Constitution of Pakistan Article 199---Constitutional petition---Naib Tehsildar(BPS-14) post of – death of petitioner's father during his employment as extra Assistant Commissioner (BPS-17)—refusal of authority to consider petitioner for his appointment on such post on ground that his father had died in year 1985 prior to promulgation of North West Frontier province Civil servant (Appointment, promotion and transfer) Rules, 1989---Validity---statute or rule giving right to citizens would always invariably operate retrospectively".*

11. The Worthy Supreme Court in its judgment cited in (2023 PLC (C.S) 740) titled "**Government of Pakistan through Secretary Establishment Division, Islamabad Vs. Muhammad Ismail and another**" held as under: -

> *"6. It is an admitted fact that respondent's father died in the year 1995 while he was in regular service of Accountant General KPK being Senior Auditor. At that time, there was no scheme/policy in field for induction of family member of deceased civil servant in service. It was on 13.06.2006 when the Government of Pakistan issued `Assistance Package for Families of Government Employees who die in service', to be made effective from 01.07.2005, wherein employment for posts in BS-01 to ES-I5 on two years contract without advertisement for the families of deceased servant was surfaced. Thereafter, this package was amended thrice i.e. on 20.10.2014, 04.12.2015 and lastly on 09.09.2016 whereby the two years contract period was enhanced to 5 years and the same was also made extendable till the age of superannuation or regularization. We have perused the Assistance Package and the subsequent amendments but could not find any provision therein which gives it retrospective effect especially when the grievance of respondent was agitated with a lapse of almost 17 years. It is an established principle of interpretation of statutes / notifications / executive / administrative orders that they would operate prospectively unless they expressly provide for retrospective operation. This Court in the case of Hashwani Hotels Ltd. v. Federation of Pakistan (PLD 1997 SC 315) has acknowledged this fact by observing that "it is a well-settled principle of interpretation of a notification and/or an executive order that the same can operate prospectively and not retrospectively. This principle is equally applicable to a statute in the absence of any express or implied intendment contrary to it. In this view of the matter, when it is clear that afore-referred Assistance Package for legal heirs of deceased government employee was not available at the time when deceased employee died and the same was issued later on with prospective effect, the respondent was not deprived of any right accrued to him at the relevant time by not appointing him. The learned High Court has erroneously presumed that statute or rule, which gives right to the citizens, always operates retrospectively. If this is accepted, it would tantamount to opening a floodgate for all other similarly placed persons.*"

Similarly, the august Supreme Court of Pakistan in case reported as PLD 2024 Supreme Court 1276 titled "General Post Office, Islamabad and others Versus Muhammad Jalal", held as under: -

> *"18. The widow/widower, the wife/husband and the dependent children of a civil servant who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service get pensionary and other benefits from the public exchequer, to which they are entitled. However, the above mentioned rules, policies, OMs, etc. which secure or provide appointments in different grades, without open advertisements and competition, to the widow/widower, wife/husband or a child of a civil servant of the Federal and Provincial Governments, who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service, is ex facie discriminatory against the other or ordinary citizens of Pakistan and the same cannot be termed as a reasonable classification as their object is to give an advantage by excluding others, which is not permissible under Article 25 of the Constitution. Article 27 of the Constitution which specifically attends to the service of Pakistan prohibits discrimination in services.*"

12. In the abovementioned judgments of the august Supreme Court, it is held that where statute or rule giving right to citizens would always invariably operate retrospectively, is not a valid ground for making effective a statute or rule retrospectively, rather such practice or giving jobs without advertisement is held discriminatory against the rest of the ordinary citizens of Pakistan and the same cannot be termed as a reasonable classification as their object is to give an advantage by excluding others, which is not permissible under Article 25 of the Constitution.

13. The petitioner who claims service/employment from the respondent, on the ground that his father got retired on medical grounds and according to the Office Memorandum dated 13 April, 2005 issued by the Establishment Division, Cabinet Secretariat, Government of Pakistan, he is entitle for employment. The said Memorandum was issued in the year 2005 while the father of the petitioner got retired on medical grounds in the year 2002 and according to the dictum laid down by the august Supreme Court of Pakistan in Rulings cited above, retrospective effect cannot be given to statutes which give rights to citizens

unless and until express provision is not given to that effect. Hence, in the given circumstances, the instant Writ Petition is **dismissed** being misconceived and without any merit.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of April 2025.

JUDGE

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