JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2943 of 2020
Jam Muhammad
Versus
Ministry of Water and Power, Government of Pakistan and others

Dates of Hearing:	14.06.2021 and 08.07.2021.
Petitioner by:	Mr. Ashiq Hussain Tarar, Advocate.
Respondents by:	Mr. Sajjad Zafar, Advocate for WAPDA. Mr. Arshid Mehmood Kiani, learned Deputy Attorney General. Mr. Ahmer Bilal Soofi, Advocate, learned *Amicus Curiae.*

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Jam Muhammad, seeks a direction to the respondents to make appointments in the WAPDA Diamer Basha Dam Development Company **("WAPDA-DBDC")** by observing regional and provincial quotas in accordance with the Prime Minister's directive dated 25.10.2011.

2. An advertisement published by WAPDA-DBDC inviting applications for appointment against different positions in Diamer Basha Dam Development Company ("**DBDC**"). The last date for the submission of the applications was 21.09.2020 (i.e., 11 days before the filing of this petition). In the said advertisement, it was mentioned that the hiring of staff against open merit will be in relaxation of regional / provincial quota under the Prime Minister's directive dated 25.10.2011 giving first preference to the locals of Diamer, then Gilgit-Baltistan, and later rest of the country.

3. Learned counsel for the petitioner submitted that the relaxation of the said directive transgresses the rights of the locals of Diamer and Gilgit-Baltistan who are eligible to be appointed against different posts in DBDC. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. Learned counsel for WAPDA submitted that the Diamer Basha is a project of national importance; that the National

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Assembly Standing Committee on Water Resources, in its meeting dated 01.10.2020, accepted WAPDA's position that posts of BPS-01 to BPS-05 in WAPDA-DBDC would be filled 100% by local residents under the Government of Pakistan Recruitment Policy, 2014, and posts in BPS-06 to BPS-15 against which incumbents are required to serve in a particular Province / Region are to be filled by appointment of persons domiciled in the Province / Region concerned; that it has also been decided that posts in BPS-17 are to be filled by adhering to the provincial / regional quota under the guidelines issued by the Establishment Division, and 20% of the sanctioned posts in BPS-01 to BPS-14 are earmarked for the employees' children; that the petitioner had applied for the post of Junior Geologist, which is a BPS-17 post; that since the petitioner is possessing a domicile of Gilgit-Baltistan, he is not eligible to be appointed to the said post; and that there is no quota for Gilgit-Baltistan for the said post. Learned counsel for WAPDA prayed for the writ petition to be dismissed.

5. The learned *Amicus Curiae* has submitted a well-prepared brief on the subject which sets out the political history and Constitutional status of Gilgit-Baltistan. The learned *Amicus Curiae* opined that this Court may consider directing the WAPDA-DBDC to prefer residents of Gilgit-Baltistan for appointment to posts in BPS-01 to BPS-16 but for appointment to posts in BPS-17 and above, there should be an open competition and best of the best should be chosen through a competitive process.

6. I have heard the contentions of the learned counsel for the contesting parties. I have also gone through the brief submitted by the learned *Amicus Curiae.*

7. On 13.10.2011, the Prime Minister of Pakistan, while performing the groundbreaking ceremony of Diamer Basha Dam, announced *inter alia* that WAPDA is to *"give first preference to the locals of Diamer, then Gilgit-Baltistan and later rest of the country for jobs in Diamer Basha Dam Project."* Directions were also given for necessary action to be taken to implement the Prime Minister's announcements. Subsequently, an advertisement was published by WAPDA-DBDC inviting applications for posts including 16 posts

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of Junior Geologists on regular basis. The applicants for the said posts were required to have the qualification of M.Sc. in Geology (2nd Division) from a recognized university or four years / eight semesters honors degrees. Unlike several other advertised posts, there was no provision for appointments to be made to the post of Junior Geologist on the basis of open merit. The said advertisement provides for the 16 posts of Junior Geologists to be filled on the basis of the following quota:-

"Punjab (Open) – 11
Punjab (Minority) – 01
Sindh (Rural) Open – 02
Sindh (Urban) Open – 01
KPK (Open) – 01"

8. The vital question that needs to be answered is whether the said advertisement published by WAPDA-DBDC is in violation of the law and whether it was obligatory on WAPDA-DBDC to have given preference to the residents of Gilgit-Baltistan while making appointments to 16 posts of Junior Geologists. Article 27(1) of the Constitution provides that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth. The third proviso to the said Article provides that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an Act of Parliament.

9. Rule 14 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 **("APT Rules")** (which were made by the President in exercise of the powers conferred by Section 25 of the Civil Servants Act, 1973) provides that vacancies in (i) all posts in basic pay scales 16 and above and equivalent, and (ii) posts in basic pay scales 03 to 15 and equivalent in offices, which serve the whole of Pakistan, shall be filled on all-Pakistan basis in accordance with the merit and provincial or regional quotas prescribed by the Government from time to time. The term *"prescribed"* in the said rules has to be given the same meaning as the one given to the said term in Section 2(1)(f) of the Civil Servants Act, 1973 which provides that *"prescribed"* means prescribed by rules.

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10. Vide notification (SRO No.747(1)/2020) dated 19.08.2020 issued by the Establishment Division, the words *"prescribed by the Government from time to time"* appearing in Rule 14 of the APT Rules were replaced with the words *"as prescribed below".* The provincial / regional quotas in the said notification provide for a quota of 1% for Gilgit-Baltistan. The said notification was issued in exercise of the powers conferred by Section 25 of the Civil Servants Act, 1973. The provincial / regional quotas in the said notification were fixed on the basis of the directions of the Prime Minister. Therefore, the provincial / regional quotas prescribed in the said notification would supersede the Prime Minister's earlier directive dated 25.10.2011.

11. It is not the petitioner's case that the provincial / regional quotas in the advertisement issued by the WAPDA-DBDC are in violation of the provincial / regional quotas prescribed in the Prime Minister's directive dated 25.10.2011. As regards the posts of Junior Geologists, the documents brought on record by the respondents show that there are a total of 32 posts of Junior Geologists in DBDC. Against 6 posts of Junior Geologists, people domiciled in Gilgit-Baltistan are working. The names and addresses of such people are also mentioned in the said documents. The petitioner has not disputed the authenticity of the information provided in the said documents. Since under the notification dated 19.08.2020, the quota for Gilgit-Baltistan is 1%, therefore, presently the number of Junior Geologists employed by DBDC, who are domiciled in Gilgit-Baltistan, are in excess of the prescribed quota.

12. In the case of Punjab Public Service Commission Vs. Husnain Abbas (2021 SCMR 1017), the Hon'ble Supreme Court upheld the *vires* of a notification prescribing regional quotas within the Province of Punjab under the provisions of the Punjab Civil Servants Act, 1974. In paragraph 12 of the said report, it was held as follows:-

> ***"12. The argument of learned counsel for the Appellants that 40 years period provided in the Constitution has expired is misconceived and fallacious. It is evident from a plain reading of third proviso to Article 27 of the Constitution that necessary***

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amendments have been made in the Rules of 1974 in accordance with the mandate provided by the Constitution and the same has been found by us to be in consonance with the provisions of Article 27(1) of the Constitution. This aspect of the matter was considered by a three member Bench of this Court in Constitution Petitions No.34 & 71 of 2007, 10 & 11 of 2018 and Civil Petition No.1750 of 2018. Vide judgment dated 06.12.2018, this Court came to the conclusion that legislation put in place by the competent legislature for redressal of under presentation of any class or area in the service of Pakistan is neither ultra vires nor violates Article 27(1) of the Constitution. Reference in this regard may also usefully be made to a judgment of this Court reported as Mushtaq Ahmed Mohal v. Honourable Lahore High Court (1997 SCMR 1043).”

13. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 30.07.2021.

(JUDGE)

Ahtesham*

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