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Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

....

INTRA COURT APPEAL NO.2493 of 2025.

Adnan Yaseen.

Versus

Government of the Punjab, etc.

JUDGMENT.

Date of hearing: 05.05.2026.

Appellants by: M/s Allah Nawaz Khosa and Shahid Nawaz Khan, Advocates.

Respondents by: Mr. Waheed Alam, Assistant Advocate General Punjab.

AHMAD NADEEM ARSHAD, J. Through this Intra Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called into question the validity and legality of order dated 23.12.2024 whereby the Writ Petition filed by the appellant was dismissed.

2. Necessary facts forming the background of the instant proceedings are that the father of the appellant who was a Ward Servant at Health Department, Chniot and medically retired from service w.e.f. 15.09.2023 vide notification dated 31.10.2024. Following this, the appellant filed an application for his appointment under Rule 17-A of the Punjab Civil Servants (*Appointment and Conditions of Service*) Rules, 1974 (*'The Rules'*) which was rejected by the respondent No.2 vide order dated 05.12.2024 on account of

omission of Rule 17-A through Notification No.SOR-III(S&GAD)2-60/2024, dated 24.07.2024. Feeling aggrieved, the appellant filed Writ Petition No.80528 of 2024, which was dismissed by the learned Single Judge in Chambers vide order dated 23.12.2024. Hence, the instant appeal.

3. Learned counsel appearing on behalf of the appellant inter alia contends that impugned order is illegal and contrary to law. He submits that the appellant had acquired a vested right for appointment under Rule 17-A of the Rules at the time of accrual of cause, which could not be taken away by subsequent omission of the said Rule. In this regard, he places reliance upon the judgment rendered by the Hon'ble Federal Constitutional Court in the case titled *"The Province of Sindh v. Muhammad Rizwan Khan and others"* (F.C.P.L.A. Nos.508, etc. of 2025), and argues that process of issuance of appointment letters is merely an administrative formality, and once the right had accrued, the same could not be divested retrospectively.

4. Learned Assistant Advocate General appearing on behalf of respondents has supported the impugned order by arguing that Rule 17-A of the Rules, stood omitted after being declared unconstitutional; therefore, no vested right could accrues in favour of the appellant. Further contends that the judgment relied upon by the appellant, rendered by the Hon'ble Federal Constitutional Court, does not deal with or extend to cases of civil servants who became incapacitated during service. He submits that the said judgment pertains specifically to cases arising out of death of a civil servant,

where rights were held to accrue to the legal heirs at the time of death. He argues that in the present case, father of the appellant was retired on medical grounds, therefore, no vested right accrued in his favour.

5. We have heard learned counsel for the parties at length and gone through the record with their able assistance.

6. After hearing learned counsel for the parties and going through the record, it has been observed that core controversy revolves around the effect of omission of Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, and whether such omission could divest the appellant of his right of appointment.

7. It is an admitted position that the father of the appellant was retired on medical grounds w.e.f. 15.09.2023. At that time, Rule 17-A of the Rules was very much operative, which expressly provided that in case a civil servant dies while in service or is declared invalidated/incapacitated, one of his children or spouse may be considered for appointment, subject to fulfillment of prescribed conditions. Thus, the triggering event for accrual of right under the Rule had already taken place well before its omission.

8. Hon'ble Federal Constitutional Court in the case titled "*The Province of Sindh v. Muhammad Rizwan Khan and others*" (referred supra) has elucidated that after accrual of a vested right, the subsequent processes of application or issuance of appointment letter are merely administrative in nature. Relevant portion is reproduced as under:-

"4. As noted above, petitioner is aggrieved of acceptance of writ petitions of the respondents by learned Sindh High Court. The controversy pertains to the fact that respondents are spouse/children of the deceased Sindh civil servants and sought appointments on the basis of Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 (the Rules). The Supreme Court of Pakistan vide judgment passed in case reported as General Post Office, Islamabad and others Vs. Muhammad Jalal (PLD 2024 SC 1276) struck down Rule 11-A ibid and petitioner now seeks benefit thereof on the basis that since the Rule is no longer in the field, no appointment can be made. The nub of the controversy is that at the time when the judgment of the Supreme Court of Pakistan supra was handed down, had the right accrued in favour of the respondents? In this regard, the relevant event which resulted in the accrual of the right, was the death of the civil servant. As and when the death of a civil servant takes place, one of the children and/or spouse acquires the right to be appointed in the civil service. The process of application and/or a formal appointment letter are administrative acts. Since right had accrued in favour of private respondents, hence judgment of the Supreme Court does not come in their way for appointment on deceased employee children/spouse quota. It is trite law that judgments of the Supreme Court operate prospectively and not retrospectively. Even otherwise, the Supreme Court in a subsequent decision, clarified that the judgment reported as PLD 2024 SC 1276 supra does not take away the accrued rights and/or set aside the past and close transaction. In view of above position of law, we do not find any legal infirmity in the reasoning handed down by the learned Sindh High Court, in the impugned judgment, warranting interference."

(emphasis supplied)

9. The contention of the learned Assistant Advocate General that the said judgment is confined only to cases of death and not applicable to cases of incapacitation is misconceived. A plain reading of Rule 17-A reveals that it places both situations, death as well as invalidation/incapacitation, on the same footing, treating

them as triggering events for entitlement of appointment. The principle laid down by the Hon'ble Court is that once a right accrues under the law prevailing at the relevant time, it cannot be defeated by a subsequent declaration or change in law. This principle is of general application and cannot be restricted to cases of death alone. Since Rule 17-A itself encompasses both contingencies, the benefit of the said judgment extends equally to cases of incapacitation.

10. In the present case, the right of the appellant crystallized on 15.09.2023, when his father was medically retired. The subsequent omission of Rule 17-A on 24.07.2024 could not retrospectively extinguish such right. The rejection of appellant's claim on the sole ground of omission of the Rule is, therefore, legally untenable. The learned Single Judge, while dismissing the writ petition, failed to appreciate the distinction between accrual of right and its subsequent enforcement, as well as the settled principle that accrued rights are protected from retrospective operation of law.

11. For the foregoing reasons, this appeal is ***allowed***. The impugned order dated 23.12.2024 passed by the learned Single Judge in Chambers, as well as order dated 15.12.2024 passed by respondent No.2, are *set aside*. The respondents are directed to consider the case of the appellant for appointment under Rule 17-A of the Rules, as it stood at the relevant time, strictly in accordance with law.

(MALIK WAQAR HAIDER AWAN)
JUDGE

(AHMAD NADEEM ARSHAD)
JUDGE

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