

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Justice Qazi Faez Isa, CJ  
Justice Muhammad Ali Mazhar  
Justice Musarrat Hilali

**CIVIL PETITION Nos.231 AND 183-K/2022**  
**AND CIVIL PETITION No.827 OF 2023**

[Against the Judgment dated 23.12.2021 passed by the High Court of Sindh, Circuit Court, Hyderabad in Constitutional Petition No. D-849 of 2021]

Ayaz and others (In CP.231/22)  
The Province of Sindh through its (In CP.183-K/22)  
Secretary Forest & Wildlife Department, Government  
of Sindh and others  
Abdul Aziz (In CP.827/23)

...Petitioners

**Versus**

Mustafa Saeed and others (In all cases)  
...Respondents

For the Petitioners: Mr. M. Aaqil Awan, Sr. ASC along with  
petitioners (In CPLA No.231/2022)

Syed Qamar Hussain Sabzwari, ASC  
(in CPLA No.827/2023)

Mr. Sabtain Mehmood, Addl. AG Sindh  
(in CPLA No.183-K/2022)

For the Govt. of Sindh &  
SPSC (in CPLA NO.231/2022 &  
827/2023)

Mr. Sabtain Mehmood, Addl. AG Sindh

Dr. A. Jabbar Kazi, Addl. Secy. Forest  
Mr. Hassan Akbar, AG. Sindh  
Mr. Fakhra Alam, Chief Secretary  
Mr. Ali Imran Baloch, Secy. Law  
Mr. M Yousaf Sr. Law Officer, SPSC  
Mr. M. Ishaque, Dy. Controller, SPSC  
(via video link from Karachi)

For Respondents No.1-5

Mr. Ghulam Sarwar Baloch, ASC  
Ms. Abida Parveen Channar, AOR  
(via video link from Karachi)  
(In CPLA No.231/2022)

For Respondents No.13:

Syed Qamar Hussain Sabzwari, ASC

Respondents No.7:

In person  
(via video link from Karachi)  
In CPLA No.183-K/2022)

Date of Hearing: 07.03.2024

### JUDGMENT

**Muhammad Ali Mazhar, J.** These Civil Petitions for leave to appeal are directed against the Judgment dated 23.12.2021, passed by the High Court of Sindh, Circuit Court, Hyderabad, in the Constitutional Petition No.D-849 of 2021.

2. The precise facts of the case are that the respondents No. 1 to 5 in all civil petitions for leave to appeal filed the Constitutional Petition in the High Court alleging, as petitioners, that they are performing duties as Range Forest Officers (BPS-16) in the Forest and Wildlife Department, Government of Sindh, for the last 4 to 6 years. The Sindh Public Service Commission ("SPSC") by means of consolidated Advertisement No.4/2020, published in the vernacular newspapers on 13.07.2020, invited applications for 2 vacant seats for the position of Assistant Conservator Forests (BPS-17) from the Urban areas. After publication of the advertisement, the SPSC issued a notification on 08.09.2020, whereby 2 posts of Assistant Conservator Forests (BPS-17) originally allocated to the Urban area was bifurcated as 1 Rural and 1 Urban area post and the upper age limit relaxation was also extended up to 15 years, except in Police and Competitive Services. Furthermore, the 2 posts originally allocated were also raised to 7 posts without re-advertisement. The respondents No.1 to 5 (petitioners before the High Court) applied and appeared in the written test and according to the result announced by the SPSC through Press Release dated 05.04.2021, they were declared successful and were called upon to attend *viva voce*. The petitioners before the High Court pleaded that they confidently answered all the questions asked by the interview Board, but they were declared failed *vide* Press Release dated 13.04.2021 and only 7 candidates were declared successful and recommended for appointment. The said petitioners in the High Court identified various lapses in the recruitment process undertaken by the SPSC and prayed in the writ petition that the appointment to the post of Assistant Conservator of Forests of respondents No.8 to 18 arrayed in the memo of petition was in violation of the law and the prescribed procedure. They also prayed for departmental inquiry against the appointment of the aforesaid persons which was allegedly made on the

basis of nepotism, departure from the recruitment process, and in contravention of the original terms and conditions published in the advertisement for inviting applications for the jobs.

3. The learned counsel for the petitioners in CPLA No.231/2022, argued that the candidates who filed the petition before the High Court, though participated in the impugned selection process, were declared failed in the interview. It was further averred that the whole petition before the High Court was based on assumptions and misconceived facts, but the learned High Court, without advert to the legal and factual position, held that the entire exercise undertaken by the SPSC was not sustainable merely for the reason that the last date of submission of applications was 20.08.2020 and the Addendum was issued on 08.09.2020 by changing the nature of quota of the post as well as relaxing the upper age limit. It was further contended that the findings of the learned High Court with regard to the Addendum dated 08.09.2020 were unlawful for the reason that though the last date was 20.08.2020 but this was extended to 25.09.2020. As far as the age relaxation is concerned, the learned counsel argued that it is the prerogative of the competent authority under Rule 12 (2) of the Sindh Civil Servant (Appointment, Promotion & Transfer) Rules, 1974 ("APT Rules"), which could not be challenged by the said petitioners. He further contended that prior to the Notification dated 27.07.2020, the earlier Notification for the said purpose was issued on 14.09.2018 and since the advertisement was made on 18.07.2020, therefore, a fresh Notification was issued on 27.07.2020, whereby the Government of Sindh was pleased to grant an age relaxation of up to a maximum of 15 years in the upper age limit for all applicants applying for the vacancies in the departments of the government of Sindh, except the Police Service post and the post to be filled through the Combined Competitive Examination by the SPSC. The learned counsel further argued that Chapter 11 of the Recruitment Management Regulations, 2006 ("2006 Regulations"), lays down the relevant Regulations with reference to the examinations which are called the Combined Competitive Examination and the Competitive Examination and according to them, the advertisement for the selection in question was Competitive Examination and not Combined Competitive Examination. However, the learned counsel for the petitioners admitted that the change in the nature of quota for the 2 original posts meant for

Assistant Conservator Forest, urban was a *bona fide* mistake on part of the Administrative Department, which was subsequently realized and corrected *vide* letter dated 28.07.2020, as the earlier requisition was silent about the quota position of Rural and Urban areas. He further argued that if any clerical or accidental mistake occurs in any departmental correspondence, the concerned Department has the power and jurisdiction to rectify it. As far as the increase in the number of posts is concerned, the learned counsel argued that the Administrative Department is competent to give requisitions of additional vacancies in the running selection process under Part IV of the 2006 Regulations.

4. The learned counsel for the petitioner, in CPLA No.827/2023, argued that the learned High Court wrongly assumed that the petitioner could not meet the minimum passing marks threshold; in fact, he was recommended as standing next to the last qualified candidate on the merit list. He further argued that the learned High Court failed to consider that by way of an Addendum dated 08.09.2020, the last date to apply was extended from 20.08.2020 to 25.09.2020 which was beneficial to all participants, and the grant of age relaxation is permissible under Rule 12 (2) of the APT Rules. It was further averred that neither the advertisement of such selection for a stipendiary course was meant for the general public nor did it cause any prejudice to any of the petitioners who filed the writ petition before the High Court.

5. The learned Additional Advocate General, Sindh ("AAG"), while arguing CPLA No.183-K/2022, filed by the Government of Sindh against the impugned judgment of the High Court, and defending the Government of Sindh and SPSC in the remaining two Civil Petitions, argued that the 15 years' age relaxation was based on the rationale that no major appointments were made in the province for over a decade prior to 2008, which caused many people to exceed the prescribed age limit, and that granting an umbrella of age relaxation was aimed to provide opportunities to eligible candidates who otherwise could not have applied. As far as the role of SPSC in the disputed recruitment process is concerned, the learned AAG argued that the changes were made after the advertisement to rectify the discrepancy regarding the Urban and Rural quota, as pointed out by

the requisitioning agency in its request *vide* letter dated 28.07.2020 which suggested maintaining both quotas. Consequently, one post was designated as Urban and one as Rural. He further argued that though a fresh advertisement was not published but an Addendum was posted on the website of SPSC and the date of submission of application was extended. It was further contended that the requisition from the Forest & Wildlife Department for additional vacancies, increasing the number of posts from 2 to 7, was received by the Commission well before the date of the written examination; hence, no fresh advertisement was required to be published for general public information.

6. The Chief Secretary, Sindh, filed a concise statement C.M.A No.2581/20024 on 25.03.2024, pursuant to the Order dated 07.03.2024, passed by this Court. In the concise statement, he categorically acknowledged that the appointment of candidates up to the age of 45 years would leave only 15 years of public service until their retirement, placing a heavy burden on the government exchequer to manage a substantial pensionary portfolio. The Chief Secretary, Sindh informed us that suggestions have been forwarded to the Government of Sindh that the age relaxation of 15 years must be discontinued and the existing Rule 12 (2) of the APT Rules should be omitted. He further avowed that proposals have been submitted to the Provincial Cabinet, Government of Sindh, to withdraw the notification granting an age relaxation of up to 15 years; omit Rule 12 (2) of the APT Rules; constitute a Committee for furnishing recommendations regarding the fixation of age relaxation; and frame the "Sindh Civil Servants (Relaxation of Upper Age Limit) Rules, 2024", pursuant to Section 26 of the Sindh Civil Servants Act, 1973. In this regard, a Summary was moved to the Chief Minister, Sindh, on 20.03.2024; the newly appointed Provincial Cabinet took up the agenda, discussed the matter, and decided that a Committee of Cabinet Members, the Law Minister, and the Advocate General, Sindh, including the Regulation Wing of the Services General Administration and Coordination Department ("SGA&CD"), will examine the proposal and submit its recommendations along with a draft of the Sindh Civil Servants (Relaxation of Upper Age Limit) Rules, 2024, before the Cabinet for approval and further proceedings.

7. The learned counsel for the respondents (petitioners before the High Court) argued that after the completion of codal formalities, written examination, and the announcement of result, the number of vacancies were raised from 2 to 7 without any advertisement, which action was against the dictum laid down by this Court in the Suo Motu Action Regarding Eligibility of Chairman and Members of Sindh Public Service Commission etc. (2017 SCMR 637). He further argued that various illegalities were committed by the SPSC in the recruitment process, even proper marks of the written tests and the result of interviews were not publically displayed, but only the roll numbers of the successful candidates were displayed in the place of marks, which shows that the selection was made on the basis of nepotism. He further alleged that the candidate Ahmed Din S/O Jamaluddin Ujjan is a close relative of the Deputy Controller, SPSC; Ayaz Ali S/O Muhammad Usman has close nexus with the Forest Minister; Muhammad Ali Shah S/O Syed Shafi Muhammad is the son of the Ex-Secretary of the SPSC; and Altaf Ahmed S/O Imamuddin is the nephew of Abdul Jabbar Qazi, who is the Chief Conservator of Forests. He further argued that despite specifically mentioning the relationship of certain candidates with high-ranking officials of the SPSC and other influential individuals but no denial was made by the SPSC or the candidates before the High Court.

8. Heard the arguments. It is an admitted position that the SPSC invited applications only for 2 posts of Assistant Conservator of Forest (BPS-17) on Urban quota, *vide* advertisement No.04/2020 dated 13.07.2020 and the last date of submitting applications was 20.08.2020. However, on 08.09.2020, an Addendum was issued which altered the complexion of the recruitment process for the 2 posts originally announced for urban candidates. It was modified and bifurcated, with 1 post allocated to Urban and 1 to Rural, without re-advertising the 1 post dedicated to the Rural area. Not only was the original condition incorporated in the advertisement modified, but at the same time, no opportunity was afforded to the prospective candidates to apply for the 1 post dedicated to the Rural area which they could not apply for in terms of the original advertisement notifying only 2 posts for Urban areas. Another misstep was increasing the numbers of vacant posts from 2 to 7. Again, in the original

advertisement, only 2 posts were announced, but departing from the original conditions, the number of posts were increased without re-advertising. Furthermore, once the cutoff date for applications was fixed as 20.08.2020 for the general public, how was the deadline extended to 25.09.2020, through an Addendum dated 08.09.2020, without publishing any advertisement or re-advertisement in continuation of the original advertisement? It is also a matter of record that one candidate, Syed Muhammad Ali Shah, showed his incapacity to join the M.Sc. (Forestry) Course, 2020-22, due to some personal reasons and in his place, the Forest Department requested the SPSC to recommend the candidate who was next on the merit list but could not be considered on account of non-availability of the seat earlier. Subsequently, the SPSC conveyed the name of Abdul Aziz S/O Shah Murad from the waiting list for appointment, although a waiting list can only be maintained for a limited time in exceptional circumstances and if permitted by the rules and regulations. Under normal circumstances, if a candidate leaves after joining, the post must be re-advertised for open competition and to select the best candidate on merit. The petitioners also lodged their grievance before the High Court that the marks of the written test and interview were not displayed publically but only roll numbers were displayed in the place of marks but again these allegations have not been denied by SPSC.

9. The SPSC, in exercise of powers conferred by Section 13 of the Sindh Public Service Commission Act, 2022, framed the Sindh Public Service Commission (Recruitment Management) Regulations, 2023, and *vide* Regulation 163, the 2006 Regulations stood superseded, but for the purpose of this case, the 2006 Regulations are relevant which provides in Regulation 0358 that after the acceptance of Additional Vacancies, an advertisement/amendment to the previous advertisement shall be issued for re-advertising the increase in the number of posts and inviting fresh applications, while Regulation 0359 emphasizes on the eligibility of candidates to apply after re-advertisement and clarifies that the candidates who had already applied in response to the original advertisement will not be required to apply again and candidates who were found to be underage in response to the original advertisement will be eligible provided they attain the prescribed lower age limit on the closing date of the re-advertised additional vacancy(s). Regulation 0413 is germane to the

change of closing date for receipt of applications and provides, in clear terms, that unless otherwise altered and notified, the closing date for receipt of applications from the candidates shall be as declared in the original advertisement. The niceties of the aforesaid regulations made it obligatory that upon the acceptance of additional vacancies or increase in the number of posts, the said posts should have been re-advertised for inviting fresh applications, and the change of the closing date for the receipt of applications could not be altered unless notified, which again implies that the extension in the closing date should also be advertised for the general public who could not apply within the original timeline, but the SPSC failed to follow its own Regulations diligently.

10. The purpose of holding any examination by the SPSC is to select and choose the most deserving and competent candidates. The wrong selection of "blue-eyed" candidates, based on nepotism, favoritism, or external pressures, leads to chaos and turmoil in the civil service structure, creating unrest and discontent among civil servants with serious repercussions. In all fairness, merit should be the sole criterion in the selection process, as it is an integral part of good governance. A lack of transparency or preferential treatment of undeserving candidates in the appointment process amounts to a brutal murder of merit and excellence. The appointment process must be transparent, ensuring that only competent individuals are allowed to serve, rather than those who are incompetent and unskilled. The menace of favoritism, nepotism, and preferential treatment in the appointment process of civil servants is always considered pernicious and devastating. The utmost compelling advantage of transparency in recruitment is that it essentially ratifies and disseminates public confidence in the impartiality of the process and authenticates that the appointments are not manipulated or a sham. A transparent recruiting process should be marked by unambiguity, uprightness, trustworthiness, and evenhandedness. Honesty and integrity are the best means to magnetize talented individuals suited for the job, and an open-minded selection process should be based on objective criteria free from any extraneous considerations, while providing every candidate with a fair and equal opportunity to compete.



11. In the case of Munir Hussain Vs. Province of Sindh (2022 SCMR 650), this Court, while reiterating the dictum laid down in the case of Musa Wazir Vs. NWFP Public Service Commission (1993 SCMR 1124), held that "i) in matters of competitive examination held by Public Service Commissions all vacancies are required to be filled up in one go. Even if the filling up is staggered the competitive examination is one and has to be treated as one selection for the purpose of recruitment. ii) In posts remaining vacant on account of non-availability of suitable candidates, failure of the recommended candidates to occupy or falling vacant by reason of the qualified candidates quitting the posts after joining need to re-advertised and subjected to open competition; iii) The practice in the matter of recruitment/promotion, etc. must always be fair, transparent and open to competition in order to hire the best available human resource to foster, competence, excellence and efficiency in public service; and iv) Only in exceptional cases and provided the rules and regulations provide for waiting list of the qualified candidates who did not in the first place meet the merit, to be maintained for a limited time (maximum of three months) on the request of the department by the relevant Public Service Commission or the department (in case recruitment is made by the department under the law, rules and regulations through an open and transparent recruitment process involving test and interview) in order to ensure that in case of an urgent need to fill the vacancies, the qualified candidates may be recommended and offered the available seats from such "waiting list" strictly following the rule of merit. However, it is re-emphasized that such practice must always be limited to exceptional circumstances and provided the laws, rules and regulations of the Public Service Commissions and/or the concerned departments so permit".

12. In the case of Chief Secretary Punjab Vs. Abdul Raof Dasti (2006 SCMR 1876), this Court held that choosing persons for public service is not just providing a job and consequent livelihood to the one in need, but is a sacred trust to be discharged, by the ones charged with it, honestly, fairly, in a just and transparent manner, and in the best interest of the public. The individuals so selected are to be paid not out of the private pockets of the ones appointing them but by the people through the public exchequer. Therefore, we must keep in mind that not selecting the best as public servants is a gross breach of the

public trust and an offence against the public who has the right to be served by the best. It is also a blatant violation of the rights of those who may be available for the same posts and whose rights to the said posts are denied to them by appointing unqualified or even less qualified individuals. Such a practice and conduct is highly unjust and spreads a message from the ones in authority that might was right and not *vice versa*; such a message gradually gets permeated to the grassroots level, leading to a society that has no respect for law, justice, and fair play. Likewise, this Court held in the case of Government of KPK Vs. Bacha Alam Khan (2022 SCMR 718) that the purpose of establishing the Public Service Commission is to ensure that the recruitment process is see-through and transparent and only competent persons are given way to serve rather than incompetent and unskillful persons.

13. The judgment rendered by this Court in Suo Motu action regarding eligibility of Chairman and Members of Sindh Public Service Commission etc. (2017 SCMR 637) accentuates that the Commission and the Government are obliged to ensure complete transparency in the process of selection and appointment respectively and anything less is unacceptable. If qualified and competent individuals are appointed, their performance and work would be far superior to the inept allowed in through the back door of nepotism and/or corruption. Those who have earned the privilege yearn to serve the nation and the people, unlike those whose loadstar is nepotism or corruption. Since tax payers are paying dearly to be served by the best, they are entitled to get the best. If the incompetent or the corrupt ingratiate themselves into the civil service, citizens are deprived of their due. The hapless taxpayers foot a never ending bill which includes the salaries and other emoluments of civil servants till they retire, and after their retirement, their pensions and other benefits. And they are denied the benefit of competent and honest individuals. Appointments which disregard merit perpetuate bad governance, and drain the public exchequer; such appointments also erode the credibility of the Commission and the Government. The performance of the Government is also adversely affected, the consequences of which is borne by the public. Those given the responsibility to select the best candidates must acquit themselves of the trust reposed in them to the best of their ability and, needless to state, without any fear or favour. In the

same judgment, various other directions were issued, but in the present context, the relevant directions are that the marks of the written tests should be publicly displayed on the Commission's website, on the notice board in its premises, and in Urdu, English, and Sindhi newspapers; disclosure should be made of the marks obtained in each subject as well as the cumulative total against the candidates' roll numbers; the results of the interview should be displayed in the same manner as mentioned with respect to written tests; and candidates should be selected for all the advertised posts, unless they don't pass the written tests and the interview.

14. According to the message uploaded on the SPSC website ([spsc.gos.pk](http://spsc.gos.pk)), the hallmark is "Excellence driven by Passion!" and their paramount aim is to rejuvenate the perception and image of the SPSC by leaving no stone unturned in restoring people's confidence in its functioning, ensuring transparency and meritocracy in making recommendations to the government and, above all, fairness and impartiality in conducting the recruitment process. The message further articulates that the SPSC is geared up to uphold its ethics and its core values (Professionalism, Teamwork, Confidentiality, and Innovation) by strictly adhering to good management practices and responsive services to the people of Sindh and that it believes in strengthening the capacity of human resource to meet the daunting challenges of modern days through extensive trainings, modern technology, and equipping their professionals with quantitative/qualitative management tools. At this juncture, we are reminded of the well-known aphorism that "actions speak louder than words" along with another turn of phrase that "well done is better than well said". In our considered view, the learned High Court has minutely considered all relevant facts of the recruitment process and we have also noted various illegalities and irregularities, including the allegations of a close nexus of certain candidates with high-ranking government officials, due to which preferential treatment and favoritism was allegedly proffered by the SPSC. After an overall assessment of the recruitment process, we are not convinced to cause any interference in the judgment of the learned High Court declaring the recruitment process null and void with the directions to re-advertise the posts afresh and allow all interested candidates to participate in the competitive process.

15. Now, we would also like to take up the issue of an unrealistic age relaxation accorded in the upper age limit *vide* Addendum dated 08.09.2020, whereby it was notified that the age relaxation in the upper age limit for vacancies in all Departments is subject to Policy/Notification of the Government of Sindh. Furthermore, it was communicated in the same Addendum that a general age relaxation of up to 15 years in the upper age limit applies to vacancies in all the departments of the Government of Sindh. If we look into this Addendum *vis-à-vis* sub-rule (1) of Rule 12 of the APT Rules, it articulates that a candidate for appointment by initial recruitment must possess the relevant educational qualifications and experience and be within the age limit laid down for that appointment. While in sub-rule (2) of the same Rule, it is provided that the age limit laid down for appointment to the posts mentioned in column 2 of the table below may be relaxed up to the extent shown in columns 3, 4 and 5 thereof by the authorities respectively specified in the said columns. The Table referred to in this Rule expounds the post and basic pay scale in column 2, while in column 3 to 6 different age relaxation periods are mentioned ranging from 1 year, 3 years, 5 years and up to 10 years. Now the maximum upper age relaxation of 10 years mentioned in the aforesaid Rule has been modified and extended up to 15 years with retrospective effect pursuant to the Notification dated 27.07.2020, issued by the SGA&CD, Government of Sindh, which endorsed that notwithstanding the contents of the table given under Rule-12 (2) of the APT Rules, the Government of Sindh is pleased to allow relaxation up to a maximum of 15 years in the upper age limit to all the applicants applying for the vacancies in the departments of Government of Sindh (except Police Service and the posts to be filed through Combined Competitive Examination by the SPSC) during the period from 1st July, 2020 to 30<sup>th</sup> June, 2022. If we look into the aforesaid notification approving this huge relaxation in the upper age limit in juxtaposition with Regulation 0612 of the 2006 Regulations, it clarifies that the Government of Sindh could only relax the age of eligible candidates at its discretion through an Age Relaxation Order which could be issued collectively or specifically for any candidate. The powers to authorize age relaxation for up to 2 years was vested in the Secretary of the concerned department while the Chief Secretary was authorized to accord age relaxation for up to 5 years only which is now

raised up to 15 years and even in the APT Rules, the maximum age relaxation limit was 10 years which was by itself highly unjustified and excessive, and rather than curtailing this period by setting a well thought-out benchmark and being mindful of the norms of reasonableness and proportionality, the Government of Sindh, without any justifiable rhyme or reason, extended the age relaxation up to 15 years.

16. In the original advertisement, whereby the recruitment process was commenced, the age limit for the post of Assistant Conservator of Forest was minimum 21 years and maximum 30 years. On judicial notice of an unstructured exercise of discretion extending a huge benefit of upper age relaxation of up to 15 years, the Chief Secretary categorically admitted the anomaly but also placed an irrational justification that since no major appointments were made in over a decade, this benefit was, thus, accorded. Nobody had stopped the government from initiating the recruitment process through the SPSC in line with the requirement of human resource and if, for any reason, the Government of Sindh discontinued or banned the recruitment, then it does not give license to exercise unbridled discretion in granting age relaxations beyond logic. In the context of the recruitment in issue, the maximum age was 30 years; if we add 15 years more, then a person, if selected for the job, will join his duty under the age of 45 years and will retire upon attaining the age of 60 years. Just on a 15 years' tenure of service, he will be entitled to claim huge pensionary benefits, including other retiring benefits, which is also discriminatory to those employees who gave their blood and sweat, and toiled and served the government for more than 25 to 30 years and then became entitled to the pensionary and other retirement benefits. The Chief Secretary rightly avowed in his concise statement that 15 years' public service till retirement will entail a heavy burden on the government exchequer to manage substantial pensionary benefits, and to avoid and control such financial burden, he has already forwarded proposals to the Provincial Cabinet to withdraw the Notification, omit Rule 12 (2) of the APT Rules, and constitute a Committee for furnishing recommendations and submit the draft of the Sindh Civil Servants (Relaxation of Upper Age Limit) Rules, 2024, for the approval of Cabinet.

17. Discretion generally means selecting from among available options or having the freedom of choice. However, in administrative law, it refers to the ability to make administrative decisions, keeping in view the law and established rules, rather than acting on individual whims or caprices. The Government functionaries, while exercising discretionary powers, even if conferred upon them by law and rules, must observe certain norms to advance the cause of justice and should not exercise unbridled discretion or whimsical use of powers, rather it should be exercised keeping in view the principles of justice, equity, good conscious, and fairness with open and unbiased considerations. Lord Denning expressed, on the exercise of discretionary authority in his book "The Closing Chapter", while relying on a judgment of the Court of Appeals of England & Wales (1948 1 KB 223, 234) authored by Lord Greene (Master of the Rolls), that "if a public authority is entrusted, as part of its public law function with the exercise of a discretion, it must take into account all relevant considerations. It must not be influenced by any irrelevant consideration. And its discretion must be exercised reasonable in this sense, that it must not be so unreasonable that no reasonable authority could have reached it". In our view, while examining the test of proportionality, the courts may overturn the exercise of discretionary powers if no judicious nexus is shown between the objective sought to be achieved and the means used to that end. The question of proportionality with reasonableness necessitates the Court to adjudicate whether the exercise of discretionary power was actually required and whether it was within the limit of the courses of action which could reasonably be followed and whether the decision-maker has accomplished the acceptable equilibrium. If the court considers it imbalanced or out of all proportion, then it may interfere and set aside the action. This Court, in the case of Independent Newspapers Corporation (Pvt.) Ltd. verses Chairman Fourth Wage Board (1993 SCMR 1533), held that where express statutory power is conferred upon a public functionary, it should not be pushed too far, for such conferment implies a restraint in operating that power, so as to exercise it justly and reasonably. Excessive use of lawful power is itself unlawful.

18. The touchstone of acceptable classification requires the fulfillment of two basic ingredients, namely that the classification must be

founded on an *intelligible differentia* which may judiciously distinguish persons or things that are grouped together from others left out of the group, and the *differentia* must have a logical and reasonable linkage with the object sought to be achieved. Under the sphere of judicial review, the Court may review the lawfulness of a decision or action made by a public body. The Court may invalidate laws, acts, and governmental actions that are incompatible with a higher authority. Though the power of judicial review of governmental policy is now well-settled, in which neither the court can act or represent as an appellate authority with the aim of scrutinizing the rightness or aptness of a policy nor may it act as an advisor to the executives on matters of policy which they are entitled to formulate, but this can be sought when a decision-maker fails to observe statutory procedures, misdirects itself in law, exercises a power wrongly, improperly purports to exercise a power that it does not have, or the policy decision was so unreasonable that no reasonable authority could ever have come to it [Ref: Federation of Pakistan Vs. Shuja Sharif (2023 SCMR 129) & Syed Azam Shah Vs. Federation of Pakistan (2022 SCMR 201)].

19. The gist of the judgment rendered by this Court in the Human Rights case titled Tariq Aziz-ud-Din and others (2011 PLC (C.S.) 1130), divulges that the action must be based on fair, open, and just consideration to decide matters more particularly when such powers are to be exercised on discretion. Actions which do not meet these threshold requirements are considered arbitrary and a misuse of power. All judicial, quasi-judicial, and administrative authorities must exercise power in a reasonable manner and also must ensure justice as per the spirit of law and instruments regarding exercise of discretion. Obligation to act fairly on the part of administrative authority has been evolved to ensure the rule of law and to prevent failure of justice. Object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind. Such objective can be achieved by following rules of justness, fairness and openness in consonance with the command of the Constitution of the Islamic Republic of Pakistan, 1973, enshrined in different Articles, including Articles 4 and 25. Good governance is largely dependent upon upright, honest, and strong bureaucracy particularly in a written Constitution wherein an

important role of implementation has been assigned to bureaucracy. Civil service is the backbone of administration, and the purity of administration, to a large extent, depends upon the purity of services. Such purity can be obtained only if promotions are made on merit in accordance with law and Constitution, without favoritism or nepotism. Institutions are destroyed if promotions/appointments are made in violation of law [Ref: Delhi Transport Corporation v. D.T.C. Mazdoor Congress (AIR 1991 SC 101) & Mansukhlal Vithaldas Chauhan v. State of Gujarat (1997(7) SCC 622)].

20. In the wake of above discussion, we do not find any justification to cause any interference in the impugned judgment. As a consequence thereof, the aforesaid Civil Petitions are dismissed and leave refused. The SPSC should re-advertise the posts in question afresh and allow all interested candidates to participate in the competitive process as directed by the learned High Court. As far as the age relaxation accorded in the upper age limit pursuant to the Notification SO-II (SGA&CD)5-64/2011, dated 27.07.2020, and the Addendum PSC/EXAM:(C.S)/2020/123, dated 08.09.2020, is concerned, the same are accordingly struck down and shall have no legal effect.

Chief Justice

Judge

Judge

**Announced in open Court**

On \_\_\_\_\_ at Islamabad

Khalid

Approved for reporting

Judge