

In the Federal Constitutional Court of Pakistan
(Appellate Jurisdiction)

Present:

Justice Aamer Farooq
Justice Syed Arshad Hussain Shah

C.P.L.A. No.15-P of 2023 & C.P.L.A 132-P/2023

(On appeal from judgment of Peshawar High Court, Mingora
Bench dated 24.11.2022 passed in Writ Petition No.885-M of 2021)

Government of Khyber Pakhtunkhwa through Secretary Elementary
& Secondary Education, Civil Secretariat, Peshawar and others (in
C.P. No.15-P of 2023)

Abdur Raqib & other (in C.P. No.132-P of 2023)

Petitioners

Versus

Abdur Raqib and others (in C.P. No.15-P of 2023)
The Secretary, Elementary & Secondary Education, Khyber
Pakhtunkhwa & others (in C.P. No.132-P of 2023)

Respondents

For the petitioners: Mr. Muzammil Khan, Addl. A.G. KP
(in C.P. No.15-P/2023)

For the petitioners: Nemo.
(in C.P. No.132-P/2023)

For the respondents: Nemo.
(in C.P. No.15-P/2023)

For the respondents: Mr. Muzammil Khan, Addl. A.G. KP
(in C.P. No.132-P/2023)

Date of hearing: 14.4.2026

Judgment

Syed Arshad Hussain Shah, J: By this single judgment we intend to dispose of both the captioned petitions, as common questions of law & facts are involved therein and they have arisen out of the same judgment, which is impugned before this Court. For the sake of ease, operative part of the impugned judgment is reproduced hereunder:-

“In view of the above discussion and exposition of law, we allow this writ petition and set aside the impugned orders dated 06.11.2020 and 06.10.2006 issued by respondent No.3, being illegal, unlawful,

and of no legal effect upon the rights of the petitioners. Consequently, the appointment orders of the petitioners dated 26.09.2006 and 29.03.2017 are restored. However, since during the intervening period petitioner No. 3, namely Hamza, has attained the age of superannuation, the impugned order, to the extent of cancellation of his appointment, is maintained.”

2. At the outset, we take up C.P.L.A. No. 132-P of 2023, filed by the employees seeking back benefits as well as reinstatement/appointment of petitioner No. 3 (before the High Court) namely Hamza, who, at the time of pronouncement of the impugned judgment, had already attained the age of superannuation. Today, despite issuance of notice for fixation of the petition, none has appeared on behalf of the petitioners. No intimation is received. Consequently, this petition is dismissed for non-prosecution.

3. Turning to C.P.L.A. No. 15-P of 2023, filed by the Government of Khyber Pakhtunkhwa, we have heard the learned Additional Advocate General, Khyber Pakhtunkhwa and perused the record with his able assistance. Suffice it to observe that the controversy involved in the present *lis* pertains to the appointments of respondents No. 1 to 5 as Naib Qasid, Mali, Chowkidar, Mali, and Bearer, respectively, at the Government Higher Secondary School Gardai, Bajaur, vide Office Endorsements dated 26.09.2006. Admittedly, the said school was constructed on the land donated *gratis* by M/s Muhammad Karim son of Faizullah and Ayub Khan son of Said Zarif. Prior to the respondents' joining their duties, one Abdul Khaliq (“complainant”) submitted a complaint before the Political Agent, Bajaur, asserting that as the school had been constructed on the land donated *gratis* by his family, he had a preference over the respondents for appointment as a Class-IV employee under the policy in vogue at the relevant time. Pursuant to the said complaint, the appointments of the respondents were initially held in abeyance and were subsequently withdrawn vide order dated 06.11.2020.

4. Aggrieved thereof, the respondents approached the High Court under Article 199 of the Constitution by way of filing Writ Petition No. 885-M of 2021, which was allowed, and the respondents were directed to be reinstated/appointed, except respondent No.5, namely Hamza, who had already attained the age of superannuation.

5. The learned High Court has relied upon a plethora of judgments of the superior judiciary in order to emphasize that appointments in the public sector must always be made strictly on merit, a principle with which there can be no cavil. It seems that the High Court was not adequately assisted, inasmuch as, the complainant submitted complaint seeking preference for appointment as Class-IV employee under the policy in vogue in the erstwhile North-West Frontier Province since 1962 or near about and not his appointment on merit. It is pertinent to mention here that through this policy, it had been the practice to elicit land grants *gratis* from individuals, B.D. Members or the village body of land-owners for construction/establishment or expansion of the schools, dispensaries or any other public welfare project on the condition that the donor of the land or his nominee was to be recruited as a Class IV employee, if there was vacancy or as soon as one became available. This policy or practice was somewhat formalized in a meeting presided over by the Minister for Education on 22.9.1987 and was so acted upon. Subsequently appointments made under this policy in different areas of KP (then NWFP) were challenged before the NWFP Service Tribunal ("Tribunal"). The Tribunal allowed the appeals and set aside the appointments made under the policy. Judgments of the Tribunal were called into question and ultimately the matter came up before a five-member bench of the Supreme Court of Pakistan in the case reported as 1993 SCMR 1287, whereby verdicts of the Tribunal were set aside, a number of appeals were allowed and appointments made under the policy were upheld.

6. It is a settled law that appointments within the public sector must be made strictly on merit, the learned High Court, *prima facie*, owing to inadequate assistance from the bar, appears to have overlooked the significant fact that the Government, as a matter of standing policy, incentivizes the *gratis* alienation of land for the construction and expansion of public welfare initiatives such as schools, dispensaries and tubewells etc. thereby alleviating the fiscal burden on the public exchequer. This policy enables the Government to minimize the costs and allocate resources towards other projects resulting in completion of a larger number of welfare projects.

Consequently, the said policy merits both appreciation and continued implementation.

7. In the light of the foregoing, it is held that where land is voluntarily alienated as a *gratis* grant for public welfare initiatives, including but not limited to schools, dispensaries, or tubewells etc., a preferential margin may lawfully be accorded to the donor or his nominee for appointment to a Class-IV position. Such preference shall of course depend upon the candidate meeting all prescribed criteria for eligibility, suitability, and fitness *at par* with other candidates.

8. Notwithstanding the complainant's failure to actively pursue or assert his claim for appointment to a Class-IV position, his entitlement and that of his nominee remains extant and protected under the said policy. However, keeping in view significant efflux of time since appointments of the respondents, we are not inclined to interfere with or unsettle the findings of the High Court to the extent of the respondents' appointments.

9. Accordingly, this petition stands disposed of in the above terms.

Judge

Judge

Islamabad

14th April, 2026

Approved for reporting

Riaz