

OFFICE OF THE
MILITARY ACCOUNTANT GENERAL

Kashmir Road, Rawalpindi Cantt

No. **951**/AN/704-AP/Misc

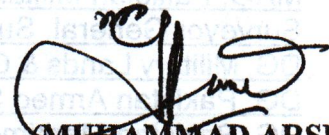
26th November, 2024

All Controllers
Including Dy. MAG

Subject: **CONTRACT APPOINTMENT UNDER MEDICAL INVALIDATION POLICY.**

Please find enclosed copy of Government of Pakistan, Cabinet Secretariat, Establishment Division, Islamabad O.M F. No.4-2/2020-CP-I dated 06-11-2024 alongwith its enclosures, on the above subject, received under Ministry of Defence u.o. No.8/22/Misc/D-18/2024 dated 19-11-2024 for information and compliance, please.

2. Please acknowledge receipt.


(MUHAMMAD ARSHAD)
Accounts Officer (AN-II)

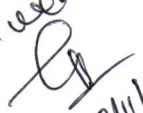
No. **261**/AN/704-AP/Misc dated **26/11/2024**.

Copy to:-

- (1) PS to MAG
- (2) APS to Dy. MAG
- (3) PA to AMAG (AN)
- (4) PA to AMAG (ME&A)
- (5) All Groups in Admin Sections
- (6) G Section (Local)
- (7) All Groups in AT Sections
- (8) Digital Library
- (9) M & E Section
- (10-14) Subject File


Accounts Officer (AN-II)

971 (Auto)
27/11/24

uploaded on website

29/11/24

OFFICE OF THE
GENERAL
GOVERNMENT OF PAKISTAN
MINISTRY OF DEFENCE
DEFENCE DIVISION



Subject: **CONTRACT APPOINTMENT UNDER MEDICAL INVALIDATION POLICY**

Kindly find enclosed herewith a copy of Establishment Division's O.M. F.No.4-2/2020-CP.1 dated 6th November, 2024, alongwith its enclosures, on the above subject, for information and compliance, please.

(Muhammad Haroon Alam)
Section Officer

MAG, Pakistan Military accounts Deptt, Rwp
Surveyor General, Survey of Pakistan, Rwp
DG, Military Lands & Cantonment Deptt, Rwp
DG, Pakistan Armed Services Board, Rwp
DG, Pakistan Maritime Security Agency, Kci
DG, FGEIs (C/G/) Directorate, Rwp

Dte Gen, ISI, Islamabad
Director (Admin) JSHQ, Chaklala, Rwp
SD Dte (SD-I), GHQ, Rawalpindi
Director (Admin), NHQ, Islamabad
Director (Admin), AHQ, Islamabad

Min of Def u.o. No.8/22/Misc/D-18/2024 dated 19th November, 2024

Copy for information to:

Snr. JS-VII, JS-I, JS-II, JS-IV, JS-V

DS (Army-C), DS (Coord), DS (Budget), Director (Legal)

APS to JS-III

Accounts Officer (AN-II)

- (1) PS to MAG
- (2) APS to Dte MAG
- (3) PA to AMAG
- (4) PA to AMAG (M)
- (5) All Groups in Admin Sections
- (6) G Section (Local)
- (7) All Groups in AT Sections
- (8) Digital Library
- (9) M & E Section
- (10-14) Subject File

Handwritten notes and stamps at the bottom right of the page, including a date stamp 27/11/24 and a signature.

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

Secretary

AS-1

F.No.4-2/2020-CP. I

Islamabad, the 06th November, 2024

OFFICE MEMORANDUM

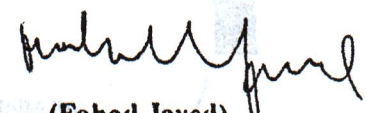
Subject: CONTRACT APPOINTMENT UNDER MEDICAL INVALIDATION POLICY

The undersigned is directed to refer to this Division's O.M.F.No. 9/8/2021/E-II, dated 16 Jan 2023 and to state that the restraining order dated 8.12.2022 issued by the Hon'ble Islamabad High Court (copy enclosed), passed in W.P. No. 1146/2022 (Mst. Fazilat Bibi vs Establishment Division and others), on the subject was circulated to all Ministries/Divisions/Departments for strict compliance. However, it has come to the notice of this Division that despite circulation of the said restraining order of the Court, certain Ministries/Divisions/Departments continued making contract appointment of the spouse/children of the civil servants under policy guidelines issued vide this Division's O.M No. 4/1/2005/CP-I dated 13.4.2005 (copy enclosed) without formal approval of the Prime Minister and in violation of the court order which is illegal and gross violation of the policy. This practice amounts to contempt of Court Orders.

2. Moreover, the honourable Supreme Court of Pakistan in the judgment dated 18-10-2024 passed in C.P. No. 3390 of 2021 (against the Order dated 13-04-2021 of Peshawar High Court, Peshawar passed in W.P.No. 4609-P of 2020) filed by General Post Office and others verses Muhammad Jalal has held that :-

"25... appointments without open advertisement, competition and merit, of the widow/widower, wife/husband or child of civil servants in different grades. Who die during service Or become permanently disabled/invalidated/incapacitated for further service and take retirement from service, are declared to be discriminatory and ultra vires Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution. The prescribed Federal and Provincial, authorities are directed to withdraw the same. However, it is clarified that the instant judgment shall not affect the appointments already made Of the widow/widower, wife/husband or child of deceased or retired civil servants. It is further clarified that this judgment shall not affect the policies, rules or compensation packages of the Federal and Provincial Governments for the benefit of the legal heirs of martyred personnel of the law enforcement agencies and of Civil servants who die on account of terrorist activities."

3. In order to implement the judgment of hon'able Supreme Court of Pakistan, this Division is in process of withdrawal of policy guidelines for contract appointment of spouse/child of the civil servants who become permanently disabled and takes retirement on medical ground issued vide this Division O.M No. 4/1/2005/CP-I dated 13.4.2005. However, in the meantime, the judgment of Supreme Court of Pakistan passed in C.P. No. 3390 of 2021 in W.P.No. 4609-P of 2020 is hereby circulated to all Ministries/Divisions/Departments for strict compliance.


(Fahad Javed)
Section Officer (CP-I)
051-9208610

All Ministries/Divisions/Departments
Islamabad.

3746, 1308/0-18
13/11/24

2426/PS(C)
12/11/24

3288 JS-IV
11/11/24

5254
11/11/24

9534/Bang
2-11-24

DS(A)
D/C
M/11
SP/12
M
12/11

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Government of Pakistan
Cabinet Secretariat
Establishment Division

No. 4/1/2005-CP-I

Islamabad, the 13th April, 2005

Office Memorandum

Subject:- CONTRACT APPOINTMENT.

The undersigned is directed to refer to Establishment Division's Office Memorandum No. 8/10/2000-CP.I 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 or 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".

Muhammad Hassan Khan Niazi
(Muhammad Hassan Khan Niazi)
Section Officer (CP.I)
Phone No. 9208610

All Ministries / Divisions /
Departments.

ORDER SHEET.

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.**

Writ Petition No.1146/2022

Mst. Fazilat Bibi & another,
Versus

The Directorate General Immigration & Passports, through its Director
General, Islamabad & others.

S. No. of order/proceedings	Date of order/Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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(06)	08.12.2022	Ch. Shafiqur Rehman, Advocate for the petitioners; Mr. Aqeel Akhtar Raja, Assistant Attorney General. Mr. Afzal Khan, DAD (Admn), on behalf of respondents No.1 & 2. Hafiz Muhammad Ishfaq, Deputy Secretary (CP-II) and Mr. Muhammad Arfan, Section Officer (Lit-V), Establishment Division. Ms. Tousif Zia, A.D (Admn) DG, Passport.
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The learned Assistant Attorney General states that the Prime Minister Assistance Package ("PM's Package") is being afforded to families of government employees who died in service, as advertised on 04.12.2015, and not under the office memorandum dated 13.04.2005 amended through office memorandum dated 17.04.2018.

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16 DEC 2022

16 DEC 2022
Court
Islamabad

He states that the august Supreme Court in the Government of Pakistan through Secretary Establishment Division, Islamabad vs. Muhammad Ismail and another (Civil Appeal No. 410 of 2020) has held that the office memorandums cannot be applied retrospectively

but are to be applied prospectively and consequently there is no infirmity with the manner in which the summary to appoint petitioner No.2 was rejected by the Prime Minister on 22.11.2021.

2. The learned counsel for the petitioner states that the judgment rendered by the august Supreme Court is distinguishable to the extent that in such case the employee in question died in service and the PM's Package, had not been put in place up until 13.06.2006. And in view of such facts the august Supreme Court held that the next-of-kin of the deceased employee were not entitled to the benefits under the PM's Package in question. He states that it is the petitioner's case that Establishment Division issued an office memorandum on 21.03.2000 where it had been held that in the event that a civil servant died during service the condition of open advertisement could be relaxed by the Chief Executive for purposes of appointment, on contract basis, of the widow or one child of the deceased to a post under BS-10 and below. He states that it is under this office memorandum, which was in place at the relevant time and placed no embargo on the age of the child of the deceased that the benefit was sought by the petitioner. He states that the embargo in

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16 DEC 2022
Establishment Division
Islamabad High Court
Islamabad

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(3)

W.P No. 1146/2022

question. (i.e. that the application for an appointment on contract basis by the next-of-kin which should be made within a period of one year) was introduced through office memorandum dated 13.04.2005. This O.M stated that the next-of-kin was to seek the contract employment benefit within a period of one year of the demise of the Civil Servant in question. And further that in case of a minor the said one year period would commence when the child attained the age of 18-year. He states that the office memorandum dated 17.04.2018 merely extended the period of one year applicable to a minor from the time that he/she attains the age of majority to the maximum age limit prescribed for an initial appointment to a civil post under the Relaxation of Upper Age Limit Rules, 1993. The learned counsel for the petitioner states that the manner in which the office memorandum dated 17.04.2018 is being given effect is discriminatory as it arbitrarily creates an entitlement for next-of-kin of some civil servants to apply under the PM's package till they reach the maximum age limit prescribed under the initial appointment to civil posts relaxation of Upper Age Limit Rules, 1993, with effect from 17.04.2018 but deny such facility to the next-of-kin of a civil servant who

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died even one day before the issuance of such office memorandum dated 17.04.2018.

3. It appears that the manner in which the PM's Package as well as contract employment under office memorandums dated 21.03.2000, 13.04.2005 and 17.04.2018 is being afforded is completely whimsical. The original purpose of affording a contractual job under the PM's Package to the next-of-kin of a deceased employee seems to have been to afford continued means of subsistence to the family of the deceased in the immediate aftermath of a demise, which purpose seems to have been lost. The Establishment Division and the Prime Minister's office appear to be acting in manner as if they are functioning in a Kingdom not governed by rules guided by requirements of fairness in treating citizens in an equal manner.

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10 DEC 2022

4. Let the Establishment Division file a detailed report providing a summary of all cases in which contractual employment has been afforded under the PM's Package as well as the aforementioned office memorandums dated 21.03.2022 and 13.04.2005 since the notification of office memorandum dated 17.04.2018. It *prima facie* appears that PM's Package in its very spirit is unconstitutional and in breach of Article 25 of the Constitution. As the manner in which it

has been implemented can afford certain benefits to the children of a Civil Servant almost two decades after the demise of such civil servant in relation to government jobs, even though at such time such citizens ought to compete fairly with other eligible citizens for government jobs. The offering of government jobs has to be in accordance with requirements of Article 4 read together with Articles 9, 18 and 25 of the Constitution by providing a level-playing-field to all citizens. Those in the higher echelons of the Establishment Division and the PM's office have no authority under the law and the Constitution to dispense state largesse at their whims. The Establishment Division and the PM's office are restrained from processing further cases for grant of contract employment under the PM's Package and the aforementioned O.Ms till the next date of hearing when the Establishment Division shall satisfy this Court that the provisions of such package have not been given effect in a discriminatory manner. As the matter involves interpretation of law and constitutionality of a government policy, let notice also be issued to the Attorney General's office under Order XXVIA of CPC.

5. Let the matter be fixed for 02.02.2023.
Let the Establishment Division file details of

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W.P No. 1146/2022

contractual jobs offered under the PM's Package,
since 17.04.2018 before such date.

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15 DEC 2022

(BASAR SATTAR)
JUDGE

Copy to
Islamabad High Court
Islamabad



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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

70/24 66
12853 ✓
12916 ✓
12952 ✓
12987 ✓
12986 ✓
13013 ✓
14118 ✓

Present:

Justice Qazi Faez Isa, CJ
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

Civil Petition No. 3390 of 2021

(On appeal against the order dated 13.04.2021 of the Peshawar High Court, Peshawar passed in W.P. No. 4509-P of 2020)

General Post Office, Islamabad & others

Petitioners

Versus

Muhammed Jalal

Respondent

For the petitioners:

Malik Javed Iqbal Wains, Addl.A.G.P.
Assisted by Mrs Maryam Rashid, AHC
Mr. Gulistaj Ahmed Khan, Senior Postmaster

For the Respondent:

Nemo

On Court Notice:

Mr. Khalid Ishaq, Advocate General, Punjab assisted by
Barrister Muhammad Mumtaz Ali, Addl.A.G., Pb
Mr. Saifullah, Addl.A.G., Sindh
Mr. Shah Faisal Ilyas, Addl.A.G., KPK
Mr. Muhammad Ayaz Swati, Addl.A.G., Balochistan

Date of Hearing:

26.09.2024

JUDGMENT

Naeem Akhtar Afghan, J. the respondent (herein), filed a Writ Petition in the Peshawar High Court for issuing directions to the petitioners (herein) to consider him for appointment against the quota reserved for the children of class-IV employees who retired on medical grounds. The respondent relied upon the Office Memorandum (OM) dated 13 April 2005¹ of the Establishment Division, Government of Pakistan (the Establishment Division) whereby the following paras were added to the Establishment division's OM dated 21 March 2000² which provided guidelines for contract appointments for a period of two years to civil posts under the Federal Government:

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

¹ OM No.4/1/2005-CP.1 dated 13 April 2005
² OM No.8/10/2000-CP.1 dated 21 March 2000

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Ms. Noreen Khalid
Sr. Court Associate
Supreme Court of Pakistan

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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.'

2. The Writ Petition was contested by the petitioners on the ground that the father of the respondent on 7 August 1996 availed of his retirement as Postman (BPS-4) on medical grounds, therefore, the OM dated 13 April 2005 cannot be applied retrospectively to appoint the respondent, who was the son of a retired civil servant.

3. The Writ Petition was disposed of by a Division Bench of the Peshawar High Court vide impugned order dated 13 April 2021 by issuing directions to the petitioners to appoint the respondent on contract basis in terms of OM dated 13 April 2005 (wrongly mentioned as notification in the impugned order) in accordance with the policy, notwithstanding that the OM dated 13 April 2005 could not be applied retrospectively to appoint the respondent as his father had retired from service on 7 August 1996, when at that time there was no policy for appointment of a child of a civil servant who dies during service or becomes permanently disabled during service and on this ground takes retirement from service.

4. The notice of this case issued to the respondent was received by his cousin who stated that the respondent has shifted abroad, but he did not disclose his address. Learned Additional Attorney-General ('AAG') stated that the respondent was not appointed by the petitioners as directed by the impugned order because he had shifted abroad.

5. During the hearing of this matter the following questions arose, which were noted in our order of 4 January 2024 as under:

(1) Whether the policy conforms with Article 25 and 27 of the Constitution of Islamic Republic of Pakistan insofar as it creates separate categories of persons who are to be given preference in appointment?

(2) Whether the Prime Minister of Pakistan has the power to relax rules and/or to issue the Policy?

6. To ascertain as to whether the policy accords with the Constitution of the Islamic Republic of Pakistan, 1973 ('the Constitution'), notices

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Ms. Nabeen Khalid
Sr. Court Associate
Supreme Court of Pakistan

were issued to the learned Attorney-General for Pakistan as well as to the learned Advocate-Generals of the Provinces under Order XXVII-A of the Code of Civil Procedure, 1908 (CPC).

7. Sub-section (1) of section 25 of the Civil Servants Act, 1973 (the Civil Servants Act) empowers the President of Pakistan (the President) or any person authorized by him in this behalf, to make necessary rules for carrying out the purposes of the Civil Servants Act. The President authorized the Prime Minister of Pakistan (PM) vide SRO No.S.R.O.120(1/98) dated 27 February 1998 to make necessary rules. There are similar provisions in the provincial laws. Sub-section (1) of section 23 of the Punjab Civil Servants Act, 1974 (the Punjab Civil Servants Act) empowers the Governor of Punjab or any person authorized by him in this behalf, to make necessary rules for carrying out the purposes of the Punjab Civil Servants Act. Sub-section (1) of section 26 of the Sindh Civil Servants Act, 1973 (the Sindh Civil Servants Act) empowers the Government of Sindh or any person authorized by it in this behalf, to make necessary rules for carrying out the purposes of the Sindh Civil Servants Act. Sub-rule (1) of rule 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (the Khyber Pakhtunkhwa Civil Servants Act) empowers the Governor of the Province or any person authorized by him in this behalf, to make necessary rules for carrying out the purposes of the Khyber Pakhtunkhwa Civil Servants Act. The Governor had authorized the Chief Minister (CM) Khyber Pakhtunkhwa to make necessary rules. Sub-rule (1) of Section 25 of the Balochistan Civil Servants Act, 1974 (the Balochistan Civil Servants Act) empowers the Government of Balochistan or any person authorized by it in this behalf, to make necessary rules for carrying out the purposes of the Balochistan Civil Servants Act.

8. The rules for carrying out the purposes of the relevant Civil Servants Acts have to be respectively made by the PM, the Governor of Punjab, the Government of Sindh, the CM Khyber Pakhtunkhwa and the Government of Balochistan. However, the laws and the rules made thereunder must conform with Article 25 of the Constitution, which guarantees equality of citizens and their entitlement to equal protection of law, and with Article 27 of the Constitution, which safeguards against discrimination in the

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Ms. Noreen Khalid
Sr. Court Associate
Supreme Court of Pakistan

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by the Establishment Division vide OM dated 23 December 2022¹⁰ with effect from 4 December 2015 whereby the provision of contract employment under the Package of 2015 was replaced with regular appointments with immediate effect and the services of all the contract employees appointed under the Package of 2000 and the Package of 2015, who were contractual employees were regularized with immediate effect.

12. The learned AAG conceded that appointments of a widow/widower/child of a civil servant who dies in service and those who become permanently disabled during service and takes retirement from service, either on contract or on regular basis, in different grades and without open advertisement was in violation of Articles 25 and 27 of the Constitution.

13. Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 existed in the Province to provide Government job to the widow/wife/child of a civil servant in BPS-1 to 11 who dies in service or is declared invalidated/incapacitated for further service; it is reproduced hereinbelow:

17.A. Notwithstanding anything contained in any rule to the contrary, whenever a civil servant dies while in service or is declared invalidated/incapacitated for further service, one of his unemployed children or his widow/wife may be employed by the Appointing Authority against a post to be filled under rules 16 and 17 for which he/she possesses the prescribed qualification and experience and such child or the widow/wife may be given 10 additional marks in the aggregate by the Public Service Commission or by the appropriate Selection Board or Committee if he/she otherwise qualifies in the test/examination and/or interview or in BS-7 and above.

Provided further that one child or widow/wife of a Government servant who dies while in service or is declared invalidated/incapacitated for further service shall be provided a job against posts in BS-1 to 5 and the posts of Junior Clerks (BS-7) in the department in which the deceased Government servant was working, without observance of formalities prescribed under the rules/procedure. Provided such child or the widow/wife is otherwise eligible for the post.

Provided further that only one child or widow or wife of an employee who dies during service or is declared invalidated or incapacitated for further service, if not otherwise eligible for the post, shall be appointed to a post in the department in which the Government servant was serving at the time of the death or the declaration, without observance of the procedural requirements prescribed for such appointment.

10 OM No. F. No. 8/23/2021-E-2 (pl) dated 23 December 2022

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Ms. Norben Khalid
Sr. Coun. Associate
Supreme Court of Pakistan

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14. Learned Advocate-General, Punjab informed that the policy for appointing one child/wife/widow in BPS-1 to BPS-11 (including the post of Patwari and Junior Clerk) of a civil servant who dies in service or is declared invalidated/incapacitated for further service in pursuance of the proviso to the above rule 17-A was discontinued with effect from 21 November 2023 vide notification dated 7 December 2023. Thereafter, vide notification dated 26 July 2024 rule 17-A was omitted. He further stated that the Government of Punjab has approved a Financial Assistance Package with effect from 22 February 2017 for the families of the civil servants who die while in service, with different rates of compensation for different pay scales and the rate of compensation has been revised from time to time. The Financial Assistance Package in the Province of Punjab does not contain any provision to provide a Government job, either on contract or regular basis, in any grade, to a child/wife/widow of a civil servant who dies in service or is declared invalidated/incapacitated for further service.

15. Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 provided Government jobs in BPS-1 to 11 to a child/spouse of a civil servant who dies in service or is declared invalidated/incapacitated for further service; it is reproduced hereinbelow:

Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, [spouse] (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity or incapacity of civil servant usually of the [Basic pay scale 1 to 11] in the Department where such civil servant was working:

Provided that such appointment shall be made after fulfillment of formalities as required in the recruitment rules and holding interview, for the post applied for:

Provided further that the cut of date shall be within two years of the death of the officer or official:-

[Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notifications dated 11.03.2008 and 17.07.2009 of these rules.]

Articles 25 and 27 of the Constitution, learned Additional Advocate-General, Sindh stated that the above rule has not been omitted by the Government of Sindh.

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Ms. Noreen Khalid
Dr. Court Associate
Supreme Court of Pakistan

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16. Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 provided for the appointment of one child or spouse to a post in BPS 1 to 10 of a civil servant who dies in service or is rendered incapacitated/invalidated permanently during service; it is reproduced hereinbelow:

Where a civil servant dies or is rendered incapacitated/invalidated permanently during service then notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant, or if the child has not attained the age prescribed for appointment in Government Service, the widow/wife of such civil servant, to a post in any of the Basic Pay Scales 1-10:

Provided that the child or the widow/wife as the case may be, possesses the minimum qualification prescribed for appointment to the post:

Provided further that if there are two widows/wives of the deceased civil servant, preference shall be given to the elder widow/wife.

Provided also that the appointment under this sub rule is subject to availability of a vacancy and if more than one vacancies in different pay scales are available at a time, and the child or the widow/wife, as the case may be, possesses the qualifications making him or her eligible for appointment in more than one post, he/she shall ordinarily be appointed to the post carrying higher pay scale.

While conceding that the above rule is discriminatory and violates Articles 25 and 27 of the Constitution, the learned Additional Advocate General of the Province stated that the same has not been omitted as yet.

17. Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 provided for the appointment of a child or spouse of a civil servant in BPS-1 to 15 who dies in service without observing the condition of open advertisement; it is reproduced hereinbelow:

Notwithstanding anything contained in any rule to the contrary, whenever a Civil Servant dies while in service, his/her spouse or a child may be employed by the appointing authority against a post in BPS-1 to 15 in the department in which deceased Government Servant was working, without observing the condition of open advertisement;

Provided that -

- (a) the spouse or child as the case may be, shall possess the qualification prescribed for the post; and
- (b) if the child of the deceased Government Servant is under-age, his name shall be included in the

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Ms. Noor Khan
Sr. Court Associate
Supreme Court of Pakistan

waiting list from the date of death of his/her Father or Mother. However he/she shall be considered for appointment after he/she attains the age prescribed for the post.'

Rule 12-A of the above Rules of 2009 provided for the appointment, without open advertisement, one child in BPS-1 and BPS-2 of a civil servant who, while serving in BPS-1 and 2, retires on superannuation or due to invalidation; it is reproduced hereinbelow:

Notwithstanding anything contained in any rule to the contrary, whenever a Government Servant in BPS-1 and BPS-2 retired on superannuation or due to invalidation, one of his/her children may be employed by the appointing authority against a post in BPS-1 and BPS-2 in the Department in which the retired Government Servant was working, without observing the condition of open advertisement;

Provided that -

- (a) the child possesses the qualification prescribed for the post; and
- (b) If the child of the retired Government Servant is under-age at the time of retirement, his name shall be included in the waiting list from the date of retirement/invalidation of his/her Father or Mother. However he/she shall be considered for appointment after he/she attains the age prescribed for the post.'

The learned Additional Advocate-General, Balochistan informed that vide notification dated 9 May 2023 rule 12-A had been omitted but that rule 12 still exists. He further stated that in the case of *PWD Employees Union Balochistan v. Secretary Communication and Works*¹¹ a Division Bench of the Balochistan High Court declared the said rule 12 to be discriminatory and *ultra vires* Articles 2A, 3, 4, 9, 18, 25 and 27 of the Constitution, but the judgment passed by the Balochistan High Court was held not sustainable by a three member Bench of this Court vide order dated 19 September 2022 passed in Civil Appeal Nos. 691 and others on the ground that the question of *vires* of rule 12 was not before the High Court and that it could not take *suo moto* notice of the same since it did not have *suo-moto* jurisdiction to take up the matters on its own accord as was held in the case of *Dr. Inran Khattak v. Ms. Sofia Waqar Khattak*¹².

12. The child of a Government Servant and the dependent children of a civil servant who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes

¹¹ 2015 PLC (C.S.) 1182

¹² 2014 SCMR 122

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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.

19. The Government and public sector employment cannot be allowed to be parceled out to the functionaries of the State. These jobs neither are nor can be made hereditary. The Constitution stipulates that equal employment and economic opportunities must be provided to all citizens. Economic justice, if we may add, is a component of social justice which focuses on creating equal opportunities for all within a society in all aspects.

20. Article 4 of the Constitution embodies the concept of equality before law, equal protection of law, right of individuals to be dealt with in accordance with law and saving the citizens from arbitrary/discriminatory laws and actions. It is the duty and obligation of the public functionaries and members of the Constitution to act in accordance with law.

21. Article 5(2) of the Constitution bounds everybody to obey the command of the Constitution. Every public functionary has to act in good faith, honestly and within the precinct of its power so that the persons concerned should be treated in accordance with the law as guaranteed by Article 4 of the Constitution, which include principles of natural justice, procedural fairness and procedural propriety. While discharging official functions every effort should be made to ensure that none is prevented because of unfair and discriminatory treatment.

22. Under Article 3 of the Constitution it is obligatory for the State to the fundamental principles, from each according to his ability to each according to his work. To achieve the object of good governance and to fulfil the obligation under Article 3 of the Constitution, transparency and

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merit in appointments in the service of Pakistan that includes government jobs must be adopted.

23. The appointment of a widow/widower, wife/husband or child of a civil servant in different grades in contract or regular basis, without open advertisement, competition and merit is also violative of Article 18 of the Constitution which provides that subject to such qualification, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. Appointments obstructing ordinary qualified citizens to compete for entering into the profession of the service of Pakistan in accordance with their ability and eligibility also violate this fundamental right, and if such appointments are made, they negate equality of opportunity, competition, merit and also defeat the object of good governance.

24. Good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily. This objective can be achieved by following the Constitution and the rules of justness, fairness and openness as enshrined in the above referred Articles of the Constitution.

25. Any law, policy or rule which is manifestly inconsistent with the Constitutional commands, retrogressive in nature and discriminatory in its effect on the citizens is subject to judicial review. In the case of *Government of Khyber Pakhtunkhwa through Secretary Agriculture v. Tahir Mushtaq and others*¹², while dismissing the claim of the son of a retired civil servant of the Agriculture Department of Khyber Pakhtunkhwa who sought appointment in DPS on the basis of employees' son quota policy, it was held by a four member Bench of this Court that:

The Constitution of the Islamic Republic of Pakistan prohibits discrimination as stated in Article 25 and further stipulates and entrenches the principle in respect of service of Pakistan in Article 27. In preferring the children of a government servant or reserving seats for them, offends the Constitution. The same also detracts from a merit-based system of employment. The taxpayers hard earned monies pay for the salaries, benefits and pensions of government servants. The people's interest lies in having the best person for the job, and not to suffer those who secure employment on the basis of a filial relationship. The stated instructions undermine transparency and good governance, therefore, the government of Khyber Pakhtunkhwa will be advised to withdraw the same.

For the above reasons, while granting leave, Civil Petition No. 3390 of 2021 is converted into an appeal and is allowed. The impugned order

¹² Civil Petition No.288-P of 2015 decided on 12 September 2024

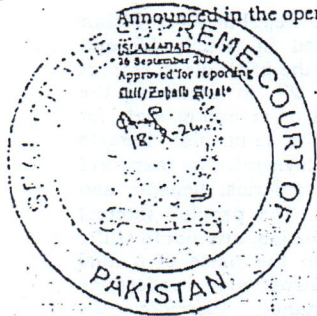
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dated 13 April 2021 passed by the Peshawar High Court in favour of the respondent is set aside. Policies, office memorandums, employment under the Package of the Prime Minister, the Financial Assistance Package, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, Rule 10 (4) of the Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989, Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 or any other rule, policy, memorandum, etc. whereunder appointments without open advertisement, competition and merit, of the widow/widower, wife/husband or child of civil servants in different grades, who die during service or become permanently disabled/invalidated/incapacitated for further service and take retirement from service, are declared to be discriminatory and ultra vires Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution. The prescribed Federal and Provincial authorities are directed to withdraw the same. However, it is clarified that the instant judgment shall not effect the appointments already made of the widow/widower, wife/husband or child of deceased or retired civil servants. It is further clarified that this judgment shall not affect the policies, rules or compensation packages of the Federal and Provincial Governments for the benefit of the legal heirs of martyred personnel of the law enforcement agencies and of civil servants who die on account of terrorist activities.

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Certified to be true copy
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 Cr. Court Associate
 Supreme Court of Pakistan

GR No. 12967/24 27.09.24 23 5.06 20.46 28.46
 Date of 21/10/24
 Date of 22/10/24
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