

IN THE LAHORE HIGH COURT AT MULTAN BENCH,
MULTAN.

JUDICIAL DEPARTMENT

Writ Petition No.4694 of 2010.

(Mst. Ubaida Maznoor Vs. Govt. of the Punjab through
Secretary Education (Schools), Lahore).

JUDGMENT

Date of Hearing. 23.06.2011.

Petitioner by Mr. Qamar-uz-Zaman Butt & Haji Tariq Aziz Khokhar
Advocates.

Respondents by Mr. Aurangzeb, Assistant Advocate General, Punjab.
Nos.1 to 4.

Mr. Abdus Salam Alvi, Advocate, for respondent No.5.

RAUF AHMAD SHEIKH, J.- In view of the conflicting judgments and divergent verdicts given in W.P.No.431 of 2005 decided at Rawalpindi Bench, Rawalpindi and W.P.No.4322 of 2010 decided at Multan Bench, Multan, of this Court, his Lordship the Hon'ble Chief Justice was pleased to constitute a larger Bench to consider if a married daughter of a deceased civil servant, who dies while in service or is declared invalidated or incapacitated for future service is entitled to the benefit of Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 as added through notification No.SORIII-2-42/92 dated 28.8.1993.

2. Through the instant writ petition under Article 199 of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the vires of letter No.SOR-III (S & GAD)3-4/2004 dated 14.03.2005 on the subject, which was issued by Government of the Punjab, Services & General Administration Department, Section (R-III) pursuant to judgment passed in

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W.P.No.431 of 2005 at Rawalpindi Bench, Rawalpindi, of this Court, providing therein that the married daughters of the deceased Government servants are not eligible for the benefit under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 as married daughters become the liability of their husbands after their marriage.

3. The facts, in brief, are that the petitioner Mst. Ubaida Manzoor was selected for the post of Elementary School Educator (BPS-9) on the basis of the recommendation made by the Selection Committee and was accordingly appointed vide appointment letter dated 20.11.2009 issued by the competent authority. She is daughter of Mian Manzoor Ahmad, who died during service so she was awarded 10 additional marks under Rule 17-A of the Rules *ibid*. She was posted in Government Girls Primary School, Qadirabad Chak No.279/TDA, Layyah and has been performing the duties since then. Mst. Shazia Saleem respondent No.5 preferred an appeal on the basis of letter dated 14.03.2005 of the S&GAD, Government of the Punjab, issued in view of judgment of this Court passed in W.P.No.431 of 2005 to the Chairman, Recruitment/Selection Committee, District Layyah and the DEO(W-EE) referred the matter to the EDO(E), Layyah, for probing into the matter on the basis of the contents of the application. It was contended that the said notification was illegal and ultra vires of the Act and the Rules framed there-under as under the Rules of Business, the amendment in the Rules could be promulgated only under the orders of the Rules Making Authority. She asserted that the action initiated by the District Coordination Officer/Chairman, Recruitment Committee, Education Department, Layyah, in respect of appointment order dated 20.11.2009 was illegal, ultra vires, without lawful jurisdiction and without lawful authority as



Additional Secretary is the Chairman of the Cell established for Redressal of the Complaints under the Contract Policy, 2004. She contended that she was selected on merits and was entitled to 10 additional marks under Rule 17-A (Appointment & Conditions of Service) Rules, 1974 and that merit list could not have been changed by withdrawing the same. It is urged that any instructions by the S&GAD in this regard is against the Rules so same is without force and has no effect.

4. In order to resolve the controversy, the relevant Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, is reproduced hereunder:-

"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, any one of his unemployed children, may be employed by the Appointing Authority against a post to be filled under rules 16 & 17 for which he/she possesses the prescribed qualifications and experience and such child may be given 10 additional marks in the aggregate by the Public Service Commission or by the appropriate Selection Board or Committee, provided he/she otherwise qualifies in the test/examination and/or interview for posts in BS-6 and above.

Provided further that one child 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 in the department in which the deceased Government servant was working, without observance of formalities prescribed under the rules/procedure. Provided such child is otherwise eligible for the post."

It is obvious that under the said Rule, one unemployed 'child' of the deceased or invalidated/incapacitated civil servant is given the benefit. The word 'child' has not been defined in the Rules so the ordinary dictionary meanings are to be adopted, while interpreting these rules. According to the Concise Oxford English Dictionary (Eleventh Revised Edition Edited by Catherine Soanes Angus Stevenson) 'child' means a 'son' or 'daughter'. While

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interpreting the statute or Rules made there-under, it is to be read by giving the words used by the Legislature or Rules Making Authority its ordinary, plain, simple and grammatical meanings. The meaning, which may render any portion of it, ineffective has to be avoided as the same would be against the settled principles of interpretation of statutes. The unambiguous language used in the principal or subordinate legislations should not be construed in a manner to defeat its object. Addition or subtraction in the words used by the Law Makers is not considered desirable while interpreting any statute or Rules made there-under as the assignment of different meanings may defeat the object for which the law is enacted. No doubt the Courts have the inherent powers to interpret the statutes but this power is to be exercised to discover the intent of the Legislature, without importing or borrowing words by unnecessarily applying the principle of reading in and reading down. In this respect reliance is placed on Syed Mukhtar Hussain Shah v. Mst. Saba Imtiaz and others (PLD 2011 SC 260), Qaiser Javed Malik v. Pervaiz Hameed and 2 others (2009 SCMR 846) and Muhammad Ijaz-ul-Haq v. Executive District Officer and others (2006 SCMR 989).

5. Under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, the benefit is to be extended to a child of a civil servant, who dies during service or is rendered invalidated/incapacitated during service. No distinction is made in the said Rule between a son and a daughter. Again, there is no distinction between the married or unmarried son/daughter. The clear and unambiguous object of this provision is to give relief to the bereaved family, who has been deprived of the bread earner. Discrimination on the basis of sex is violative

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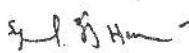
to the fundamental right of equality of citizens as bestowed under Article 25 of the Constitution of Islamic Republic of Pakistan, 1973. Even otherwise the narrower interpretation depriving a married daughter of such civil servant of the benefit given under Rule 17-A of the Rules *ibid* does not appeal to the rational mind as there may be an eventuality when the deceased leaves behind one married daughter and remaining minor children. If the daughter is not given the benefit then the family may not get any relief, which would be against the spirit of this benevolent provision of law, which appears to have been made for welfare of the bereaved families of the civil servants.

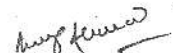
6. The contention of the learned counsel for respondent No.5 that Mst. Ubaida Manzoor is dependent on her husband so she is not entitled to the benefit under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, is without force because it is a matter of common knowledge that the daughters are more considerate towards their brothers and sisters after demise of either of the parents. Except the judgment passed at the Rawalpindi Bench, Rawalpindi, the constant view of this Court at different Benches had been that the married daughter of deceased or invalidated/incapacitated civil servant is entitled to the benefit under Rule 17-A of the Rules *ibid*. In this respect, the judgments reported as Nazia Naeem v. Executive District Officer (Education), Bahawalpur and another (KLR 2009 L & S. Cases 153) and Miss Iffat Tahirah v. Secretary Schools and others (2010 PLC (C.S.) 1404) are referred to in addition to the judgment passed in W.P.No.4322 of 2010. This wider interpretation appears to be in consonance with the object of the said Rule and in conformity with the intent of Law Makers.

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7. Learned AAG has stated that the Government of the Punjab vide notification No.SOR-III(S&GAD)2-10/2007-P dated 06.07.2010 has already clarified that the benefit under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, is admissible to the child irrespective of the marital status. This notification supersedes the impugned notification and reflects the true spirit of Rule 17-A of the Rules *ibid*.

8. For the reasons *supra*, the writ petition is accepted and it is declared that the benefit under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974, would be admissible to one unemployed child of a civil servant, who dies or is rendered invalidated/incapacitated during service irrespective of his/her marital status or sex. The impugned action initiated by respondents No.2 to 4 is without lawful foundation and ineffective *qua* the rights of the present petitioner.


(SYED EJAZ HUSSAIN SHAH)
JUDGE


(RAUF AHMAD SHEIKH)
JUDGE


(SYED IFTIKHAR HUSSAIN SHAH)
JUDGE

Approved for reporting.


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