

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.4182-P/2017

JUDGMENT

Date of hearing.....27.02-2018.....

Petitioner: (Shah Saud) By Mr. Alam Khan Adenzai,
Advocate.

Respondents: (Khyber Pakhtunkhwa Public Service
Commission through its Chairman & another)
By Mr. Rab Nawaz Khan, AAG.

QALANDAR ALI KHAN, J.- This single judgment in the instant writ petition shall also dispose of the connected writ petitions titled Amjid Ali..Vs..Government of Khyber Pakhtunkhwa and others (W.P No.4187-P/2017), Ajmal Khan Mohmand Advocate and two others..Vs..Public Service Commission Khyber Pakhtunkhwa through its Chairman and two others, (W.P No.4265-P/2017) and Aliya Naz..Vs..Government of Khyber Pakhtunkhwa and three others (W.P No.4286-P/2017), as all the four writ petitions pertain to the post of Civil Judges-cum-Judicial Magistrate (BPS-18) advertised by the Khyber Pakhtunkhwa Public Service Commission vide advertisement No.05/2017.

2. In the aforementioned first three writ petitions i.e. the instant writ petition, writ petition No.4187-P/2017 and No.8265-P/2017, the petitioners have challenged refusal of the Khyber Pakhtunkhwa Public Service Commission to grant them relaxation in upper age limit, whereas in the last mentioned writ petition (W.P No.4286-P/2017), the petitioner sought relaxation in the required two years experience at the bar.

3. The Khyber Pakhtunkhwa Public Service Commission advertised posts of Civil Judges-cum-Judicial Magistrate (BPS-18) in its advertisement No.05/2017 with the following qualification:-

Qualification: Should possess a degree in law from a recognized University entitling him/her to practice the profession of law or is a Barrister of England or Ireland or is a Member of the Faculty of Advocates of Scotland AND have practiced the profession of law in the High Court or in the Courts subordinate thereto, for a period not less than two (02) years after enrollment as an advocate.

Age Limit: 23 to 32 years.

Pay Scale: BPS-18

Eligibility: Both Sexes.”

All the petitioners in the connected four writ petitions applied for the posts, but candidature of petitioners in the first three above mentioned writ petitions was

rejected on the grounds of they being overage, whereas the petitioner in the last mentioned writ petition was declared falling short of the requisite two years experience at the bar. They, therefore, invoked the writ jurisdiction of this Court for declaring them eligible for the posts under the law and the relevant rules.

4. The Khyber Pakhtunkhwa Public Service Commission/respondent contested claim of petitioners in the first mentioned three writ petitions on the ground that they could avail only one benefit of relaxation in the upper age limit either under Rule-2 (2) of the Khyber Pakhtunkhwa Relaxation of Upper Age Limit Rules, 2008, or Rule 2 (1), in the light of advice tendered by Establishment and Administration Department vide letter dated 06.10.2017. The stance of the Khyber Pakhtunkhwa Public Service Commission, as gleaned from their comments in the writ petitions, is that having availed two years relaxation in upper age limit once granted to them by the High Court, they were not entitled to further age relaxation beyond two years already allowed to them. The Khyber Pakhtunkhwa Public Service Commission, however, lost sight of the fact that through an amendment vide Notification circulated on 15.09.2008, besides optimum relaxation of two years to Government servants, disabled persons and candidates from

backward area under Rule 2 (1) of the civil post (relaxation of upper age limit) Rules, 2008, Rule 2 (2) of ibid rules provided for 'exclusion' of two years of practice at the bar from the age of candidates for the posts of Civil Judges-cum-Judicial Magistrates/Illaqa Qazis.

5. No doubt, a candidate for the post of Civil Judge-cum-Judicial Magistrate/Illaqa Qazi is not entitled to two relaxations in the upper age limit under the ibid rules; but a maximum period of two years is to be **"excluded"** from the upper age limit of every candidate for the post who had practiced at the bar for a period not less than two years, under Rule 2 (2) under the said Rules, as the word **"excluded"** has altogether different connotations from the word **"relaxation"**. Therefore, a candidate, having already availed one relaxation, would still be entitled to the benefit of "exclusion" of two years of his practice at the bar from his/her age under Rule 2 (2) of the Rules, 2008. Consequently, the above mentioned first three connected writ petitions i.e. the instant writ petition, writ petition No.4187-P/2017 and No.4265-P/2017 are allowed in the terms mentioned hereinabove.

6. Adverting to the writ petition of Aliya Naz (W.P No.4286-P/2017), suffice it to say that in the absence of any provision either in the law or in the

rules relating to relaxation in the mandatory period of two years practice at the bar, she is not entitled to the relief of relaxation in the period of two years practice at the bar, therefore, neither her writ petition is maintainable nor she is entitled to the relief prayed for. Her writ petitioner is accordingly dismissed.

Announced
27-02-2018

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M.Iqbal

*(D.B) Hon'ble Mr. Justice Ikramullah Khan.
Hon'ble Mr. Justice Qalandar Ali Khan.*