

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.**

(Judicial Department)

W.P. No. 252-A/2024

Ayesha Maqsood.....(Petitioner)

vs

**KP Public Service Commission &
others.....(Respondents)**

Present: Mr. Rasheed ul Haq Qazi, Advocate for
the petitioner.

Sardar Basharat, AAG along with Mehtab
Khan representative of Public Service
Commission for respondents.

Date of hearing: 26.03.2024

JUDGMENT

MUHAMMAD FAHEEM WALLI, J.- This order is
directed to dispose of the instant petition filed by
the petitioner under Article 199 of Constitution of
Islamic Republic of Pakistan, 1973.

2. The Khyber Pakhtunkhwa Public
Service Commission (KPPSC), through
Advertisement No. 07/2021, advertised 81
vacancies of Headmistress in Elementary &
Secondary Education Department. Petitioner

applied for her appointment against the vacant post from Zone-5. Accordingly, she was issued roll number, she appeared in written test and qualified the same but on 01.03.2023, she received online message regarding rejection of her candidature by mentioning reasons thereof as: “*you have not claimed B.Ed. in online application*”. Petitioner preferred appeal against the said message which was dismissed on 15.08.2023. Feeling aggrieved of such acts of the respondents and having no other alternate efficacious remedy, petitioner has approached this Court through constitutional petition in hand, with the prayer;

“Under the circumstances, it is respectfully prayed that the petitioner has made a good case on facts and grounds which is sufficient for indulgence of this Honourable Court, resultantly, after acceptance of declarations A to C at the title of the petition, the respondents No. 1 to 4 be directed to allow the petitioner to participate in the interview process which is presently in motion, followed by further process of recommendation of selection for the seat of Headmistress BPS-17 Elementary and Secondary Education Department figuring at Serial No. 02 of the

advertisement No. 7/2021 published online on 07.06.2021 and the online letter dated 15.08.2023 wherein the reason for not calling the petitioner for interview that she had not claimed B.Ed. in online application be graciously set aside being misconceived, mala fide, and illegal.”

3. Respondents were put on notice and their comments were sought. The respondents, while filing their para-wise comments, have prayed for dismissal of instant petition on the ground that matter in controversy stands already resolved by this court as well as the honourable apex Court.

4. Arguments of learned counsel for the parties were heard at length and record has been sifted with their valuable assistance.

5. Perusal of record revealed that respondents published eighty-one (81) vacancies of Headmistress (BPS-17) in Elementary & Secondary Education Department through advertisement No. 07/2021 dated 07.06.2021. As per the advertisement, the requisite qualification for applying against the subject post was:

Qualification: *Master Degree with B.Ed, Med, MA (Education) or*

equivalent qualification from a recognized University and Five (05) years Teaching Experience in High/Middle Schools owned or recognized by the Government.

In response to the advertisement, petitioner applied through online application. She was issued roll number and called for initial test. According to petitioner, she qualified the initial written test, but later her candidature was rejected on the ground that she had not claimed B.Ed. in her online application.

6. The respondents, in their comments as well as arguments, questioned the maintainability of this petition on the ground that the controversy involved in this petition, stands already resolved and in this respect produced copies of judgments passed in WP No. 3539-P/2023, 2482-P/2012, 4273-P/2020, 2919-P/2023.1415-M/2022, 115-P/2021, by this Court as well as copies of judgments passed by the august Supreme Court of Pakistan in Civil Petition No. 511-P/2013 and Civil Petition No. 115-P/2021.

7. The controversy involved in the instant petition pertains to the punitive clause contained in Regulation 8(a) of the Khyber Pakhtunkhwa Public Service Commission Regulations, 2017 which reads;

*“8. (a) Application by an eligible candidate be submitted online on prescribed form given at the website of Khyber Pakhtunkhwa Public Service Commission on or before the closing date of advertisement. The candidates shall have to deposit prescribed application fee as per procedure given in the advertisement on or before the closing date of advertisement. **Incomplete application or application with incorrect information shall be rejected.**”*

8. The last sentence of the reproduced regulation provides that when the application is incomplete or having incorrect information, the same shall amount to rejection of candidature. Said regulation was in field when the judgments referred in para-6 of this judgment, were passed. However, last sentence of Regulation 8(a) i.e. the punitive clause in the said regulation, has been deleted vide Notification No. KPSC/ B&A-52 / 2017/ Vol-I/

23337 dated 25.3.2022 and the situation has now changed altogether.

9. After deletion of last sentence of Regulation 8(a), this Court allowed writ petition No. 2759-P/2023, and directed the commission to consider candidature of the petitioner therein, in accordance with law. Similarly, in the case of **“Nisar Ali Vs. Chairman Khyber Pakhtunkhwa Public Service Commission and another”** (WP No. 555-D/2022), this Court, while allowing the petition filed by the petitioner, has held that;

“Learned A.A.G produced the copies of judgments passed by this Court in Writ Petition Noo.1080-A/2019, 4273-P/2020, and 2482-P/2021 and judgment dated 19.04.2021, passed by the Supreme Court in CP No. 115-P of 2021. The contention of the learned A.A.G. is that the non-mentioning of the experience in the application form implied that the petitioner did not claim it, rather withheld the same, hence, he cannot subsequently be allowed to make a volte face. We have perused the judgments. No doubt, in all these cases, the candidatures were rejected by the Commission for the

reason that they had not mentioned and/or claimed their experience in the online application forms. The writ petitions against the decision of the Commission also stood dismissed by this Court. The Supreme Court also upheld the decision of this Court. Nevertheless, the deletion of the relevant clause in the Regulations by way of amendment has changed the situation altogether. It follows that the instant case has distinguishing facts and circumstances. By the time the candidatures of petitions in the aforesaid cases were rejected by the Commission, the above stated Regulation was in the field. In the instant case, the very Regulation by virtue of which the Commission rejected the application of the petitioner is no more in the field. Rather, it was already deleted by the Commission through an amendment on 25.03.2022. Hence, in the facts and circumstances, the law laid down in the judgments (supra) is not applicable in the instant case.”

10. Learned AAG contended that this case pertains to the advertisement published on 07.06.2021, whereas the amendment in the Regulation 8(a) was introduced on 25.03.2022, therefore, the same would not be applicable to the case of present petitioner. Such

contention of the learned AAG is also misconceived, because the candidature of the petitioner has been rejected on 01.03.2023 on the ground contained in erstwhile Regulation 8(a), which was not prevailing at the time of issuance of impugned rejection notice, thus the respondents cannot get benefit of erstwhile Regulation 8(a) when they have themselves amended it.

11. The purpose behind amending a statute is always reformatory to remove imperfections therein and to make it in conformity with the purpose of its enactment. When the legislature notices that the aimed purpose of a statute is not being achieved, it then amends the statute to make it practicable so that the desired goal could be achieved. In the same context, legislature adds, amends, alters and omits particular parts of the statute. It is settled law that where rules relating to the subject had been modified, changed or altered, then the latter rules would prevail and would supersede the former. In the case of *“Imtiaz Ahmed and others Vs. Punjab Public Service Commission through Secretary, Lahore and others”* reported as **PLD 2006 Supreme Court 472**, it has been held by

the honourable Supreme Court that the law maker has the authority to amend, alter or modify the rules and when the rules are amended, then the amended rules would be applicable. Relevant findings of the apex Court are reproduced below for ready reference;

“Similarly, an identical proposition came up for consideration before this Court in a number of cases in which it was held that conditions, qualifications and criteria prevailing at the time of appointment ought to have been taken into consideration and not what were in the past nor a candidate has a vested right to claim to be governed by any particular set of rules and where unless rules relating to the subject have been modified, changed or altered, then the latter rules would prevail and supersede the former. In the instant case no vested rights accrued to the petitioners under the old existing rules or by operation of law in view of the amended rules introduced through the impugned Notification which superseded the earlier Rules on the subject. The law maker is fully competent to make rules, alter qualification or criteria for a particular posts and no one can make a grievance about the determination of the criteria of eligibility or about the conditions and qualifications provided by the competent authority or rule making authority for appointment and selection against the post, which are to be considered as it exist at the

time of appointment or inviting applications from the candidates for such post, as the case may be, as well, as so held by this Court in number of cases out of which some of the relevant reported judgments can be conveniently referred. i.e. (1) Government of N.-W.F.P., Health and Social Welfare Department through its Secretary v. Dr. Sheikh Muzaffar Iqbal and others 1990 SCMR 1321 = Government of N.-W.F.P. Health Department and Social Welfare Department v. Dr. Sheikh Muzaffar Iqbal 1990 SCMR 1524, (2) Federation of Pakistan through Secretary, Government of Pakistan, Establishment Division, Islamabad v. Mirza Muhammad Irfan Baig and 4 others 1992 SCMR 2430, (3) Dr. Mrs. Shahnaz Akhtar, Associate Professor v. Government of N.W.F.P. through Chief Secretary, Peshawar and others 1998 PLC (CS) 1112, (4) Mumtaz Ali Bohio v. Federation Public Service Commission through Chairman at Islamabad and another 2002 SCMR 772, and (5) Dr. Muhammad Hussain v. Principal, Ayub Medical College and another PLD 2003 SC 143. In view of the law laid down in the above mentioned judgments of this Court the petitioners cannot claim to be governed under the old rules, substituted subsequently by amending Rule 7 of the Rules through the impugned Notification.”

12. It is thus clear that a law, rule or statute is polished and groomed by way of amendment, and

whenever amendment stood introduced, then the former law would lose its worth and the newly amended law would be applied and practiced. Reference in this regard may also be made to the cases of “*Messrs Habib Rafiq Pvt. Ltd. Through Authorized Representative Vs. Government of Punjab and another*” (PLD 2015 Lahore 34), “*Khudadai Dad alias Mama and others Vs. State and others* (PLD 1997 Quetta 69), and *Sarwar Khan Vs. Muhammad Azam Khan and others* (1997 SLC 500)”.

13. In the instant case, the sentence that *incomplete application or application with incorrect information, shall be rejected*, was omitted by introducing amendment, and in the light of settled proposition of law, now the amended Regulation 8 (a) would be applicable to the case of petitioner and her candidature cannot be rejected merely on the ground that she has not claimed B.Ed experience in her online application.

14. For the foregoing reasons, we allow this writ petition and set aside the impugned rejection notice dated 01.03.2023 of the respondents. The

respondents are directed to consider the candidature of the petitioner in accordance with law and rules. If the petitioner fulfills the eligibility criteria, she be allowed to compete for the subject post strictly on merit and in accordance with law.

Announced.
26.03.2024

JUDGE

JUDGE

*Tufail./**

*Hon'ble Justice Muhammad Ijaz Khan,
Hon'ble Justice Muhammad Faheem Wali.*