

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No.3483-P/2019

“Mst. Zill-e-Huma Vs. Secretary Education (Higher Education) College & Commerce, Khyber Pakhtunkhwa, Peshawar etc”

JUDGMENT

Date of hearing **27.08.2019**

Petitioner(s) by: Mr. Gohar Ali Khweshgi, Advocate.

Respondent(s) by: Mr. Arshad Ahmad, Addl:
Advocate General.

WIQAR AHMAD, J.- The petitioner namely Mst. Zill-e-Huma has filed the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer: -

“On acceptance of this Writ Petition, the term 11 years experience asked by Director of Higher Education may please be declared null and void and directed the respondent No.1 to notify 5 years instead of 11 years at the analogy of Notification Serial No.93 & 94 of Advertisement No.03/2018 PSC, KPK Peshawar, Director General of Commerce Education and Management Science as both are under the supervision of respondent No.1”.

02. Brief facts of the case are that Public Service Commission vide consolidated Advertisement No.03/2018 invited applications for a number of posts which included the post of Associate Professor in the Directorate of Higher Education at Sr # 83 of the Advertisement. The required qualification for the post

has also been given therein, which is reproduced hereunder for ready reference: -

SIXTY THREE (63) POSTS OF FEMALE ASSOCIATE PROFESSOR IN DIRECTORATE OF HIGHER EDUCATION.

QUALIFICATION: (i) Ph.D or equivalent qualification in the relevant subject with nine (09) years teaching / research experience (**after Ph.D**) in a recognized College / University or Professional experience in the relevant field in a national or international organization and distinguished research publication as a principal author in a standard journal recognized by the University / University Grant Commission; OR (ii) M.Phil in the relevant subject with eleven (11) years teaching / research experience (after M.Phil) in a recognized College / University of Professional experience in the relevant field in a national or international organization and distinguished research work with at least 4-research publications as a principal author in a standard journal recognized by the University / University Grants Commission; OR (iii) 2nd Class Master Degree in the relevant subject from a recognized University with 12-years teaching experience (after Master) and / or research in the recognized college / University.

S.No.	Subject	No. of Posts
i.	Botany	2
ii.	Chemistry	4
iii.	Computer Science	4
iv	Economics	2
V	English	9
Vi	Geography	1
Vii	Health & Physical Education	4
Viii	Home Economics	2
Ix	Islamiyat	5
X	Law	1
Xi	Maths	6
Xii	Pakistan Studies	3
Xiii	Physics	5
Xiv	Political Science	3
Xv	Statistics	2
Xvi	Urdu	6
Xvii	Zoology	4

AGE LIMIT: 30 to 45 Years PAY SCALE:BPS-19

ELIGIBILIYT: Female".

03. Petitioner applied for the post, received roll number slip, succeeded in written test by obtaining **252** out of 400 marks and was placed at serial No.113 of the merit list. She was not called for interview as she was lacking in the required experience of 11 years. The petitioner has stated in her Writ Petition that since, the required experience for the same post i.e. Associate

Professor in Pak Study under the Directorate of Commerce Education & Management Sciences is 05 years according to the qualifications required at serial No.93 & 94 of the same advertisement, therefore, the qualification for the post of Associate Professor under the Directorate of Higher Education should also be brought down to 05 years for avoiding discrimination.

04. Learned counsel for the petitioner argued that it is sheer discrimination that for the same post of **Associate Professor in Pak Study** in two different Directorates two different criteria(s) have been provided. He added that the petitioner was having 9½ years experience and was just short by 2½ years and if the experience is brought to 05 years, as is required for the same post in the Directorate of Commerce Education & Management Sciences, the petitioner would be fully qualified for the post.

05. Learned Addl: AG contended that every department is bound to follow its own criteria for appointment, prescribed in the relevant service rules and that one department may not be compelled to follow another in this respect.

06. We have heard arguments of the learned counsel for the parties and perused the available record.

07. The required qualification given in the impugned advertisement was in fact based upon the service rules of the concerned departments. The Directorate of Higher Education regulates the affairs of colleges wherein the students get general education in various disciplines including subjects of Humanities and Sciences etc while the Directorate of Commerce Education & Management Sciences deals with the specialized discipline of education in commercial and management sciences. Both the Directorates may require and accordingly set different standard for the teaching staff employed by them for various disciplines. What qualification and how much experience is required for which of the subject; can best be adjudged by the relevant department as they have the technical expertise and know how required for the job. This Court may not have the expertise required for fixing the said criteria nor is it the job of this Court. None of the grounds for judicial review has been urged before this Court except the principle of discrimination. As observed earlier different departments may fix different criteria for the teaching staff employed by them, according to their respective standards, and it would not amount to discrimination by any stretch of imagination. Different people having

different qualification or different experience may be treated differently and this could be reasonable clarification which is not barred by the rule of discrimination. Reasonable classification is not only permitted but required in some of the cases like the present one. In the case in hand, we find reasonable classification based on intelligible differentia which have a rational nexus to the object sought to be achieved by such classification. In a similar case of "*Abid Hussain Sherazi Vs. Secretary M/O Industries and Production, Government of Pakistan, Islamabad*" reported as **2005 SCMR 1742**, " the Hon'ble Supreme Court of Pakistan observed as follows: -

"The learned Advocate Supreme Court on behalf of petitioner has ignored the fact that while pressing the provisions as contained in Article 25 of the Constitution of Islamic Republic of Pakistan that "the Article guarantees a similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform".

08. The petitioner in the instant petition is also demanding identical treatment as distinguished from similar treatment. She is also demanding that all the relevant laws should be uniform which is neither desirable nor advisable.

09. Another aspect of the case is that the petitioner had not impugned the relevant service rules wherefrom the qualification given in the impugned

advertisement have been reproduced. The requisite qualification has in fact been provided in the relevant service rules which have been framed by the respective departments under Sub-Rule 2 of Rule 3 of the Khyber Pakhtunkhwa Civil Servants (Promotion, Appointment and Transfer) Rule, 1989. Unless the vires of those Rules are challenged, the criteria or the qualification given in the advertisement cannot be challenged.

10. For what has been discussed above, we find no merit in the instant petition, same is therefore dismissed.

ANNOUNCED.
27.08.2019

J U D G E

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DB

Hon'ble Mr. Justice Ijaz Anwar
Hon'ble Mr. Justice Wiqar Ahmad

Himayat