

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Yahya Afridi, JJ

SAJJAD ALI---Petitioner

Versus

VICE-CHANCELLOR through Registrar University of Malakand at Chakdara, Dir Lower and
others---Respondents

Civil Petition No. 3107 of 2018, decided on 24th October, 2019.

(On appeal against the judgment of Peshawar High Court, Mingora Bench dated 28.05.2018,
passed in Writ Petition No. 290-M of 2013)**Disabled Persons (Employment and Rehabilitation) Ordinance (XL of 1981)---**

---Ss. 10 & 12 [as amended by the Khyber Pakhtunkhwa Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012]---Establishments to employ disabled persons--- Disability quota, calculation of---Provisions of S. 10 of the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 ('the Ordinance') mandated that not less than two percent of the total number of persons employed by an establishment at any time shall be disabled persons---Under S. 10 of the Ordinance the quota for disabled persons in an establishment was calculated on the basis of the total number of persons employed by the establishment and not on the basis of the number of posts advertised at a given time---To give effect to S. 10, S.12 of the Ordinance must also be given full effect---Under S. 12, a disabled person desirous of getting employed had to ensure that his name was registered with the Employment Exchange of the area---Additionally, the Provincial Council was to assess the nature of functional disability of the person and also as to his aptitude and the nature of work he was fit to do and if the Provincial Council was of the view that the disabled person was fit to work it shall inform the Employment Exchange, indicating the nature of work for which he may be employed---Total quota of 2% calculated on the basis of the fixed number of the employees in an establishment was then given effect through the information collected by the Employment Exchange with the assistance of the Provincial Council---Calculating the quota under S. 10 would not lead to much result if the exercise under S. 12 had not been undertaken, especially regarding the nature of work a disabled person was fit to perform.

Nasir Mahmood, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Rehman Ullah, Advocate Supreme Court along with Rauf Khattak, A.D (SWD) KPK for Respondent No.1.

Date of hearing: 24th October, 2019.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---Brief facts of the case are that the petitioner applied for the post of Lecturer in the subject of Pharmacy (BS-18) against the disability quota but his request was turned down on the ground that only one post of Lecturer in the subject of Pharmacy was advertised and the two percent quota prescribed under the law for the disabled persons could not be worked out against the advertised post.

2. We have examined sections 10 and 12 of the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 ("Ordinance"), as amended by the Khyber Pakhtunkhwa Disabled Persons (Employment and Rehabilitation) (Amendment) Act, 2012, which state as under:-

Section 10:

"Establishments to employ disabled persons.---(1) Not less than two percent of the total number of persons employed by an establishment at any time shall be disabled persons whose names have been registered with the Employment Exchange of the area in which such establishment is located and against whose names in the register maintained under section 12 an endorsement exists to the effect that they are fit to work.

- (2) The disabled persons employed against any post in pursuance of subsection (1) shall be entitled to the terms and conditions which are not less favourable than those of the other persons employed by the establishment against similar posts.
- (3) When calculating the percentage of the posts in an establishment for the purposes of employment of disabled persons, the fraction of 2 and above shall count as a whole number."

Section 12

"Registration of disabled persons.---1. Any disabled persons desirous of being employed or otherwise rehabilitated may have his name registered in the register maintained by an Employment Exchange in such form and in such manner as may be prescribed by the Federal Government; and the Employment Exchange shall refer all names so registered to the Provincial Council.

2. The Provincial Council shall, if it thinks necessary, cause each disabled person registered under subsection (1) to be assessed as to the nature of his functional disability and also as to his aptitude and the nature of work he is fit to do by a medical officer authorised by it in his behalf or by such assessing board consisting of not less than one medical officer as it may appoint, and the medical officer or, as the case may be, the assessing board shall submit its report to the Provincial Council in such form as may be prescribed by the Provincial Government.
3. If the disabled person is considered by the Provincial Council fit to work, it shall so inform the Employment Exchange, indicating the nature of work for which he may be employed or the trade or vocation in which he may be trained, and an endorsement to that effect shall be made against his name in the register.
4. If the disabled person is not considered by the Provincial Council fit to work, the Provincial Council shall inform the Employment Exchange accordingly for an endorsement to that effect being made against his name in the register, and the Provincial Council shall take such measures for his rehabilitation as it thinks fit.
5. If a person is declared by the Provincial Council not to be a disabled person, his name shall be struck off the register"

The above provisions mandate that not less than two percent of the total number of persons employed by an establishment at any time shall be disabled persons. While "Establishment" under the Ordinance includes a University (see sections 2(f) and (h) of the Ordinance). Therefore, under section 10 the quota for disabled persons in an establishment is calculated on the basis of the total number of persons employed by the establishment and not on the basis of the number of posts advertised at a given time. To give effect to section 10, section 12 must also to be given full effect. Under section 12, a disabled person desirous of getting employed has to ensure that his name is registered with the Employment Exchange of the area. Additionally, the Provincial Council is to assess the nature of functional disability of the person and also as to his aptitude and the nature of work he is fit to do and if the Provincial Council is of the view that the disabled person is fit to work it shall inform the Employment Exchange, indicating the nature of work for which he may be employed. The total quota of 2% calculated on the basis of the fixed number of the employees in an establishment is then given effect through the information collected by the Employment Exchange with the assistance of the Provincial Council. Calculating the quota under section 10 will not lead to much result if the exercise under section 12 has not been undertaken, especially regarding the nature of work a disabled person is fit to perform.

3. Respondent University, in light of the above provision and Khyber Pakhtunkhwa Disabled Persons (Employment and Rehabilitation) Rules, 1981, has worked out the total number of persons employed at the University to be 966 persons. Learned counsel for the University along with departmental representative submits that according to the total strength of the employees of the University, two percent quota for the disabled persons comes out to be 19 seats and the University is

willing to allocate the said quota for disabled persons. Learned counsel representing the University submitted that University is in the process of formulating a policy for the allocation of this quota for disabled persons and as soon as it is done the case of the petitioner will be considered in the light of the said policy.

4. We leave it to the University to evolve a policy for disabled persons and for the allocation of the 19 posts for disabled persons in the University. While formulating the policy, the University will ensure that although disabled persons will have a separate quota under the Ordinance, however, merit will not be compromised and same threshold qualification, standard and eligibility shall be maintained as in the case of regular appointment. It is in this context that the assessment of the Provincial Council regarding the nature of work a disabled person is fit to perform, becomes relevant and crucial.

5. Let such policy be formulated within a period of three months from today. Once the policy is formulated, the case of the petitioner will be duly considered afresh by the respondent University and the findings of impugned judgment dated 28.05.2018 will not come in its way.

6. This petition is disposed of in the above terms.

MWA/S-40/L Order accordingly.