

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Jamal Khan Mandokhail and Ayesha A. Malik, JJ**MUHAMMAD YASIN and another---Petitioners****Versus****The DIRECTOR GENERAL, PAKISTAN POST OFFICE, ISLAMABAD and another---Respondents**

Civil Petitions Nos. 688 and 689 of 2020, decided on 9th January, 2023.

(Against the judgment of the Federal Service Tribunal, Islamabad dated 10.01.2020, passed in Appeals Nos. 2061 and 2062 (R)CS of 2019)

Constitution of Pakistan---

----Arts. 4, 5 & 25---Civil service---Right to equality---Scope---Appointment---Eligibility criteria---Any unlawful act cannot be made a standard for enforcing the right to equality guaranteed by the Constitution--- Any person aspiring for the appointment to a post has to pass the eligibility criteria prescribed in the relevant law for that post and cannot be absolved from fulfilling those criteria on the ground that some other person who was allowed to compete for or appointed to such post also did not meet the prescribed criteria.

Article 25 of the Constitution guarantees the equal protection of law, not the equal protection of lawlessness, by declaring that all citizens are equal before law and are entitled to equal protection of law. An unlawful act, therefore, cannot be made a standard for enforcing the right to equality guaranteed by the Constitution. One illegality cannot be allowed to be compounded by applying the right to equality. The extension of the right to equality to the acts done in violation of law would amount to perpetuating previous unlawful acts and motivating the commission of further illegalities. Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. Such other persons cannot be discriminated against to deny the same benefit, in view of their right to equality before law and equal protection of law guaranteed by Article 25 of the Constitution. But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law.

Abdul Wahid v. C.B.R. 1998 SCMR 882; Government of Punjab v. Zafar Iqbal 2011 SCMR 1239; Yar Muhammad v. Government of Punjab 2011 SCMR 1537; Shahid Ahmed v. O.G.D.C. 2014 SCMR 1008 and Government of Khyber Pakhtunkhwa v. Hidayat Ullah 2021 SCMR 1904 ref.

One wrongdoing cannot be permitted, defended or condoned by citing the example of another wrongdoing. If unlawful acts are allowed or acknowledged on the basis of the right to equality and non-discrimination, it would negate the rule of law mandated by Articles 4 and 5 of the Constitution. The one who wants the court to grant him the relief prayed for must base his claim on his own legal right, not on the wrongful gains of others. Any person aspiring for the appointment to a post has to pass the eligibility criteria prescribed in the relevant law for that post and cannot be absolved from fulfilling those criteria on the ground that some other person who was allowed to compete for or appointed to such post also did not meet the prescribed criteria.

Malik Matee Ullah, Advocate Supreme Court for Petitioners (in both cases).

Nemo for Respondents.

Date of hearing: 9th January, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioners seek leave to appeal against a consolidated judgment of the Federal Service Tribunal, dated 10.01.2020 ("impugned judgment"), whereby their appeals filed against the decisions of the departmental authority have been dismissed. The departmental authority had declined the petitioners' request for permission to appear in the departmental competitive exam for appointment to the posts of Assistant Superintendent.

2. Briefly, the facts of the case are that the petitioners, Muhammad Yasin and Mehboob Khan, are serving in the Pakistan Post Office Department as Clerk and Postmaster, respectively. They applied to the departmental

authority for permission to appear in the departmental competitive exam for appointment to the posts of Assistant Superintendent, which was declined to them on the ground that they were above 45 years of age and as such were not eligible for appointment to the said post under the relevant rules. The petitioners made appeals in the Tribunal, which were dismissed by the impugned judgment. Hence, they have filed these petitions for leave to appeal.

3. The petitioners concede that as per the relevant rules, which prescribe the method, qualifications and other conditions for appointment to the posts of Assistant Superintendent, the officials applying for that appointment must not be more than 45 years of age on the last date fixed for receipt of the applications. Their only contention, before us, is that some other official was allowed to appear in an earlier exam for the same post, despite that he was also above 45 years of age at that time; therefore, they are entitled to equal treatment and same relief as per Article 25 of the Constitution of the Islamic Republic of Pakistan 1973 ("Constitution").

4. We have considered the contention of the petitioners, read the relevant rules and examined the record of the case.

5. Article 25 of the Constitution guarantees the equal protection of law, not the equal protection of lawlessness, by declaring that all citizens are equal before law and are entitled to equal protection of law. An unlawful act, therefore, cannot be made a standard for enforcing the right to equality guaranteed by the Constitution. One illegality cannot be allowed to be compounded by applying the right to equality. The extension of the right to equality to the acts done in violation of law would amount to perpetuating previous unlawful acts and motivating the commission of further illegalities. Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. Such other persons cannot be discriminated against to deny the same benefit, in view of their right to equality before law and equal protection of law guaranteed by Article 25 of the Constitution. But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law.

6. If some other person ineligible for the appointment to the post of Assistant Superintendent, whose case is not before us, had been permitted to appear in an earlier exam for the said post in violation of law (the relevant rules), this fact does not confer any right on the petitioners to claim the similar permission by repeating the violation of law. As the proverb goes: "Two wrongs don't make a right". One wrongdoing cannot be permitted, defended or condoned by citing the example of another wrongdoing. If unlawful acts are allowed or acknowledged on the basis of the right to equality and non-discrimination, it would negate the rule of law mandated by Articles 4 and 5 of the Constitution. The one who wants the court to grant him the relief prayed for must base his claim on his own legal right, not on the wrongful gains of others. Any person aspiring for the appointment to a post has to pass the eligibility criteria prescribed in the relevant law for that post and cannot be absolved from fulfilling those criteria on the ground that some other person who was allowed to compete for or appointed to such post also did not meet the prescribed criteria. The petitioners, thus, cannot dispute the decision of the departmental authority, declining to them the permission sought, on the ground of their right to equal treatment and non-discrimination.

7. For the above reasons, we find that the contention of the petitioners is absolutely misconceived. The departmental authority and the Tribunal have correctly decided the present matter in accordance with law. These petitions are meritless; they are, therefore, dismissed and the leave to appeal, declined.