

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Muhammad Ali Mazhar and Shahid Waheed, JJ**MUBARIK ALI BABAR---Petitioner****Versus****PUNJAB PUBLIC SERVICE COMMISSION through its Secretary and others---Respondents**

Civil Petition No. 2045 of 2019, decided on 18th November, 2022.

(Against the judgment of Lahore High Court, Lahore dated 08.03.2019, passed in W.P. No. 20429 of 2016)

(a) Constitution of Pakistan---

---Arts. 9, 14, 18, 20, 22, 26, 27, 36, 37(a), 38(b), 38(d) & Preamble---Constitutional protections for minorities and persons with disabilities (PWDs) stated.

The Preamble of the Constitution provides that it is the "will of the people" of Pakistan to establish an "Order". The term "will of the people of Pakistan" is an inclusive term signifying all citizens irrespective of religion, caste, creed, race, sex, place of birth or personal abilities. Therefore, such a "will" is incomplete without including the will of the minorities and persons with disabilities ("PWDs").

The word "minorities" signifies merely a statistical number, representing a class of people in the country who are Non-Muslims and in no manner does it imply that they are lesser citizens or in any manner less entitled to the fundamental rights under the Constitution.

The minimum right to dignity of the minorities and PWDs is that they ought to be considered equally with the rest of the majority of Muslims and the majority of persons with fuller abilities. Under the Constitution there is no distinction and therefore, the fundamental rights are fully available to the minorities and PWDs in the country as they are available to all other citizens of Pakistan.

The Constitution uplifts PWDs, gives them additional protection so that every effort (reasonable accommodation) is made to bring differently-abled persons at par with fully-abled persons. Similarly, it mandates that minorities are equal citizens of Pakistan and must be protected from all kinds and forms of discrimination. The Constitution, therefore, not only caters to minorities and PWDs as equal citizens of Pakistan, having equal rights and safeguards, it also provides extra protection to them.

People with disabilities are segregated from community life and face discrimination due to pervasive attitudinal and systemic barriers that the law, policy and practice frameworks have failed to remove, such as inaccessible or unequal facilities of housing, transport and education, segregated settings, barriers in accessing justice and legal systems, and employment and health discrimination. The effects of such discrimination are further expounded when intersecting with sexism, ageism, racism and other forms of inequality.

Disabled People's Organization Australia, Segregation of People with Disability is Discrimination and Must End, Position Paper (September, 2020). https://dpoa.org.au/wp-content/uploads/2020/11/Segregation-of-People-with-Disability_Position-Paper.pdf ref.

Lower rates of employment are persistently observed for PWDs. Lower education levels coupled with discrimination, stigma, negative attitudes, inaccessible transport and workplaces, and limited availability of accommodations for PWDs, play a significant role in limiting job opportunities. Due to these reasons, PWDs are pushed backwards and depressed at the hands of an unfriendly and unaccommodating ecosystem, making them fall under the rubric of the backward and depressed classes, as recognized by the Constitution. Under the Constitution, it is the obligation of the State to attend to the legitimate interests of these classes. Legitimate interests are all those interests which can help PWDs actualize their fundamental rights under the Constitution and enable them to become effective members of the society.

UN Department of Economic and Social Affairs, Disability and Development Report - Realizing the Sustainable Development Goals by, for and with persons with disabilities (2018). <https://social.un.org/publications/UN-Flagship-Report-Disability-Final.pdf>; Indra Sawhney v. Union of India, AIR 1993 SC 477 and Muhammad Yousaf v. Chairman, FPSC PLD 2017 Lah. 406 ref.

In order to safeguard the rights of the minorities and PWDs and to provide equality of status and opportunities, the State has to endeavor to bridge the gap and ensure that the differently-abled persons and the Non-Muslim minority in our country get to enjoy their fundamental rights under the Constitution with the same fervour and force as enjoyed by the Muslim majority and majority of persons with fuller abilities.

(b) Disabled Persons (Employment and Rehabilitation) Ordinance (XL of 1981)---

---S. 10---Constitution of Pakistan, Arts. 14 & 36---Persons With Disabilities (PWDs)---Minorities---Seats reserved for PWDs and minorities in the Combined Competitive Examination conducted by the Punjab Public Service Commission---Constitutional right of PWDs and minorities---Other than the general seats, the additional provision of quota for the PWDs and the minorities reaffirms the constitutional commitment---In case the seats reserved for PWDs and the Non-Muslim minority are not filled by PWDs and the non-Muslim minority in a particular year, it was not permissible to open and make the said seats available to general quota as it would offend constitutional values, fundamental rights and the Principles of Policy---Seats earmarked for minorities or PWDs must be retained and carried forward; this quota is their constitutional right and cannot be reversed or made available to other citizens---Petition for leave to appeal was dismissed and leave was refused with the direction to respective governments that they shall ensure that the employment quota of the minorities is maintained at all levels and to strictly avoid discriminatory and demeaning advertisements (for posts) flouting the dignity and self-respect of the minorities.

(c) Disabled Persons (Employment and Rehabilitation) Ordinance (XL of 1981)---

---S. 10---Constitution of Pakistan, Art. 14---Persons With Disabilities (PWDs)---Combined Competitive Examination conducted by the Punjab Public Service Commission (PPSC) --- Use of the word 'disabled' in advertisements for posts---Supreme Court directed that the word "disabled" has already been put to disuse in the judgment reported as Malik Ubaidullah v. Government of Punjab and others (PLD 2020 SC 599) and, therefore, the PPSC shall ensure that the word "disabled" is not used and instead persons with disabilities or persons with different abilities is put to use---Supreme Court observed that it was hopeful that in the future these terms will be incorporated in the official correspondence as well as relevant notifications, including public advertisements, issued by the Government.

PLD 2020 SC 599 ref.

Petitioner in person.

Nemo for Respondents.

Date of hearing: 18th November, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner has challenged the seats reserved for minorities and persons with disabilities ("PWDs") in the Combined Competitive Examination, 2015 ("CCE") conducted by the Punjab Public Service Commission, Lahore ("PPSC"). In the advertisement issued by the PPSC for the post in the Provincial Management Service (BS-17) ("PMS") under the Services and General Administration Department, Government of the Punjab ("S&GAD"), out of 62 posts, 53 posts were on open merit, 06 posts for PWDs and 03 posts for minorities. The petitioner challenges the legality of the allocation and reservation of seats for the above two classes of persons and also prays that if this quota remains unfilled in a particular year, the seats reserved against this special quota be made available to other deserving candidates applying under the general quota on open merit. The said claim of the petitioner was dismissed by the High Court through the impugned judgment dated 08.03.2019. Hence this petition.

2. We have heard the petitioner and have gone through the record of the case. It is important to begin with the constitutional scheme. The preamble of our Constitution¹ provides that it is the "will of the people" of Pakistan to establish an "Order". The term "will of the people of Pakistan" is an inclusive term signifying all citizens irrespective of religion, caste, creed, race, sex, place of birth or personal abilities. Therefore, such a "will" is incomplete without including the will of the minorities and PWDs. The "Order" is a result of our collective vision and aspirations. The "Order" established by the "will of the people" is pillared on principles which form our constitutional values, providing for freedom, equality, tolerance, social justice and democracy; adequate provision for the minorities to freely profess and practice their religions and develop their cultures; safeguards

to protect the legitimate interests of minorities, backward and depressed classes; fundamental rights including equality of status and opportunity, social, economic and political justice; freedom of thought, expression, belief, faith, worship and association, subject to law and public morality. Tolerance, freedom, equality, social justice and democracy are central to our constitutional values which promote inclusion and abhor apartheid, exclusion, apartness, racism, bias and bigotry. These constitutional principles and values form an integral part of the Objectives Resolution which is a substantive part of the Constitution under Article 2-A and is to be given effect accordingly. The Constitution is, therefore, a shared voice of its citizenry.

3. The Constitutional values specifically provide for "equality of status, of opportunity," which means that every person in Pakistan has equal human status and worth and enjoys equal access to opportunities without discrimination based on caste, creed, race, sex, place of birth, etc. Undeniably, equality of status and opportunity includes access to employment to earn a decent livelihood.

4. Fundamental rights under the Constitution actualize these constitutional values; Article 9 provides that every person shall have a right to life and liberty subject to law. "Life" includes all the attributes of a healthy and a meaningful life, while the right to "liberty" provides freedom, agency and choice to a person to be able to design his or her life in any manner he or she wants. Life and liberty of any person in Pakistan is protected and there is no distinction between persons on the basis of religion, sex or creed; Article 14 provides that the dignity of a person is inviolable; Article 18 provides that everyone has a right to a lawful profession or occupation. Articles 20, 22, 26 and 27 of the Constitution provide further safeguards for minorities. Amongst fundamental rights, the right to dignity stands at the top, like a jewel in the crown of fundamental rights. This unique place is because the right to dignity is an absolute right, is non-negotiable and is not subject to any law. Therefore, the minimum right to dignity of the minorities and PWDs is that they ought to be considered equally with the rest of the majority of Muslims and the majority of persons with fuller abilities. Under the Constitution there is no distinction and therefore, these fundamental rights are fully available to the minorities and PWDs in the country as they are available to all other citizens of Pakistan. Article 36 of the Principles of Policy under the Constitution provides that the State shall safeguard the legitimate rights and interests of minorities including their due representation in the Federal and Provincial services. Article 37(a) provides that the State shall promote with special care the educational and economic interest of backward classes. Article 38(b) of the Constitution provides that all citizens (which undoubtedly includes minorities and PWDs) to be provided within the available resources of the country, facilities for work and adequate livelihood. Article 38(d) provides that the State shall provide basic necessities of life to all citizens (which once again undoubtedly includes PWDs) who are unable to earn their livelihood on account of infirmity or sickness. Review of the above constitutional scheme unfolds that the Constitution uplifts PWDs, gives them additional protection so that every effort (reasonable accommodation) is made to bring differently-abled persons at par with fully-abled persons. Similarly, it mandates that minorities are equal citizens of Pakistan and must be protected from all kinds and forms of discrimination. The Constitution, therefore, not only caters to minorities and PWDs as equal citizens of Pakistan, having equal rights and safeguards, it also provides extra protection to them.

5. "Backward" and "depressed" classes are not defined in the Constitution, therefore going by their simple meaning, they include any class of people who are marginalized, underprivileged, disadvantaged, lacking choice, agency, autonomy, level-playing field and opportunity. The marginalization and discrimination experienced by PWDs is arguably considered to be similar to the apartheid system in terms of segregation and discrimination based on a particular characteristic, leading to limited access to education, employment, and other opportunities, as well as social and economic marginalization, thereby, marginalizing individuals and communities. People with disabilities are segregated from community life and face discrimination due to pervasive attitudinal and systemic barriers that the law, policy and practice frameworks have failed to remove, such as inaccessible or unequal facilities of housing, transport and education, segregated settings, barriers in accessing justice and legal systems, and employment and health discrimination.² The effects of such discrimination are further expounded when intersecting with sexism, ageism, racism and other forms of inequality.³ Albie Sachs, the celebrated South African Judge writes: "If there is one thing that the struggle against apartheid has taught us, it is how important it is to manage difference in society. Difference was used

as the basis for apartheid. Difference became an instrument of domination and control. What if we can turn difference around to become a source of vitality, of variability, of richness?"⁴ The United Nations, Department of Economic and Social Affairs' flagship "Disability and Development Report"⁵ highlights that the professional potential of PWDs is often misunderstood and remains untapped due to misconceptions, negative societal attitudes and inaccessibility of workplaces, training and vocational skills centers. Lower rates of employment are persistently observed for PWDs. Lower education levels coupled with discrimination, stigma, negative attitudes, inaccessible transport and workplaces, and limited availability of accommodations for PWDs, play a significant role in limiting job opportunities.⁶ Due to these reasons, PWDs are pushed backwards and depressed at the hands of an unfriendly and unaccommodating ecosystem, making them fall under the rubric of the backward and depressed classes, as recognized by the Constitution. Under the Constitution, it is the obligation of the State to attend to the legitimate interests⁷ of these classes. Legitimate interests are all those interests which can help PWDs actualize their fundamental rights under the Constitution and enable them to become effective members of the society.⁸

6. The word "minorities" on the other hand, signifies merely a statistical number, representing a class of people in the country who are Non-Muslims and in no manner does it imply that they are lesser citizens or in any manner less entitled to the fundamental rights under the Constitution. 96.5 % of Pakistan's population is Muslim. Minorities make up approximately 3% of the population.⁹ Our national flag, our badge of honour and national unity, shows the minorities in the white along with the green signifying the majority Muslim population. The majority (Muslims) and the minority (Non-Muslims) of Pakistanis together constitute the paradigm of Pakistan. Our national flag stands higher because it represents both the Muslims and the Non-Muslims. Moving towards an inclusive society is getting closer to realizing our constitutional values. "If society is intolerant, embarrassed, exclusionary, its own imaginative heart is being restricted. Its capacity for human empathy is being denied. Exclusion damages the way we understand and characterize the world we live in. Inclusion enhances our humanity."¹⁰

7. Quaid-e-Azam, Muhammad Ali Jinnah repeatedly affirmed that as a foundational principle of Pakistan, rights of all minorities shall be safeguarded and all citizens of Pakistan are equal and have equal rights irrespective of their religion, colour, caste or creed. He assured and asserted that "minorities to whichever community they may belong, will be safeguarded. Their religion or faith or belief will be secure. There will be no interference of any kind with their freedom of worship. They will have their protection with regard to their religion, faith, their life, their culture. They will be, in all respects, the citizens of Pakistan without any distinction of caste or creed".¹¹ At the time of the inception of Pakistan, while asserting the above said principle as the first President of the Constituent Assembly of Pakistan, Quaid-e-Azam unequivocally stated that "you are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed - that has nothing to do with the business of the State ... we are starting with this fundamental principle that we are all citizens and equal citizens of one State".¹² He was conscious of the fact that equal treatment of minorities was not only important for the prosperity and growth of Pakistan, it was a duty cast upon all Muslims by Islam as "the tenets of Islam enjoin on every Musalman to give protection to his neighbours and to the minorities regardless of caste and creed"¹³ ... in Islam there is no difference between man and man. The qualities of equality, liberty and fraternity are the fundamental principles of Islam."¹⁴

8. In order to actualize the constitutional mandate and the vision of our founding father, we have the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 ("Ordinance") which, post 18th amendment, has translated into provincial laws.¹⁵ Provisions of the Ordinance are *pari materia* to the Punjab Law. Section 10 of the Ordinance, as applicable in Punjab, provides that not less than three percent (3%) of the total number of persons employed by an establishment at any time shall be PWDs in the manner and procedure provided under the said Ordinance. Similarly, notification dated 27.3.2010, issued under section 23 of the Punjab Civil Servants Act, 1974 by the S&GAD (Regulations Wing), 5% quota has to be reserved for minorities (Non-Muslims) against the total number of posts advertised in the future, including posts to be filled on the basis of competitive examination to be conducted by the PPSC. Later on through an amendment¹⁶ brought about in the said

notification, the vacancies reserved for minorities for which qualified candidates are not available at the time of a particular recruitment process, shall be carried forward and filled through appointment of persons belonging to minorities (Non- Muslims). We have noted with concern that according to the fact finding report titled "Unequal Citizens, Ending Systemic Discrimination against Minorities" ("Report")¹⁷ published in May, 2022 by the National Commission of Human Rights ("NCHR") established under the National Commission for Human Rights Act, 2012 with the mandate to promote and protect human rights as provided for in the Constitution and the various international instruments to which Pakistan is a State party or shall become a State party, advertisements published in major newspapers all over the country show that religious minorities have been recruited exclusively for sanitary work. The Report shows that in the advertisements, under eligibility requirements, there is often a clause that states 'Only Non-Muslims Apply.' Such discriminatory advertisements and employment selection process limiting the job quota only for low level posts is offensive to the constitutional values, the fundamental rights of the minorities and the notification mentioned above. The Report recommends ending discrimination against minorities in the employment quota, ending the practice of publishing discriminatory advertisements and ensuring public transparency in the number of minority posts filled across each level of the government.¹⁸ We fully support the said recommendations of the NCHR in the Report and accordingly direct that the respective governments shall ensure that the employment quota of the minorities is maintained at all levels and to strictly avoid discriminatory and demeaning advertisements flouting the dignity and self-respect of the minorities.

9. In order to safeguard the rights of the minorities and PWDs and to provide equality of status and opportunities, the State has to endeavor to bridge the gap and ensure that the differently-abled persons and the Non-Muslim minority in our country get to enjoy their fundamental rights under the Constitution with the same fervour and force as enjoyed by the Muslim majority and majority of persons with fuller abilities. Hence other than the general seats, the additional provision of quota for the PWDs and the minorities reaffirms the constitutional commitment.

10. The argument of the petitioner that in case the said seats are not filled by PWDs and the Non-Muslim minority in a particular year, the said seats should be opened and made available to general quota. This is not permissible as it would offend constitutional values, fundamental rights and the Principles of Policy as discussed above. The seats earmarked for minorities or PWDs must be retained and carried forward. This quota is their constitutional right and cannot be reversed or made available to other citizens.

11. For the above reasons we agree with the final conclusion arrived at by the High Court in the impugned judgment and for the reasons given above, this petition is accordingly dismissed and leave is refused.

12. It is also pointed out that the word "disabled" has already been put to disuse in Malik Ubaidullah¹⁹ and, therefore, the PPSC is directed to ensure that the word "disabled" is not used and instead persons with disabilities or persons with different abilities is put to use. We are hopeful that in the future these terms will be incorporated in the official correspondence as well as relevant notifications, including public advertisements, issued by the Government. A copy of this order shall be dispatched to the Chief Secretary, Government of the Punjab as well as the Chief Secretaries of other provinces to ensure that this order is complied with in letter and spirit at the national level.

13. Before parting with this order, we would like to appreciate and commend the valuable assistance provided to us by Muhammad Hassan Ali, Law Clerk in rendering this order.

MWA/M-6/SC Petition dismissed.