

Present: Syed Mansoor Ali Shah and Athar Minallah, JJ

ZAHIDA PARVEEN---Petitioner

Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Elementary and Secondary Education, Civil Secretariat, Peshawar and others---Respondents

C.P.L.A. No. 566-P/2024, decided on 17th March, 2025.

(Against the impugned judgment dated 03.06.2024 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in S.A. No. 1959 of 2023).

(a) Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989---

---R.10(4)---Constitution of Pakistan, Arts. 14, 25 & 27---Compassionate appointment---Married daughter of deceased civil servant---Discrimination---Principle of intelligible differentia---Appellant was daughter of deceased civil servant and was appointed under Rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989---Appointment of appellant was terminated after she contracted marriage---Validity---Reasonable classification must be founded on intelligible differentia and must bear rational nexus to the object sought to be achieved by law---Exclusion of married daughters, despite Rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, itself is inclusive and silence on marital status lacks any rational basis---No intelligible differentia is discernible between a married son and a married daughter that would justify such exclusion in light of the underlying purpose of Rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, which is to provide compassionate economic relief to bereaved family of a deceased or incapacitated civil servant---Such arbitrary classification is not only unreasonable but plainly unconstitutional, offending the guarantees of equality (Article 25), non-discrimination in public service (Article 27), and the right to dignity (Article 14)---Such act of authorities had undermined expectations of deceased civil servants whose families were assured of lawful security under the compassionate appointment framework---Supreme Court declared clarification of authorities and letter dated 28-04-2023, whereby married daughters were excluded from compassionate appointment under Rule 10(4) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, to be discriminatory, ultra vires, issued without lawful authority, and incompatible with Constitutional guarantees and international legal obligations---Supreme Court directed respondent/authorities to restore appointment of appellant with all back-benefits and set aside judgment passed by Service Tribunal---Supreme Court reaffirmed that all judicial and administrative authorities bear a Constitutional responsibility to adopt gender-sensitive and gender-neutral language; that this was not a mere formality but reflected a substantive commitment to the values of dignity, equality, and autonomy guaranteed to all citizens under Articles 14, 25, and 27 of the Constitution---Supreme Court observed that the Judiciary must lead by example, ensuring that the words used to interpret and apply law did not themselves had become instruments of exclusion---Appeal was allowed.

S.G.G. Edgar, Craies on Statute Law (Universal Law Publishing Co, 7th Edition, 1971); Muhammad Nadeem Arif v. IG Police, Punjab 2011 SCMR 408; Federal Public Service Commission v. Altaf Hussain 2015 SCMR 581; Muhammad Bashir Limited v. Government of Pakistan 2015 SCMR 630; Province of Punjab v. Kanwal Rashid 2021 SCMR 730; Sant Ram Sharma v. State of Rajasthan AIR 1967 SC 1910; Union of India v. Majji Jangammayya AIR 1977 SC 757; B.N. Nagarajan v. State of Karnataka AIR 1979 SC 1676; P.D. Aggarwal v. State of U.P. AIR 1987 SC 1976; Union of India v. Arun Kumar Roy AIR 1986 SC 737; State of Madhya Pradesh v. GS Dall AIR 1991 SC 772; JAC of Airlines Pilots Association v. DG, Civil Aviation AIR 2011 SC 2220; N S Bindra, Interpretation of Statutes (LexisNexis, 13th Edition, 2022); Khawaja Ahmad Hassan v. Government of Punjab 2005 SCMR 186; Federation of Pakistan v. Shuja Sharif 2023 SCMR 129; Hadayat Ullah v. Federation of Pakistan 2022 SCMR 1691; Syed Azam Shah v. Federation of Pakistan 2022 SCMR 201; Dr. Mobashir Hassan v. Federation of Pakistan PLD 2010 SC 265; Meenakshi Dubey v. Madhya Pradesh AIR 2020 MP 60; Smt. Bhuvaneshwari V. Puranik v. State of Karnataka AIR 2020 Kar. 2303; Superintendent

of Police v. Ijaz Aslam 2024 SCMR 1831; Vice Chancellor Agriculture University v. Muhammad Shafiq 2024 SMCR 527; Pakistan Peoples Party Parliamentarians v. Federation of Pakistan PLD 2022 SC 574; Dr. Vijaya Manohar v. Kashi Rao AIR 1987 SC 1100; Sir William Blackstone in William Blackstone, Commentaries on the Laws of England, Book The First: Chapter the Fifteenth: Of Husband and Wife (Oxford Press) defines coverture as, "By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection and cover, she performs everything; and is therefore called in our law-French a feme-covert; is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture. Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities that either of them acquires by the marriage; E. H. Deering, 'Coverture and Lasting Effects of Gender Inequality: An Analysis through Equal Protection Jurisprudence' Washington University Jurisprudence Review (Volume 16, Issue 2, 2024); Reed v. Reed 404 U.S. 71 (1971); Frontiero v. Richardson 411 U.S. 677 (1973); Kirchberg v. Feenstra 450 U.S. 455 (1981); Bombay Labour Union v. Messrs International Franchises AIR 1966 SC 942; C. B. Muthamma v. Union of India AIR 1979 SC 1868; Air India v. Nargesh Meerza AIR 1981 SC 1829; Joseph Shine v. Union of India AIR 2018 SC 4898; Murdoch v. Murdoch [1975] 1 SCR 423; Bhe v. Magistrate Khayelitsha 2005 (1) SA 580 (CC); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social, and Cultural Rights (1966). Pakistan ratified ICCPR in 2010 and ICESCR in 2008 and Pakistan ratified the CEDAW on 3 December, 1996; CEDAW Committee, General Recommendation No. 33 on Women's Access to Justice, UN Doc. CEDAW/C/GC/33 (2015) <https://digitallibrary.un.org/record/807253/files/CEDAW_C_GC_33-EN.pdf?ln=en> accessed 23 March, 2025; Martha Albertson Fineman, The Autonomy of Myth: A Theory of Dependency (The New Press, 2005); bell hooks, Feminism is for Everybody: Passionate Politics (South End Press, 2000). She chose to write her name in lowercase to de-emphasize her personal identity and draw attention to her work and message, rather than herself; Simone de Beauvoir, The Second Sex (translated by H.M. Parshley) (Jonathan Cape, 1953); In existentialist terms (drawing on Jean-Paul Sartre, a French philosopher), the "other" means being objectified, excluded from subjectivity, and treated as something less than fully human, especially in social, cultural, and legal systems; Simone de Beauvoir, The Second Sex (translated by H.M. Parshley) (Jonathan Cape, 1953); General Post Office, Islamabad and others v. Muhammad Jalal PLD 2024

SC 1276; Paragraph 25 of the judgment provides that "it is clarified that the instant judgment shall not affect the appointments already made of the widow/widower, wife/husband or child of deceased or retired civil servants"; Zarai Taraqiati Bank v. Sarfraz Khan Jadoon 2021 SCMR 1305; Pakistan Medical and Dental Council v. Muhammad Fahad Malik 2018 SCMR 1956; According to the Merriam-Webster Dictionary, the term "liability" connotes "the quality or state of being liable" or "one that acts as a disadvantage"; Paragraph 7 of the impugned judgment rel.

(b) Islamic law---

---Women rights over their earnings---Scope---Under Islamic jurisprudence, a woman retains full ownership and control over her property, earnings, and financial affairs, irrespective of her marital status---Any presumption that a married woman becomes financially dependent on her husband is not only legally untenable but also religiously unfounded, and contrary to egalitarian spirit of Islamic law.

Surah An-Nisa (4:7): "For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much-a share ordained rel.

Rehman Ullah, Advocate Supreme Court for Petitioner (through V.L. Peshawar Registry).

Shah Faisal Ilyas, A.A.G. Khyber Pakhtunkhwa along with Ms. Sabra Parween, DEO (F) Karak for Respondents.

Assisted by: Umer A. Ranjha, Judicial Law Clerk.

Date of hearing: 17th March, 2025.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---"A woman's legal rights, her personhood, and her autonomy are not erased by marriage, not should they be made contingent upon it."¹ Briefly stated, Zahida Parveen ("petitioner") was appointed as a Primary School Teacher (Basic Pay Scale-12) at Government Girls Primary School, District Karak, under the deceased son/daughter quota pursuant to Rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion, and Transfer) Rules, 1989 ("Rules"), vide order dated 17.03.2023. Subsequently, the District Education Officer (Female), District Karak withdrew the petitioner's appointment order without issuing a show-cause notice, vide order dated 15.05.2023 ("impugned order"). It is pertinent to note that the petitioner's services were terminated based on a clarification letter dated 21.02.2020² ("impugned clarification"), which stipulates that the benefit of appointment under the deceased son/daughter quota is not available to a female who has contracted marriage. A further guidance/ clarification was issued by the Provincial Government on 28.04.2023, providing that a married daughter may be considered eligible for appointment only if she has separated from her husband and dependent on her parents.³ Aggrieved, the petitioner filed a departmental appeal against the impugned order before the Government of Khyber Pakhtunkhwa, which was not responded to within the statutory period. Consequently, the petitioner preferred an appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar, ("Tribunal"), challenging the impugned order, which was dismissed vide judgment dated 03.06.2024 ("impugned judgment"). Hence, the instant petition for leave to appeal.

2. Learned counsel for the petitioner submitted that the impugned clarification, when read in conjunction with Rule 10(4) of the Rules constitutes a misinterpretation and misconstruction of the relevant statutory provisions. It was further contended that the petitioner was not afforded an opportunity of personal hearing, and that her services were terminated without the initiation or conclusion of any proper inquiry or fact-finding investigation. Accordingly, the impugned judgment is contrary to the fundamental principles of natural justice and is liable to be set aside. Conversely, learned counsel for the respondents supported the impugned judgment, arguing that the petitioner was not entitled to appointment under Rule 10(4), as she was residing with her husband at the relevant time.

3. We have heard the learned counsel for the parties at length and examined the impugned judgment of the Tribunal along with the record of the case.

4. The Khyber Pakhtunkhwa Civil Servants Act, 1973 ("Act") is the principal law governing the terms and conditions of service for civil servants in the province. Section 26 of the Act empowers the Governor, or any person authorized by the Governor, to make rules necessary for carrying out the purposes of the Act. The Rules formed under the Act provide the framework for appointment, promotion, and transfer of civil servants. Rule 10 relates to appointments under special categories, and Rule 10(4), relevant for the present matter, is reproduced below:

Rule 10. Appointment by Initial Recruitment.--

(1) ...

(2) ...

(3) ...

(4) Where a civil servant dies or is rendered incapacitated/ invalidated permanently during service then notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant, or if the child has not attained the age prescribed

for appointment in Government Service, the widow/wife of such civil servant, to a post in any of the Basic Pay Scales 1-10:

Provided that the child or the widow/wife as the case may be, possesses the minimum qualification prescribed for appointment to the post:

(5) ...

(6) ...

(7) ...

(emphasis supplied)

A plain reading of Rule 10(4) makes it evident that it allows compassionate appointment in cases where a civil servant dies or is rendered permanently incapacitated during service. It allows the appointing authority to

appoint either one of the children of such a civil servant or, if the child is below the eligible age for government service, the widow/wife, to a post in Basic Pay Scales 1 to 10, subject to prescribed qualifications. The language of the rule is inclusive, indicating that the benefit is to be extended equally to all children, without distinction based on gender, marital status, disability or religion. Therefore, a plain reading of the provision indicates that a married daughter falls within the scope of "one of the children" and cannot be excluded solely on the basis of her marital status.

5. Now adverting to the impugned clarification issued by the Establishment Department, Government of Khyber Pakhtunkhwa, whereby Rule 10(4) of the Rules was interpreted so as to restrict its scope, the core question that arises is whether such an executive construction issued by a Section Officer can be regarded as legally competent to clarify, modify, or curtail the scope of the Rules. It is a settled principle of statutory interpretation that executive construction may assist in understanding administrative practice but holds no binding force where it seeks to override or contradict the express language of a statutory rule.⁴ While executive authorities may issue instructions to supplement the implementation of rules, but it cannot, under the pretext of a clarification, amend or distort the scope of duly framed

rules enacted under any statutory mandate.⁵ Allowing subordinate executive authorities to restrict the lawful scope of such rules would amount to an impressible encroachment into the legislative domain and offend the doctrine of separation of powers.⁶ Executive fiat cannot override legislative command, and any interpretation enabling such a proposition would be legally unsustainable and constitutionally repugnant.⁷

6. Applying this principle to the instant case, it is evident that the impugned clarification issued by the Establishment Department suffers from multiple constitutional and legal infirmities. First, the Establishment Department lacked the authority under Section 26 of the Act to issue any clarification that effectively amends Rule 10(4) --a power vested exclusively in the Governor. By purporting to interpret and restrict Rule 10(4), the impugned clarification amounts to an unauthorized executive act, effectively amending Rule 10(4) through an administrative fiat in clear excess of the executive's mandate. Second, and more critically, we have noticed that the impugned clarification introduces a discriminatory classification by excluding married daughters from eligibility, despite Rule 10(4) containing no such restriction, while allowing married sons to benefit under the same provision. Such a distinction does not meet the test of reasonable classification under Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). It is well settled that reasonable classification must be founded on an intelligible differentia and must bear a rational nexus to the object sought to be achieved by the law.⁸ In the present case, the exclusion of married daughters, despite the rule itself being inclusive and silent on marital status lacks any rational basis. No intelligible differentia is discernible between a married son and a married daughter that would justify such exclusion in light of the underlying purpose of Rule 10(4), which is to provide compassionate economic relief to the bereaved family of a deceased or incapacitated civil servant. This arbitrary classification is thus not only unreasonable but plainly unconstitutional, offending the guarantees of equality (Article 25), non-discrimination in public service (Article 27), and the right to dignity (Article 14).⁹ It also undermines the expectations of deceased civil servants whose families were assured of lawful security under the compassionate appointment framework. Consequently, the impugned clarification and the letter dated 28.04.2023 is liable to be struck down for being ultra vires, discriminatory, and constitutionally repugnant. It is well settled law that when the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically.¹⁰ Since the impugned clarification lacks lawful authority, the petitioner's termination pursuant to it is also void and declared unconstitutional.

7. The exclusion of married daughters from the ambit of Rule 10(4) is not merely a procedural irregularity--it reveals a deeper structural flaw grounded in patriarchal assumptions about a woman's identity and her role within the legal and economic order. It presumes that upon marriage, a woman relinquishes her independent legal identity and becomes economically dependent on her husband, thereby forfeiting entitlements available to similarly situated male counterparts. At its core, this exclusion constitutes a denial of a woman's right to financial and economic independence--rights that are not ancillary but essential to the exercise of constitutional personhood. The Constitution guarantees rights to individuals, not to marital units or prescribed social roles.

Women are autonomous, rights-bearing citizens in their own right, not by virtue of their relationship to a man, be it father, husband, or son. Financial independence is not a privilege but a necessary precondition for the full realization of citizenship, autonomy, and personhood. A married daughter remains equally a child of her deceased parent¹¹, and to deny her this entitlement on the basis of marriage is to deny her constitutional identity as an equal citizen. It bears mentioning that the principle of a woman's financial independence is not only grounded in the constitutional text but is also firmly embedded in the Islamic legal tradition. Under Islamic jurisprudence, a woman retains full ownership and control over her property, earnings, and financial affairs, irrespective of her marital status.¹² Therefore, any presumption that a married woman becomes financially dependent on her husband is not only legally untenable but also religiously unfounded, and contrary to the egalitarian spirit of Islamic law.

8. The rationale underpinning the impugned clarification represents a constitutionally impermissible revival of the discredited common law doctrine of coverture¹³, under which a woman's legal existence was subsumed into that of her husband.¹⁴ Contemporary constitutional jurisprudence¹⁵ has firmly rejected such notions, affirming that marriage neither extinguishes a woman's legal personhood nor curtails her entitlements under the law. Any policy or executive clarification that seeks to reintroduce this logic under the pretext of marital dependency violates the core constitutional guarantees of dignity, equality, and non-discrimination. Excluding married daughters from compassionate appointment under Rule 10(4) not only violates Pakistan's constitutional framework but also breaches its international legal obligations under various instruments¹⁶, most notably those under the United

Nations Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW")¹⁷. Article 1 of CEDAW defines "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of

men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Similarly, Articles 2 and 11 of CEDAW explicitly prohibit discrimination in employment on the basis of sex and marital status. The CEDAW Committee has repeatedly underscored that laws and administrative practices rooted in cultural stereotypes or customary norms are incompatible with the State's duty to secure substantive gender equality.¹⁸

9. More broadly, the exclusion reflects a regressive and untenable conception of womanhood---one that conditions a woman's civic and economic identity on her relationship to a man. The Constitution neither recognises marriage as a status-diminishing event nor permits the State to presume dependency on that basis. This position is firmly grounded in feminist legal theory. Feminist legal scholars such as Martha Fineman, for instance, challenges the legal system's assumption that marriage guarantees economic support for women. She argues that this presumption has historically served to justify their exclusion from public entitlements, and advocates for reconceptualization of the State as a responsive institution---one that affirms women's economic and legal autonomy.¹⁹ This vision aligns directly with Pakistan's constitutional commitment to equality and dignity. Similarly, bell hooks²⁰ underscores that true liberation requires economic independence and the dismantling of institutional norms that restrict women's access to public life based on the marital status or traditional roles. When the law denies married daughters equal access to employment opportunities, it reinforces the very patriarchal logic that the Constitution seeks to dismantle. This critique finds further resonance in Simone de Beauvoir's seminal work²¹ where she interrogates how society has historically defined women not as autonomous beings but as the "Other,²²" existing in relation to men rather than as individuals in their own right. De Beauvoir argues that a woman's personhood remains unrealised as long as her legal identity and legal entitlements are mediated through marital status or familial roles.²³ To exclude a woman from compassionate appointment merely because she is married is to reproduce precisely the patriarchal structure that denies women their full legal identity. It relegates them to a derivative status, reducing them to dependents rather than recognising them as independent, rights-bearing individuals. As Beauvoir aptly asserts, true liberation and by extension, constitutional equality requires that women be recognized and treated as full and equal participants in public life, with rights and responsibilities that are not contingent on their relationship to men. Anything less

perpetuates a system in which women's access to the justice remains precarious, conditional, and fundamentally subordinate.

10. In view of the foregoing, the exclusion of married daughters from compassionate appointment under Rule 10(4) of the Rules through the impugned clarification and the letter dated 28.04.2023, is declared to be discriminatory, ultra vires, issued without lawful authority, and incompatible with Pakistan's constitutional guarantees and international legal obligations. Consequently, the impugned judgment is set aside, and the respondent-department is directed to restore the petitioner's appointment with all back-benefits.

11. For completeness of record, it is clarified that the judgment of this Court reported as *General Post Office, Islamabad and others v. Muhammad Jalal* (PLD 2024 SC 1276) has struck down Rule 10(4) of the Rules as being ultra vires the Constitution but has no application on appointments that have been already made.²⁴ It is well settled that the judgments of this Court operate prospectively, unless declared otherwise.²⁵ Therefore, the present case remains unaffected by the said judgment.

12. We also find it necessary to express concern over the language used in the impugned judgment, particularly the phrase "a married daughter becomes a liability²⁶ of her husband."²⁷ Such language is not only factually and legally erroneous, but also deeply patriarchal, reinforcing outdated stereotypes that are fundamentally incompatible with constitutional values. It assumes that a woman's identity, legal capacity, personhood, and entitlement to support are subsumed into that of her husband upon marriage, treating her as a dependent rather than an autonomous, rights-bearing individual. The use of gender-biased language by judicial or administrative bodies does not merely reflect prevailing social prejudices, it perpetuates and legitimizes structural discrimination, and risks encoding bias into the law itself. Globally, it has been recognized that the language of judicial reasoning plays a critical role in shaping, affirming, or undermining substantive equality.²⁸ As constitutional subjects, women are entitled to equality not only in result but also in the form, tone, and respect with which the law addresses them. In this context, the Feminist Judgments Project undertaken in several jurisdictions²⁹ including Pakistan³⁰ has demonstrated how judicial reasoning can be reframed through a feminist lens, applying existing legal principles while eschewing gendered assumptions and incorporating inclusive, equality-affirming language. The core premise is clear: how law is written matters as much as what it decides.³¹

13. Thus, we deem it imperative to reaffirm that all judicial and administrative authorities bear a constitutional responsibility to adopt gender-sensitive and gender-neutral language. This is not a mere formality, but reflects a substantive commitment to the values of dignity, equality, and autonomy guaranteed to all citizens under Articles 14, 25, and 27 of the Constitution. The judiciary must lead by example, ensuring that the words used to interpret and apply the law do not themselves become instruments of exclusion.

14. This petition is converted into an appeal and allowed in the above terms.

MH/Z-3/SC Appeal allowed.