

**IN THE HIGH COURT OF SINDH, KARACHI**  
C. P. No D-4257 of 2016

**Present:**

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

Petitioners: Ahsan Ali Shah and 10 others  
Through Mr. Salahuddin Ahmed Advocate.

Respondents: Respondents No. 1 to 3 Province of Sindh  
& others through Mr. Abdul Jalil Zubedi  
Assistant Advocate General Sindh.

Respondent No.4 Pakistan Engineering  
Council through Mr. Ghulam Hyder  
Shaikh Advocate.

Respondents No. 5 to 10 namely  
Syed Nayab Hussain and others  
Through Mr. M.M. Aqil Awan Advocate

Date of hearing: 28.08.2017.

Date of Judgment: .10.2017.

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON-J.:** Petitioners are Civil Engineers holding Bachelor Degree i.e. B.E. (Civil) and are registered with Pakistan Engineering Council (PEC) as its lifetime members. They are serving as Assistant Engineers (BPS-17) in Public Health Engineering Department, Government of Sindh, and are aggrieved by the Impugned Notification dated 11.12.2015 on the ground that the same is ultra-vires to Pakistan Engineering Council Act, 1976 and is, therefore, void ab-initio and nullity in the eyes of law. By way of Impugned Notification, the Government of Sindh in pursuance of Sub-Rule (2) of Rule 3 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 has laid down the method, qualifications, experience and other conditions for appointment to the post of Executive Engineer,

Design Officer, Research Officer (BPS-18) in Public Health Engineering Department, according to which, 80% seats have been reserved by promotion from amongst Assistant Engineers (BPS-17) holding Degree of B.E. in Civil, etc. with at least five years' service in (BPS-17) in their respective technology or seniority-cum-fitness basis; 13% by promotion from amongst Diploma Holder Assistant Engineers/Assistant Design Officer (BPS-17) in their respective Technology on seniority-cum-fitness basis; and 7% by promotion from amongst Assistant Engineer (BPS-17) having B. Tech (Hons) Degree in Civil, etc., with at least 5 years' service in (BPS-17) in their respective Technology on seniority-cum-fitness basis.

2. The case of the Petitioners is that the post of Executive Engineer, Design Officer and Research Officer (BPS-18) in Public Health Engineering and Rural Development Department. Government of Sindh entails functions, which require undertaking purely engineering work and such function can only be performed by Engineers having necessary education and expertise. Delegating such functions to those, who do not have the necessary education and expertise, is arbitrary, irrational and it would wreak havoc on the entire Public Health Engineering and Rural Development Department. The effect of the Impugned Notification would be to equate the Diploma or B. Tech. in Engineering with Bachelor Degree in Engineering, which would be against the Provisions of 1976, Act. The necessity for the Petitioners to file the Petition seems to have arisen, when allegedly in pursuance of the Impugned Notification, the Public Health Engineering and Rural Development Department called a Departmental Promotion Committee (DPC) meeting held on 04.08.2016 to consider the cases of only Diploma and B-Tech. Degree Holders serving as Assistant

Engineers (BPS-17) for promotion to the available vacancies of Executive Engineer, Design Officer and Research Officer (BPS-18), to the exclusion of those having Bachelor Degree in Civil Engineering including the Petitioners.

03. When on 03.08.2016, this Petition was taken up for the first time, this Court issued notice to the Respondents as well as Advocate General Sindh and observed that meanwhile the Respondents may hold scheduled meeting of DPC but shall not declare the final promotion results till next date. Record reflects that despite interim orders, the Notifications pursuant to DPC were issued, which were brought into notice of this Court by the counsel for the Petitioners, hence apart from issuing Contempt of Court's Order, the status-quo ante i.e. the position as on 07.09.2016 was ordered to be restored. It appears that after such Order, the Respondents No. 5 to 7 filed an application Under Order 1 Rule 10 CPC for impleading themselves as Respondents in the instant Petition, which was allowed vide Order dated 02.02.2017, as a result of which, vide amended title dated 0.03.2017, they were made as Respondents. The said Respondents filed CMA No. 4557/2017 Under Order VII Rule 11 CPC read with Section 151 CPC, praying for rejecting the instant Petition on the ground of being barred by Article 212 of the Constitution, or in alternate to refer the Petition to Provincial Service Tribunal in pursuance of Rule 10 CPC.

04. During the course of arguments of this application, the counsel for the parties not only dilated upon the merits of said application but on the overall merits of the Petition and after hearing them, this Petition was reserved for judgment on

11.05.2017, thereafter the matter was fixed on 04.08.2017 for rehearing of the matter and finally the matter was reserved for judgment on 28.08.2017.

05. Mr. Salahuddin Ahmed learned counsel for the Petitioners has argued that qualification of Diploma and Bachelor of Engineering are not at par with each other and carry different weightage. Learned counsel referred to Section 2 (j) of Pakistan Engineering Councils Act 1976, which defines Professional Engineer. He has further contended that Diploma and B-Tech (Hons) degrees in Engineering are not recognized as an accredited engineering qualification and professional registered Engineers, under the law, therefore, they cannot perform any work of professional Engineering nor can hold any post in an Organization that involves the performance of such work ; that the subject posts involve the exercise of Professional Engineering work, which cannot be entrusted to them; that each and every post in an Engineering Department or cadre can only be filled by Engineers qualified under the PEC Act 1976. He next contended that since the present matter does not involve the terms and conditions of service, therefore, an Appeal before the Sindh Services Tribunal against the impugned notification is not open to the Petitioners under Section 4 of the Sindh Service Tribunal Act, which permits a Civil Servant aggrieved by a final order in respect of any of the terms and conditions of his service to prefer an appeal to the Tribunal; that the Petitioners have challenged the Respondent's unlawful allocation of a quota to Diploma-Holders and B-Tech. Degree Holders in relation to the subject posts vide the Impugned Notification; that there is no final or interim order against the Petitioners, as such, no appeal can be filed before the Sindh

Service Tribunal and a Constitutional Petition is the only remedy available to the Petitioners. Learned counsel, in support of his contentions, has relied upon the decision rendered by the Hon'ble Supreme Court in the case of Muhammad Younus Arain Vs. Province of Sindh and others (2007 SCMR 134), and further argued that a candidate holding a Diploma in Engineering cannot be recognized as a professional Engineer as a Degree of Diploma does not meet the criteria provided under section 2(j) of Pakistan Engineering Council Act 1976. He next added that in the instant case, the Respondents do not hold a Degree of Bachelor of Engineering awarded by any University of Engineering and Technology; that the impugned Notification dated 01.12.2015 issued by Government of Sindh, Public Health Engineering and Rural Development Department (PHERD) is made in pursuance of Sub-Rule 2 of Rule 3 of Sindh Civil Servant (Appointment, Promotion & Transfer) Rules 1974 and the same could not have been issued as it interferes with the working of the Pakistan Engineering Council; that so far as the Notification treats the Diploma Holders at par with Bachelors of Engineering, it is against the law. The Pakistan Engineering Council distinctly benefits the holder of the two Degrees and does not hold the same to be of equivalent weightage. Therefore, the Respondent No.3 has acted outside the scope of its power to issue impugned Notification. He next added that the Respondent No.3 through Impugned Notification has assigned the quota to all B-Tech Degree Holder, Diploma Holders, which is against the law and amounts to relaxing qualifications and same is in circumvention of the relevant law, and hence, not sustainable. He further contended that the Impugned Notification is ultra vires of Section 2 (xiii) of the

Pakistan Engineering Council Act 1976. In support of his contentions, learned counsel for the Petitioners has relied upon the case of Muhammad Hussain Vs. EDO (Education), 2007 SCMR 855, Bashir Ahmed Vs. Muhammad Aslam 2003 SCMR 1864, Ghulam Rasool Vs. Muhammad Hussain, PLD 2011 SC 119, Abdul Latif Vs. Chairman Board of Intermediate & Secondary Education 1986 CLC 1908, Tasnimuddin Vs. Prudential Discount and Guarantee House, 2005 MLD 1681, Zaheer Ahmed Vs. Government of Sindh, 1999 MLD 2881, Nadir Khan Vs. Town Officer, SBLR 2004 Sindh 620, Ejaz Ahmed Shah Vs. Federation of Pakistan PLD 2010 Karachi 309, Pakistan Engineering Council Vs. Federation of Pakistan 1998 SCMR 811, Muhammad Yasin Vs. Federation of Pakistan PLD 2012 SC 132.

06. Mr. M.M. Aqil Awan, learned counsel for the Respondents No. 5 to 10 has argued that the Petitioners are Civil Servants and have challenged Impugned Notification dated 01.12.2015, which directly relates to terms and conditions of their Service; that on the basis of the Recruitment Rules, the Administrative Department has given eligibility to the B-Tech Honors Degree Holders and Diploma Holders Assistant Engineers (BS-17) to be considered for next promotion of Executive Engineer (BS-18), which is a policy decision of the Government and the same cannot be nullified on the premise that they are not registered with Pakistan Engineering Council; that a Civil Servant, if he is aggrieved by an order, whether Original or Appellate Order, passed by a Competent Authority of the relevant Department in respect of his terms & conditions of service, his remedy, if any, is by way of an Appeal before the Service Tribunal, that where the case involves vires of a particular Service Rules or a Notification; which the Civil Servants

are adversely effected by the same for the purpose of law would be treated as an order in terms of Sub-Section (1) of Section 4 of Sindh Service Tribunal Act, 1973, amenable to the Service Tribunal in appeal; that under Section 5 of the Sindh Service Tribunal Act, 1973, the Service Tribunal is competent to adjudge upon the validity of Impugned Notification, as there is a bar of jurisdiction under Article 212(3) of the Constitution; that Recruitment Rules cannot be nullified, because to lay down the qualifications for any post for promotion or otherwise falls within the exclusive domain of the Government. In support of his contentions, he relied upon the case of Fida Hussain Vs. The Secretary, Kashmir affairs and Northern affairs Division Islamabad and others (PLD 1995 SC, 701), Pakistan Diploma Engineers Federation Vs. Federation of Pakistan (1994 SCMR 1807), Muhammad Younus Arain Vs. Province of Sindh and others (2007 SCMR 134), Ali Azhar Khan Baloch and others Vs. Province of Sindh and others (2015 SCMR 456), Pakistan Engineering Council and others Vs. Afzal Anwar Associates and others (1995 SCMR 802), Pakistan Engineering Council Vs. Federation of Pakistan and others (1998 SCMR 811), Muhammad Younus and Sons Vs. Ministry Water and Power Lahore and others (PLD 2003 SC 488), Muhammad Azam Vs. Tufail and others (2011 SCMR 1871) Muhammad Iqbal and others Vs. Executive District Officer Revenue and others (2007 SCMR 682) Mrs. Munnawar Sani Vs. Director Army Education (1991 SCMR 135), Secretary Revenue Division and others Vs. Muhammad Salim (2008 SCMR 948).

7. Mr. Ghulam Hyder Shaikh learned counsel for Respondent No.4 has argued that Pakistan Engineering Council has never equated the B-Tech or (Hons) with Bachelor of Engineering (B.E) at

any stage and the Section 27(5-A) of PEC Act 1976 restricts a person to perform the professional Engineering work who are not a registered Engineers; that the promotion of person / employ who has no Engineering qualification and not registered with PEC against a post, which is involved in the professional Engineering works, the said promotion will be against and in violation of Section 27 (5-A) of the PEC Act 1976; that the post of Executive Engineer is a Supervisory post and the person, who holds the said post has to look into the matters, which are related to the professional Engineering work; that the post of Design Officer and Research Officer are also a Non-Engineering posts . He lastly prayed that the Petitioners have not asked for any relief against Respondent No.4 therefore Petition may be decided on its merits.

08. Mr. Abdul Jalil Zubedi learned Assistant Advocate General Sindh has contended that the Pakistan Engineering Council Act does not apply on Diploma Holder and B-Tech Holders, as they are regulated under their own law; that the Assistant Engineer in (BS-17) Public Health Engineering Department holding Degree of B-Tech (Hons) and Diploma Holder are working in the Department since long; that the Department has received no complaint against them from their Superior Engineers; that the Department in consultation with Sindh Public Service Commission and Services General Admin & Coordination Department has reserved 20% quota for their promotion to the post of Executive Engineer (BS-18), whereas B.E (pass) Assistant Engineer (BS-17) are enjoying 80% quota for Engineer (BS-18), the method and conditions for appointment to the post of Executive Engineer have also been revised under Notification No. SO(PHE) 2 (8) 2000 dated 01.12.2015, which is quite reasonable and justified; that the works



and services as well as Irrigation and Power Department Government of Sindh has also reserved 20% quota for the promotion of Assistant Engineers (BS-17), who possess B-Tech (Hons) and Diploma in Civil Engineering vide Notification No. SO(C&W)E-W/12-1/2005 dated 19.03.2014 and No. A/11-2/81/III dated 16.12.2013; that in both the aforesaid Departments AEN (BS-17), who have diploma in Civil Engineering have already been promoted to the post of Executive Engineers (BS-18) against 20% quota; that being aggrieved by the reserving 20% quota. Mr. Mansoor Ahmed Memon an AEN of Irrigation and Power Department filed Petition No. 91-K of 2008, before the Hon'ble Supreme Court of Pakistan, upon which the Honorable Supreme Court passed order dated 09.06.2009 endorsed that this is a policy matter and leave was refused. He further contended that the matter has already been decided by the Supreme Court, hence this Court cannot adjudicate upon this matter further on the issue; that since this is a policy matter and policy making is the function of the Government therefore it has revised the method and qualification of the post of Executive Engineer in PHERD; that the same method of appointment has already been adopted/acted upon in other Departments and the same has also been notified by Works & Services Department as well as Irrigation and Power Department; that the promotion of Diploma and B-Tech (Hons) AENs (BS-17) against 20% quota on the post of Executive Engineer (XEN) (BS-18) has also been made here in this Department, the Diploma and B-Tech (Hons) have rendered their services more than 30 development schemes successfully. Presently, they are at the verge of retirement, therefore, raising objections by the Petitioners that the Diploma Holder and B.-Tech

(Hons) AENs (Bs-17) may not be promoted against reserved quota of 20% is quiet unjustified; that the Chief Engineer PHERD, Hyderabad has referred the matter of the Petitioners to this Department, which is under consideration since this is purely service policy matter needs to be decided by the Department; that a DPC meeting was fixed on 04.08.2016 to consider the cases of Diploma and B-Tech Holder Assistant Engineer (BS-17) for promotion against reserved quota of 20% as per method of appointment prescribed by the Department (PHERD), however, the DPC was put off due to pendency of this Petition; that this is service/policy matter and as per orders dated 09.06.2009 passed by the Hon'ble Supreme Court of Pakistan, it is to be decided by the Government only. Moreover, this is a service matter, relating to the terms and conditions of service, which can only be heard and decided by the learned Sindh Service Tribunal and this Court cannot entertain service matter of Civil Servants in view of bar contained under Article 212 (3) of the Constitution of Pakistan; that the Assistant Engineers (BS-17) PHERD possessing degree of B-Tech (Hons) and Diploma Holder are being considered for promotion to the post of Executive Engineers BS-18 against 20% quota as per Rules framed vide Notification dated 01.12.2015, which is within the parameters of law.

09. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

10. The questions which arise are as to whether the instant Petition is maintainable under the law and whether the grievance raised in the Petition pertains to the terms and conditions of service of the Petitioners?

11. We are of the view that the matter pertains to promotion policy. Recruitment Rules have been amended to confer right of promotion to Diploma and B-Tech Degree Holders in BS-18. Therefore, it cannot be said that any right of the Petitioners is infringed, which could be enforced by a Writ Petition.

12. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a Writ. Rule 3(2) of Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974 provides the method of appointment, qualifications and other conditions applicable to the posts, which are laid down by the Department concerned in consultation with the Services and General Administration Department.

13. As per Section 7(ii) (a) of Sindh Public Service Commission Act, 1989 the Commission advises the Government on the matters relating to qualification and recruitment to the posts connected with the affairs of the Province of Sindh.

14. The impugned recruitment rules have been framed in pursuance of Sub-Rule (2) of Rule 3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 in consultation with the Services General Administration and Coordination Department and Commission.

15. We are of the view that Rules have been framed under the statutory power within the ambit of the relevant statute, therefore, we cannot sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the Regulations making body merely because the impugned Recruitment Rules will not serve the

object of the Pakistan Engineering Council Act, 1976 as contended by the learned counsel for the Petitioners.

16. It is well settled law that the Government is empowered to change the promotion policy and prescribe the qualification for a particular post through amendment in the relevant Rules. Secondly, the responsibility deciding suitability of an appointment, posting or transfer fell primarily on the Executive branch of the State which is a policy matter.

17. The impugned Notification dated 1<sup>st</sup> December 2015 is reproduced as under:

**NO.SO (PHE) 2(8)/2000 pt.IV  
GOVERNMENT OF SINDH  
PUBLIC HEALTH ENGINEERING &  
RURAL DEVELOPMENT  
DEPARTMENT  
KARACHI DATED 1<sup>st</sup> December, 2015**

**NOTIFICATION**

NO.SO(PHE)2(8)/2000 pt.IV In pursuance of sub-rule (2) of rule-3 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and in consultation with the Services, General Administration and Coordination Department, Government of Sindh and in partial modification of this Department's Notification No. NO.SO(PHE)2(8)/81 pt.I dated 10<sup>th</sup> July, 1988, the method, qualifications, experience and other conditions for appointment to the post in the Public Health Engineering Department, Government of Sindh, mentioned in column-1 of the table below, shall be as laid down in column-2 hereof:-

TABLE

<b>NAME OF POST WITH BPS</b>	<b>METHOD OF APPOINTMENT</b>
Executive Engineer/Design Officer/Research Officer (BPS-18)	<p><b>a) Eighty percent</b> by promotion from amongst Assistant Engineers (BPS-17) holding degree of B.E in Civil, Mechanical or Electrical Engineering with at least five years' service in (BPS-17) in their respective technology on seniority-cum-fitness basis.</p> <p><b>b) Thirteen percent</b> by promotion from amongst Diploma Holder Assistant Engineers/Assistant Design Officers (BPS-17) having Diploma in civil, Mechanical or Electrical Engineering with at least five years service in (BPS-17) in their respective technology on seniority-cum-fitness basis.</p> <p><b>c) Seven percent</b> by promotion from amongst Assistant Engineers (BPS-17) having B. Tech (Hons) Degree in Civil, Mechanical or Electrical Engineering with at least five years service in (BPS-17) in their respective technology on seniority-cum-fitness basis.</p>

**SECRETARY TO GOVT OF SINDH**

18. The aforementioned Recruitment Rules depict the policy of the Provincial Government whereby 20% quota is assured to Diploma and B. Tech (Hons) Degree Holders for promotion as Executive Engineer (BPS-18). This does not amount to recognizing the Diploma and B. Tech (Hons) Holders as having a Degree equivalent to the Bachelors of Engineering as stipulated in Pakistan Engineering Council Act, 1976. Therefore, contention of the Petitioners that they are Graduate Engineers and are aggrieved by the aforesaid impugned Notification is not tenable under the law for the simple reason that it is for the Government and not for the Courts to make such policies, if the same do not offend against any law or any Constitutional or legal rights of the Petitioners. Government is empowered to frame the policy of promotion, appointment and qualification for appointment against a particular post. Thus, promotion quota of 13% and 7% respectively as specified in the impugned Notification reproduced supra does not violate any fundamental right of the Petitioners. Therefore, the Petitioners have no cause of action to file Constitutional Petition against the Rules framed by the Competent Authority. We are fortified by the decision rendered by the Honourable Supreme Court of Pakistan in the case of Government of Khyber Pakhtunkhwa and others vs. Hayat Hussain and others (2016 SCMR 1021).

19. This Court ordinarily refrains from interfering in the domain of the Executive. Fair and meritorious appointment to public office is requirement of law under Article 18 of the Constitution. Therefore, Respondent No.1 has issued the Notification dated 01.12.2015, which is in accordance with law. That no Civil Servants can be prejudiced, if Government frames the policy of promotion in service matters.

20. As per the settled principle, determination of illegibility of the Respondents through the Rules fully falls within domain and policy decision of the Government which, cannot be interfered with by this Court. On this proposition, the decision rendered by the Hon'ble Apex Court in the case of Ghulam Rasool Vs. Government of Pakistan & others (PLD 2015 SC 6) is very much clear.

21. It may be observed that the Recruitment Rules earlier notified vide Notification dated 10.08.1987 had fixed 20% quota for further promotion for Diploma Holders and the same Notification has been amended from time to time by putting the ratio of percentage to the particular Class of Civil servants having qualification of Diploma and B-Tech. Therefore, Petitioner's stance before this Court that they are aggrieved by the prescribed quota assigned to them is not tenable.

22. In the light of above facts and circumstances of the case, we conclude that there is no illegality, infirmity or material irregularity in the impugned Notification dated 1<sup>st</sup> December 2015, issued by Secretary Public Health Engineering and Rural Development. Consequently, the instant Petition is dismissed along with listed application(s).

JUDGE

JUDGE