IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR &
MR. JUSTICE ADNAN-UL-KARIM MEMON

C. P. NO.D-1906/2020

Petitioner : **Pasban Pakistan**,
through its President Mr. Altaf Shakoor,
Through Mr. Irfan Aziz advocate.

Respondent s : **Federation of Pakistan and others**.
through Mr. Muhammad Nishat Warsi, DAG.
and Mr. Ali Safdar Depar, AAG.

Date of hearing and short order : 13.10.2021.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Petitioner has prayed that:-

(1). To **declare** the **quota** system as **null** and **void**, illegal and **unconstitutional** after its **expiry date** as per the constitution of Pakistan.

(2). To **direct** the **Respondents** to **cancel** all the **appointments** made on the basis of **quota** system after the date of its **constitutional** expiry in **2013** and **refill** all these **vacant** slots on the basis of pure **merit** through open **competition**.

(3). **Restrain** the Respondents from **using** the abolished, **expired Quota** System for the **allocation** of **jobs**/ services in the Federal/Provincials civil services.

(4). To **direct** the Respondents to **make appointments** on merit basis **irrespective** of the **quota-system**, which has since **expired** in **2013**.

(5). To **award** any other **relief** deemed **fit** and **proper** in the **circumstances** of the case."

2. Brief facts and legal grounds as set up in the petition are that, for the uplift of any country and society it needs *upholding* the rule of law, merit and equality *ending* discrimination and racism with citizens of the country in its every shade, caste, creed and color; the

cancerous quota system in Pakistan ended in 2013 and the rotten dead body of quota system, instead of a respectful burial, is still being dragged by the respondents, despite fact of its constitutional demise. Resultantly, the sufferer is the general public of Pakistan, which is being denied of efficient governance, as recruitments are still made on outdated quota system, which has already lived its useful age, as prescribed by the Constitution of Pakistan, instead of pure ability and merit. The Article 27 of the Constitution of Pakistan governs the quota system; in Pakistan it was originally established to give every region of the country representation in institutions according to their population; it was first introduced in Pakistan by Prime Minister Liaquat Ali Khan in September 1948, further refined in 1949 when 20 percent of seats were allocated for Central Superior Services (CSS) on merit; the Constitution of Pakistan of 1956 extended the quota system of 1949 by 15 years and in 1970 General Yahya Khan's martial law government extended the quota system according to which the rural and urban (*Karachi, Hyderabad and Sukkur*) population in Sindh were given respectively 60% and 40% representation in services on the recommendations of the then martial law administrator Rukhman Gul of Sindh.

3. The Constitution of Pakistan 1973 clearly describes in Chapter-I titled "Fundamental Rights and Principles of Policy" of Article 27 Clause I about safeguarding the fundamental rights of the citizens of Pakistan against the discrimination in the federal and provincial government services. As per the constitution, for a period not exceeding forty years from the commencing day (of the 1973 Constitution), posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan. In the interest of civil service, specified posts or services

may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex. At the very outset, the Constitution had fixed ten years for the continuation of the quota system, later in 1985 it was extended for ten years, in 1999, it was expanded by another twenty years and overall forty-year extension ended in 2013. Since then, it has not been enhanced, but the federal cabinet decided to continue with the job quota for provinces in federal government departments. Despite the cabinet's decision, the Constitution was not amended till 1999. Through the 16th Constitution Amendment Act 1999, the period was extended from 20 to 40 years during the *second* Government of Mr. Nawaz Sharif. In July 1991 the National Assembly passed the much awaited Constitutional (Sixteenth Amendment) Bill, 1999 by 162 against four votes, more than two-thirds majority, reviving the quota system in services till 2013 and thereafter the quota system is practically dead and buried, because the constitutional cover is no more available to this practice. In the absence of extension of the period, given in the Constitution, implementation of the quota regime has already become unlawful. However, despite its death and demise, this system is still illegally and unlawfully applicable to specific areas including determining the share of various areas in appointments in bureaucracy through the competitive examination.

4. That the Respondents by killing the **merit** enforced the unjust system by induction in the **CSS** as only **7.5** per cent seats are reserved for **open merit**; the remaining **92.5** percent reservations are quota based, whether they are eligible or not. Following is the ratio in percentage:

MERIT	PUNJAB	KPK	SINDH-R
7.5	50	11.5	11.4
SINDH-U	**BALOCHISTAN**	**FATA-GB**	**AJK**
7.6	6	4	2

That the above chart shows Sindh Urban and Sindh Rural only for Sindh and it does not apply for any other province which is malafide, illegal, unconstitutional and showing the *mens rea* for the merit and educated young generation of Sindh urban, *especially* Karachi, as this policy *deprived* the Karachi young generation for bureaucratic seats and service in Federation as well as in the Province; the example is the advertisement of job in Karachi Port Trust which is situated in Karachi and the advertisement clearly inviting applications from whole Pakistan excluding Karachi which is a unique example of *inequality* and *deprivation* in the whole world as always advantage is given to the locals first and priority should be given to the locals, same is the situation in Pakistan Navy. The induction of quota system by the Respondents in Pakistan is the root cause of racism in the country which has resulted in widespread economic disparity and hatred amongst the people; the outcome is that 90 percent of the country bureaucrats are recruited through lowering the selection criteria depriving the intelligent eligible Pakistanis who were/are denied to serve the nation, which has resulted in *inefficiency*, *corruption* and racism and destruction of the whole country and nation. The respondent's discrimination resulted into *collapsing* the whole country in the economic zone as well, debts over the country have been increased putting the country in the grey-list to the alarming extent and the country is going in the blacklist due to the *inefficiency* in *bureaucracy* of Federation and Province. The quota-system caused irreparable damage to the whole nation, economy of the country and the whole public, as the country is

standing in the last number in the comparison list of economy, education, health, science, development etc. The quota system which has resulted into disasters in all norms, viz. injustice, economic disparity, nepotism, inefficiency, corruption, bribery, feeling of deprivation, un-employment, resulting in hatred, fighting, intolerance, chaos; the quota system has been declared un-Islamic and illegal by the Federal Shariat Court and the Supreme Court of Pakistan.

5. **Conversely** the comments filed on behalf of respondent No.1/Federation of Pakistan, contains that existing quota system in Federal Government was introduced in the light of article **27(1)** of the Constitution read with Rule **14** of Civil Servant **Appointment, promotion and Transfer** (**Rules 1973)** and in pursuance of proviso to article 27(1) of the Constitution, it has been laid down in Rule 14 of the Rules of 1973 that all posts in basic pay scale 6 to 15 and equivalent in offices which serve the whole of Pakistan and all posts in BS-16 and above and equivalent shall be filled up on all Pakistan basis in accordance with the merit and provincial/regional quotas provided thereunder. Posts in BPS-1 to 5 and equivalent shall be filled under Rule 16 of the said Rules; existing merit and regional / provincial quota is being observed since 2007 in filling up vacancies reserved for direct recruitment to posts in the Federal Government as amended vide OM dated 14.02.2020 to the extent of bifurcation of **4%** combined quota of Gilgit-Baltistan and FATA. The Article **27(1)** of the Constitution initially provided such reservation of a period of **ten years**, which **extended** for a further period of **ten** years through Presidential Order No.14 of 198 and lastly for a period of twenty years from the date of its *expiry* in pursuance of Cabinet Decision under Case No.177/18/98 dated **19.08.1998** through Act No. VII of 1999

dated **05.08.1999**. It was contended that matter regarding amendment in the first proviso of Article **27(1)** of the Constitution was considered by the then Cabinet in its meeting held on 07.03.2013 under Case No.73/04/2013, that recommended an extension for further twenty years from 14.08.2013, however constitutional **amendment** could not be made, hence the matter was again placed before the former **Cabinet** which in its meeting dated **25.07.2013** also recommended *extension* for above said period; that Official Bill regarding amendment in Article **27(1)** of the Constitution was laid in the House by the Law and Justice Division, however it could not be brought on the agenda of the former National Assembly for consideration for enactment by the Parliament, hence by virtue of Article **76(3)** of the Constitution the same stood lapsed on dissolution of National Assembly. Thereafter the sitting Cabinet has sworn on **20.08.2018** and this Establishment Division on **29.08.2018** had initiated the proposal for placement of the matter before the Cabinet for consideration. In compliance with the directions of Prime Minister, dated **19.04.2019** a summary was forwarded to the Cabinet Division on **07.05.2019** for placement of the matter before the Cabinet Committee for Disposal of Legislative Cases (CCLC) for consideration and recommendations to be considered by the Cabinet. That committee during its meeting held on **19.06.2019** has considered the summary dated **07.05.2019** and deferred its consideration for further consultation between Establishment and Law Justice Division. The proposals made with the consultation of Establishment Division and Law and Justice Division were again placed before the Prime Minister for **approval** to place the matter before the Cabinet for *consideration* and **decision**. Moreover, the Prime Minister's Office vide their U.O. dated **15.04.2020** while

constituting a Committee has *desired* to look into the pros and cons of the issue and submitted a consensus proposal to resolve the matter. Several meetings have been scheduled in this regard including lastly, held on **27.01.2021**, whereby; it was decided to have further consultation with the **Attorney General of Pakistan** in the next meeting of the committee. That matter regarding continuity of observance of regional/provincial quota in the absence of constitutional amendment in **Article 27(1)** of the Constitution also remained under adjudication before **the Hon'ble Supreme Court of Pakistan in CP No.34/2017 and CP No. 71/2017** ***in which the apex court had held that after the change brought into the relevant Law/Rules pursuant to E*****ighteenth Amendment, the Court found that all the questions noted and raised in the orders dated 13.09.2018 have become irrelevant**. The law presently in force is absolutely in consonance with the provisions of Article **27(1)** of the Constitution, as well Rules of 1973 have been amended and existing quota is being followed on the strength of Article **37(f)** and **38(g)** of the Constitution and on strength of **Rule 14 of Rules of 1973** therefore, instant petition having no merit is accordingly dismissed, whereas Government of Sindh failed to file comments despite of opportunity.

6. At the outset learned counsel for petitioner while reiterating the pleadings further contends that quota system is seriously affecting the merits of the deserving candidates as the Federal and Provincial Authorities are misusing the same to accommodate their favourites on the basis of quota system; he further argued that the quota system in the service of Pakistan is discriminatory and after lapse of Proviso with regard to the period of 40 years has become redundant. It is further urged that the recruitments are to be made on the basis

of Article 27(1), of the Constitution. It is further urged that all the appointments made on the basis of quota system after 2013 are liable to be declared null and void. Lastly, the learned counsel for the Petitioner has prayed that the Petition may be allowed as prayed.

7. Per contra, Mr. Muhammad Nishat Warsi, DAG and Mr. Ali Safdar Depar, AAG have argued that in compliance with the directions of Prime Minister, dated **19.04.2019** a summary was forwarded to the Cabinet Division on **07.05.2019** for placement of the matter before the Cabinet Committee for Disposal of Legislative Cases (CCLC) for consideration and recommendations to be considered by the Cabinet. They have also challenged the maintainability of the petition on the plea that the matter regarding continuity of observance of regional/provincial quota in the absence of constitutional amendment in **Article 27(1)** of the Constitution also remained under adjudication before the Hon'ble Supreme Court of Pakistan in CP No.34/2017 and CP No. 71/2017 *in which the apex court had held that after the change brought into the relevant Law/Rules pursuant to E*ighteenth Amendment, the court found that all the questions noted and raised in the orders dated 13.09.2018 have become irrelevant. It is further urged that the law presently in force is absolutely in consonance with the provisions of Article **27(1)** of the Constitution, as well Rules of 1973 have been amended and existing quota is being followed on the strength of Article **37(f)** and **38(g)** of the Constitution and on strength of **Rule 14 of Rules of 1973;** therefore, the learned DAG/AAG have prayed for dismissal of the Petition.

8. Before dilating upon issue raised in the petition it would be appropriate to look into the word "Quota" being universally accepted

especially into the "**Black's Law Dictionary**" 11th Edition Revised Fourth Edition by The Publisher's Editorial Staff St. Paul, minn. West Publishing Co. 1968 and speaks as follows:-

> QUOTA. A **proportional part** or **share**, the **proportional** part of a **demand** or **liability**, **falling** upon **each** of **those who** are **collectively responsible** for the **whole**.

9. The bare reading of the universally accepted meaning of the word Quota enlighten that its share, cut stake being divided equivalently among the people who are answerable for the whole, and it can safely be said that each person of the nation is equally responsible for the upbringing, prosperity and development of the country, therefore his meaningful participation in the power sector has become inevitable and the same cannot be afforded and possible without affording opportunity approach the appropriate indiscriminately and numerically sufficient representation.

10. Apart from above, constitution being supreme legislation being source and assurance of the fundamental rights protects the rights of the every native of the country indiscriminately and each provision of the same is to be read out in consonance to each other not otherwise safeguarding the rights of the inhabitants as enshrined in ***Article 25 & 25 A*** i.e equality under the law and protection with free compulsory education to the next fathers of the nation and speaks as follows:-

> **Article 25 : Equality of citizens.**
>
> (1) All **citizens** are **equal** before law and are **entitled** to equal **protection** of law.
>
> (2) There shall be no discrimination on the basis of sex alone.
>
> (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Article 25-A : Right to Education,

State shall provide **free** and **compulsory education** to **all children** of the age of five to sixteen years in such manner as may be determined by law.

11. The careful glance of the both articles suggest that equivalence of the inhabitant of the state equally protected in addition to mandatory essential education to all children till the age of sixteen years free of costs. At this juncture question may be asked to the petitioner as well as raises in mind that whether the "***State***" has capable to ensure free compulsory education to all the children in country? Statics of literacy ration shows that yet there is big gape to fill the same.

12. Unequivocally the provision of the job and participation of the citizen of the Pakistan **indiscriminately** without race, religion, caste, sex, **residence** or **place of birth** under **Article 27** protected, but the same its ***sine qua*** non to right of education under Article **25-A** of the Constitution as it placed first in sequences of the fundamental rights.

13. Apart from above and taking pause at this stage in discussion of the fundamental rights protected in the constitution of the Pakistan, it may be observed here that the word "**Quota**" or the system based on the same is neither out dated, rejected or discouraged internationally and prevailing in the advanced countries as well, including the neighbouring countries in the line of **Article 18 United Nations Declarations of the rights of indigenous People 2007 which secure the rights of the persons as follows.**

Article 17 (3).

Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary;

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions;

https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1

Reason to protect the rights of indigenous people.

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

14. Moreover, the job quota being maintained in the Australia Public Services (ttps://www.apsc.gov.au/working-aps/diversity-and-inclusion/indigenous-capability-agency-portal/indigenous recruitment-guide) as well as evince from it Foreword as follows:

> "The Australian Public Service (the APS) is committed to improving and sustaining employment outcomes for people from **diverse backgrounds**. We recognise the **knowledge**, **insights** and **capabilities** of **Aboriginal** and Torres Strait Islander peoples. Their strength, resilience and **cultural competence** are highly valued.
>
> Meeting the challenges of the future will require a workforce that reflects the community that we serve. Workplaces that embrace a diverse and inclusive environment unlock new perspectives and ways of solving problems. These workplaces generate creativity and innovation, and produce more sustainable and effective outcomes.
>
> If we are to capably respond to the needs of the community, the representation of Aboriginal and Torres Strait Islander peoples in the APS must increase. I encourage you to look for opportunities within your agency to employ more Aboriginal and Torres Strait Islander people in all occupations, levels of employment

and locations. I commend the use of the Affirmative measure – Indigenous employment when recruiting.

To make genuine changes to our workforce, we must adopt a sustained cross-government focus on strengthening cultural competence. All staff should be encouraged to develop the skills, knowledge and practices they need to perform their duties in a culturally informed way. Ensuring APS workplaces are inclusive with diverse perspectives, including those of Aboriginal and Torres Strait Islander peoples, should be at the forefront of our agenda."

John Lloyd PSM Australian Public Service Commissioner

15. Irrespective of the going and discussing details of the above article the prominent fact eminent from above articles that the same are directory and compulsory and to applied coextensively. Further Hon'ble Supreme Court held in the case regarding observing Quota **Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islambad and another** (1997 SCMR 1026), wherein observed that:-

"26. From the above cited cases the following principles of law are deducible:-

(i) **that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances**, but it contemplates that **person similarly situated or similarly placed are to be treated alike**;

(ii) that **reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis**;

(iii) that **different laws can validly be enacted for different sexes**, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;

(iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of person may be Constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) **that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed**;

(vii) that in order to make a classification reasonable, it should be based-

(a) **on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left** out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification."

16. It has been recently held in the case titled ***Punjab Public Service Commission Vs Husnain Abbas (2021 SCMR 1017)*** that:-

> ***"The argument of learned counsel for the Appellants that 40 years period provided in the Constitution has expired is misconceived and fallacious. It is evident from a plain reading of third proviso to Article 27 of the Constitution that necessary amendments have been made in the Rules of 1974 in accordance with the mandate provided by the Constitution and the same has been found by us to be in consonance with the provisions of Article 27(1) of the Constitution. This aspect of the matter was considered by a three member Bench of this Court in Constitution Petitions Nos.34 and 71 of 2007, 10 and 11 of 2018 and Civil Petition No.1750 of 2018. Vide judgment dated 06.12.2018, this Court came to the conclusion that legislation put in place by the competent legislature for redressal of under representation of any class or area in the service of Pakistan is neither ultra vires nor violates Article 27(1) of the Constitution. Reference in this regard may also usefully be made to a judgment of this Court reported as Mushtaq Ahmed Mohal v. Honourable Lahore High Court (1997 SCMR 1043)".***

In the case of ***Zarai Taraqiati Bank Limited and others v. Said Rehman and others,*** 2013 PLC (C.S) 1233, the Honourable Supreme Court of Pakistan held that:-

> ***"16. The "rules" and "regulations" framed under any Act are meant to regulate and limit the statutory authority. All statutory authorities or bodies derive their powers from statutes which create them and from the rules or regulations framed thereunder. Any order passed or action taken which is in derogation or in excess of their powers can be assailed as ultra vires. Rules and regulations being forms of subordinate legislation do not have substantial difference as power to frame them is rooted in the statute. Statutory bodies are invariably authorized under the Act to make or adopt rules and regulations not inconsistent with***

> ***the Act, with respect to such matters which fall within their lawful domain to carry out the purposes of the Act. This rule making power of such bodies, called 'delegated legislation' has assumed importance in the contemporary age. "The justification for delegated legislation is threefold. First, there is pressure on parliamentary time. Second, the technicality of subject matter necessitates prior consultation and expert advice on interests concerned. Third, the need for flexibility is established because it is not possible to foresee every administrative difficulty that may arise to make adjustment that may be called for after the statute has begun to operate. Delegated legislation fills those needs"***

In Rajya v. Gopikabai (AIR 1979 SC 79), the Indian Supreme Court, highlighted the broad categories of legislation by reference and opined as under:--

> ***"Broadly speaking, legislation by referential incorporation falls in two categories: First, where a statute by specific reference incorporates the provisions of another statute as of the time of adoption. Second, where a statute incorporates by general reference the law concerning a particular subject, as a genus. In the case of the former, the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. In the case of hatter category, it may be presumed that the legislative intent was to include all the subsequent amendments also, made from time to time in the generic law on the subject adopted by general reference. This principle of construction of a reference statute has been neatly summed up by Sutherland, thus:***
>
> ***A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted.***
>
> ***(Vide, Sutherland's Statutory Construction, Third Edition, Article 5208, page 5208)".***

17. In case of **Malik Ubaidullah Vs Government of Punjab etc.** reported as 2021 PLC (CS) 65 Supreme Court, Honourable Supreme Court held while securing the Job Quota of differently able persons in

the perspective of Article 27 of the Constitution under discussion as follows:-

> ***"CRPD works to promote and protect the human rights of people with disabilities. With Article 27 explicitly recognizing their right to work on an equal basis with others. The same article further emphasizes the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to people with disabilities. CRPD also prohibits all forms of employment discrimination, promotes access to vocational training, promotes opportunities for self-employment and calls for reasonable accommodation in the workplace. The new dimension in the treatment of persons with disabilities, which the Convention sanctions, is the departure from the perception of people with disabilities as "objects" of mercy, treatment and social protection, to the perception of disabled people as "subjects" possessing rights, which they are able to claim, make decisions and be active members of society. This legal act is based on values arising from fundamental human rights. It guarantees people with disabilities equal access to institutions and the possibility of pursuing social activities and fulfilling the roles on the same principles as those who are able-bodied"***.

18. Since the core issue revolves around Article 27 of the Constitution, so it would be appropriate to have a glance over the same, which reads as under:-

> 27. **Safeguard against discrimination in services:**
>
> (1) No citizen **otherwise qualified** for **appointment** in the service of Pakistan shall be **discriminated** against in respect of any such **appointment** on the **ground** only of race, religion, caste, sex, **residence** or **place of birth**:
>
> Provided that, for a period not exceeding forty years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan:
>
> Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

> Provided also that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament)
>
> (2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority."

19. The Constitution of Pakistan 1973 introduced the first proviso of clause **1** of **Article 27**. It is related to the country's existing reserved posts/quota system. Its period was extended from time to time. It says that since the commencing day of the Constitution, its period shall not exceed forty years. It is deemed to expire in **2013**. Prior to expiry of period, parliament passed the **eighteenth amendment vide the Act No. X of 2020** to further amend the Constitution of Pakistan. By such amendment, the legislature enacted **the third proviso of clause (1) of Article 27 of the Constitution, and it was provided therein that 'under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an act of parliament'**. Besides, the period of '**forty years'** mentioned in clause **1** of **Article 27** is also protected by **Article 254**, of the Constitution. **It says *if a thing or an act as ordained by the Constitution is not done within the stipulated period it shall not become invalid or ineffective by reason only that it has not been done within the period specified***. Furthermore 40 years period provided in the Constitution has expired is misconceived and fallacious. It is evident from a plain reading of third proviso to **Article 27** of the Constitution that necessary amendments have been made in the Rules of 1973 in accordance with the mandate provided by the Constitution and the same has been found by us to

be in consonance with the provisions of ***Article 27(1)*** of the Constitution.

20. Third Proviso to ***Article 27(1)***, the legislature has left the under-representation of any class or area in the service of Pakistan to be redressed in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament). The principle can be deduced from the third Proviso to ***Article 27(1)***, of the Constitution that the matter with regard to determination in respect of the representation of citizens of any class or area in service of Pakistan fall within the exclusive domain of the executive based upon the trichotomy of powers where legislature is vested with the function of law making, the executive with its enforcement and judiciary of interpreting the law. The Court can neither assume the role of a policy maker or that of a law maker. The reliance, if needed, can be placed on the Case of ***Executive District Officer (Revenue), District Khushab at Jauharabad and others v. Ijaz Hussain and another (2011 SCMR 1864)***, wherein it has been held by the Honourable Apex Court that; *"The framing of the recruitment policy and the rules thereunder, admittedly, fall in the executive domain. The Constitution of Islamic Republic of Pakistan is based on the well-known principle of trichotomy of powers where legislature is vested with the function of law making, the executive with its enforcement and judiciary of interpreting the law. The Court can neither assume the role of a policy maker or that of a law maker"*. In the case of ***Ghulam Rasool Vs. Government of Pakistan & others*** *(**PLD 2015 SC 6),*** It is held that; *"It is by now a well-settled law that the responsibility of deciding suitability of an appointment, posting or transfer fell primarily on the executive branch of the State. It is also a*

settled law that the Courts should ordinarily refrain from interfering in policy making domain of the Executive."

21. It will not be out of context to mention that in India also there are **Articles 15(4) and 16(4)** in the Indian Constitution. The former guarantees that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, but clause (4) thereof provides exception to the above rule by laying down that nothing in the aforesaid Article or in clause (**2**) of **Article 29** shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes. The latter Article (i.e. the **Article 16**) guarantees equality of opportunity of public employment by providing inter alia that; there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. However, clause (**4**) thereof provides exception by laying down that "*Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State*". The reasons for providing the aforementioned provisions have been succinctly stated by **B.P. ' Jeevan Reddy, J**. in his opinion for himself and on behalf of **M.H. Kania, C.J**. and **M.N. Venkatachaliah**, and **A.M. Ahmadi, JJ** representing the majority view in the well-known case of **Indra Sawhney etc. etc**., **Petitioners v. Union of India and others, etc. etc., Respondents. (AIR 1993 SC 477)** (also known as the **Mandal verdict**) in the following words:--

"2. The Constituent Assembly, though elected on the basis of a limited franchise, was yet representative of all sections of society. Above all, it was composed of men of vision, conscious of the historic but difficult task of carving an egalitarian society from out of a bewildering mass of religions, communities, castes, races, languages, beliefs and practices. They knew their country well. They understood their society perfectly. They were aware of the historic injustices and inequities afflicting the society. They realised the imperative of redressing them by constitutional means, as early as possible - for the alternative was frightening. Ignorance, illiteracy and above all, mass poverty, they took note of. They were conscious of the fact that the Hindu religion - the religion of the overwhelming majority - as it was being practiced, was not known for its egalitarian ethos. It divided its adherents into four watertight compartments. Those outside this fourtier system (chaturvarnya) were the outcastes (Panchamas), the lowliest. They did not even believed all the caste system - ugly as its face was. The fourth, shudras, were no better, though certainly better than the Panchamas. The lowliness attached to them (Shudras and Panchamas) by virtue of their birth in these castes, unconnected with their deeds. There was to be no deliverance for them from this social stigma, except perhaps death. They were condemned to be inferior. All lowly, menial and unsavoury occupations were assigned to them. In the rural life, they had no alternative but to follow these occupations, generation after generation, century after century. It was their 'karma', they were told, the penalty for the sins they allegedly committed in their previous birth. Pity is, they believed all this. They were conditioned to believe it. This mental blindfold had to be removed first. This was a phenomenon peculiar to this country. Poverty there has been - and there is - in every country. But none had the misfortune of having this social division - or as some call it, degradation - super-imposed on poverty. Poverty, low social status in Hindu caste system and the lowly occupation constituted - and do still constitute - a vicious circle. The founding fathers were aware of all this - and more".

22. It is germane to state that proper representation of all classes is also demand of the fundamental right hence difference of equality and discrimination must be supported by placing both in proper law and situation. It is matter of record that Petitioner is seeking relief against the **Respondents** to **cancel** all the **appointments** made on the basis of **quota** system after the date of its **constitutional** expiry

in **2013** and **refill** all these **vacant** slots on the basis of pure **merit** through open **competition.** However, the Petitioner has not impleaded the employees whose appointments were made on the basis of quota system after 2013 with intention to obtain Order in their absence. Thus, the present Petition is hit by the principle of non-joinder of necessary parties. In Case of ***Muhammad Irfan and 5 others v. Post Master General and 5 others*** ***(1996 PLC (C.S.) 75)***, it has been held by a division bench of this Court as under:-

> ***"No question of pick and choose arises in a case when specific appointments, through an order in the nature of a writ of quo warranto, are assailed. Such relief cannot be obtained by suing a random group in a representative capacity by invoking the principle incorporated in Order 1, rule 8, C.P.C. What is more, the persons, who were to be sued, have been specific and known and the position became self-evident when the learned counsel next urged that such persons may be allowed to be joined now. The petition is now pending since 26-4-1992 and a period of two years has already passed by introducing the element of laches in its wake. It would be according premium on the conduct of petitioners to allow the impleadment at this late Age. This is moreso because we are apprehensive that proper and indeed necessary parties were left out by the petitioners, possibly, on purpose and for mala fide reasons with a view to obtain orders in their absence.***
>
> ***At this stage, the learned counsel for the petitioner; apparently implying a reference to Order 1, rule 9, C.P.C., has contended that no suit can be defeated by reason of miss-joinder or non-joinder of parties. We are not unmindful of that principle but such does not confer any free licence to a plaintiff or petitioner. All that is there involved is that in cases of mis-joinder and non-joinder. The Court may deal with the matters in controversy so far as regards the rights and interests of the parties actually before it. The rule that if necessary parties are not joined the suit or petition, as the case may be, should fail is a rule of substantive law and remains unaffected by the principle, incorporated in Order 1, rule 9, C.P.C. Of course the Court, under rule 10 of Order 1 of the Code, has the discretion to join due parties at any stage of the proceedings but the discretion is judicial and can be declined. We, in the circumstances, decline it here".***

23. Besides, petitioner has failed to join other provinces as necessary party whereas petitioner is seeking an order having effect all over Pakistan in the circumstances. In Case of ***Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital through Principal and others (2019 SCMR 648)***, it has been held by the apex Court that *"It is also noticed that the petitioner did not implead the Province of Punjab as a party in the constitutional petition. This was despite the fact that the said Government was a necessary and proper party in the case. In the circumstances, even otherwise, the constitutional petition was not competent and was rightly dismissed by the Division Bench. Reference in this regard may usefully be made to Government of Balochistan v. Mir Tariq Hussain Khan Magsi (2010 SCMR 115)"*.

24. Now coming to the rule of *locus poenitentiae*. Once a right is accrued to the employees (appointed on the basis of quota system) by appointment letters issued after complying with all the codal formalities could not be taken away on mere assumption and or supposition and or whims and fancy of any executive functionary. Such right once vests, cannot be destroyed or withdrawn as legal bar would come into play under the well doctrine of *locus poenitentiae*, well recognized and entrenched in our jurisprudence. One may refer to the Case of ***Mst. Basharat Jehan v. Director-General, Federal Government Education, FGEI (C/Q) Rawalpindi and others (2015 SCMR 1418)***.

25. The constitutional architecture of a Provincial High Court provides that while it enjoys judicial power to examine all laws or actions of the federal, provincial, and local governments or authorities, it can do so only if the cause of action arises or the respondent government or authority is located or if the impugned act

or order affects a person within the territorial jurisdiction of this Court i.e. within the Province. Therefore, under our Constitution, while our High Courts can judicially examine and strike down a federal law or federal notification, in fact, the said federal law or notification is made non-applicable to the extent of the Province unless the matter is finally decided by the Supreme Court of Pakistan or else if the Federation or the federal authority decide to withdraw or amend the law on their own, in compliance of the judgment. In the present case the **quota** in question is inter-linked and combined with the **quotas** of the other Provinces and any interference by this Court will affect national allocation of **quota** in other Provinces and areas. As relief cannot be granted to a person in Sindh or other provinces without depriving the allocation of **quota** of the people of other provinces, such a relief or writ issued by this Court will amount to travel beyond the territorial limits of the Province and offend the federal principle and the core value of the Constitution. High Court has power to issue a direction to a person performing within its territorial jurisdiction functions in connection with the affairs of the Federation, a Province or a local authority to refrain from doing anything that is not permitted by law to do, or to do anything which is required by law to do *(a communi observantia non est recedendum).* Similarly, a declaration without lawful authority or of no legal effect can be given by a High Court in respect of any act done or proceeding taken within its territorial jurisdiction by a person performing functions in connection with the affairs of the Federation, a Province or a local authority. In the case of ***Hassan Shah Jehan v.FPSC through Chairman and others*** (PLD 2017 Lahore 665), the Honourable Lahore High court held that:-

"10. What is the jurisdiction of the High Court under Article 199? Article 175 states that there shall be a High Court for each Province and no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. The jurisdiction conferred on the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is as under:-

199. Jurisdiction of High Court.---(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,--(a) on the application of any aggrieved party, make an order---

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II. (emphasis supplied)

Article 201 provides that any decision of a High Court to the extent it decides a question of law or is based upon or enunciates a principle of law shall be binding on all courts subordinate to it. Similarly, Article 202 provides that the High Court may make rules regulating the practice and procedure of any court subordinate to it. While Article 203 provides that High Court shall supervise and control all courts subordinate to it.

Constitutional terms like "High Court for each Province" "within the territorial jurisdiction of the Court" and "all courts subordinate to it" construct a High Court, which has a provincial character. The term "within the territorial jurisdiction of the Court" ubiquitously recurs throughout Article 199 emphasizing the territorial limitation on the jurisdiction of a High Court. The term "All courts subordinate to it" repeated in Articles 201, 202 and 203 place the Provincial High Court atop a provincial pyramidical hierarchy of courts. Constitutional architecture of a Provincial High Court provides that while it enjoys judicial power to examine all laws or actions of the federal, provincial and local governments or authorities, it can only do so if the cause of action arises or the respondent government or authority is located or if the impugned act or order affects a person within the territorial jurisdiction of this Court i.e., within the Province. As a corollary, the relief granted or the writ issued by the High Court also remains within the territorial jurisdiction of this Court and can only benefit or affect a person within the territorial jurisdiction of the Court. The relief cannot go beyond the Provincial boundary and affect any other Province or Area or its people. So for example, if a federal law or federal notification is struck down by Lahore High Court, it is struck down for the Province of Punjab or in other words the federal law or the federal notification is no more applicable to the Province of Punjab but otherwise remains valid for all the other Provinces or Areas. Unless of course the Federation or the federal authority complying with the judgment of the Lahore High Court, make necessary amends or withdraw the law or the notification. Which of course would then be open to challenge by the other Provinces or Areas or their people, if they so decide. The other eventuality is that the Federation or the federal authority may or may not enforce the said law or notification in other Provinces, as a matter of administrative decision and instead challenge the judgment of the Lahore High Court before the apex Court of the country. These are the operational repercussions and effects of a judgment, setting aside a federal law or federal notification or decision. However, on a purely constitutional and legal plane, the federal law or federal notification remains in existence for the rest of the country but for the Province of Punjab. This is further fortified by the fact that in case the same federal law or federal notification is challenged in any other Province or Area, the High Court concerned is not bound by the decision of the Lahore High Court and can declare the same federal law or federal notification to be valid law (Reference Article 201 of the Constitution). Therefore, under our Constitution, while our High Courts can judicially examine and strike down a federal law or federal

notification, in fact, the said federal law or notification is made non-applicable to the extent of the Province unless the matter is finally decided by the Supreme Court of Pakistan or else if the Federation or the federal authority decide to withdraw or amend the law on their own, in compliance of the judgment.

What does "Within the territorial jurisdiction of this Court" mean? Relying on our constitutional jurisprudence developed over the years and the provincial constitutional architecture of a High Court, writ cannot be issued by High Court against any person which is located geographically outside the territorial limits of the Province, having no physical or legal presence within the Province. See: Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others (PLD 1997 SC 334), Flying Kraft Paper Mills (Pvt.) Ltd., Charsadda v. Central Board of Revenue, Islamabad and 2 others (1997 SCMR 1874), Asghar Hussain v. The Election Commission Pakistan (PLD 1968 SC 387), Messrs Al-Iblagh Limited, Lahore v. The Copyright Board, Karachi and others (1985 SCMR 758) and Messrs Sethi and Sethi Sons through Humayun Khan v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and others (2012 PTD 1869).

It is trite law that if the order or action of the Government or Authority (federal or provincial), present within the Province, affect the rights of a person within the Province, writ can be issued against the said Government or Authority (irrespective of its federal character) and relief given to the aggrieved person located within the Province".

26. Let it come back to the averments of the petition, wherein; the petitioner has exemplified the job advertisements in **KPT** & **Pakistan Navy** by inviting applications from all over the Pakistan and objected on such provision, but his such stance rather supports Quota system by reserving the jobs in KPT & Navy to the extent of local people of Karachi, which completely is in contravention to his stance as well as constitution. Per petitioner reserving jobs in subject departments to the extent of Karachi would tantamount to deprive the people of other parts of the country have equal opportunity to work, earn and represent his area in the deep seas as well, otherwise; the people belong to Northern Areas, Punjab and KPK

would never be able to have representation in the Jobs. And such stance of the petitioner falls within the ambit of approbate and reprobate, he cannot be allowed to breath hot and cold in simultaneously, reliance in this respect can safely be placed in the case of **Habib Kassan and other v. Habibi Bank Ltd**. (1989 CLC 1433), wherein it has been observed that;

> *"A litigant cannot be permitted to assume **inconsistent** positions in court, to play **fast** and **loose**, to **blow hot** and **cold**, to **approbate** and **reprobate**, to the detriment of his opponent and this **doctrine** applies not only to the **successive** stages of the same suit, but also in different suits".*

27. The constitution of the Pakistan also ensures the adequate representation of the people from all over the Pakistan in the jobs of Armed Forces Under Article as well as Parliament by envisaging Article 39 of the Constitution of the Pakistan as follows;-

> **39. Participation of people in Armed Forces.**
>
> The State shall enable people from all parts of Pakistan to participate in the Armed Forces of Pakistan.

28. Such participation of the people of Pakistan from all parts of the country can only be made on the basis of Quota of the Provinces set out by the concern authority as ensured Under Articles 37 & 38 of the Constitution of the Pakistan which prescribe the promotion of the social and economic wellbeing of the people as follows:-

> **37. Promotion of social justice and eradication of social evils**
> The State **shall**-
>
> **a.** **promote**, with special care, the **educational** and economic **interests of backward classes or areas**;
>
> **b.** **remove illiteracy and provide free and compulsory secondary education within minimum possible period**;
>
> **c.** make technical and professional education generally available and higher education equally accessible to all on the basis of merit;

d. ensure inexpensive and expeditious justice;

e. make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment;

f. **enable** the people of **different areas**, through **education**, training, agricultural and industrial development and other methods, **to participate fully in all forms of national activities, including employment in the service of Pakistan**;

g. prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements;

h. prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and

i. decentralize the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.

Whereas Article 38 provides as follows:-

38. Promotion of social and economic well-being of the people

The State shall-

a. **secure the well-being of the people**, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of **general interest and by ensuring equitable adjustment of rights between employers and employees,** and landlords and tenants;

b. **provide** for all **citizens**, within the available resources of the country, **facilities for work** and adequate livelihood with reasonable rest and leisure;

c. **provide** for all persons **employed** in the **service of Pakistan** or otherwise, social security by compulsory social insurance or other means;

d. **provide basic necessities of life,** such as food, clothing, housing, **education** and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment;

e. reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan;

f. eliminate riba as early as possible and

g. **ensure that the shares of the Provinces in all Federal services, including autonomous bodies and corporations established by, or under the control of, the Federal Government, shall be secured and any omission in the allocation of the shares of the Provinces in the past shall be rectified**.

29. Besides, it would be pertinent to see whether with this litigation the petitioner's object to achieve political mileage or ambition and/or purely other individual interest and whether the Petition styled as a **Public Interest Litigation** is essentially a **Political Interest Litigation** and hence the same is liable to be dismissed on this ground? To answer this, we have examined the pleadings and admittedly the petitioner belongs to a political party and holding an office of same political party. We are also mindful that just because petitioner is a political party it does not *ipso facto* mean that he is debarred all the time from invoking the Court's process as public interest litigation. However, political interest cannot be enforced through the process of this Court under Article 199 of the Constitution under the garb of a **Public Interest Litigation**. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation. There is material to show that a petition styled as a **Public Interest Litigation** is nothing but a camouflage to foster political interest. **Public Interest Litigation** which has now come to occupy an important field in the administration of law should not be "**Publicity Interest Litigation**" or "**Private Interest Litigation**" or "**Politics Interest Litigation**" as held by the Honourable apex Court in the

case of ***Akhtar Hussain khan vs Federation of Pakistan (2012 SCMR 445)*** which reads as under:-

> ***"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow is process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."***

30. It may be added that '**Public Interest Litigation'** is an instrument of the administration of justice to be used properly in proper cases. The present petition is not a *bona fide* public interest litigation, but should be more appropriately termed as a political interest litigation; hence, petition fails.

31. These are the reasons of short order dated 13.10.2021 whereby captioned petition was dismissed.

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