

5. In contrast to the above submissions, Mr. Faisal Mehmood Ghani, learned counsel, articulated the case of the Bank. At the very onset, he raised an objection to the maintainability of the Petition, arguing that the admitted lack of statutory rules, namely the National Bank of Pakistan (Staff) Service Rules, 2021, precluded the respondent Bank from being subjected to writ jurisdiction in employment matters. He submitted that even when subjected to the anvil of the functions test devised by the Supreme Court, the respondent Bank did not qualify. Contesting the submission regarding discriminatory treatment, Mr. Ghani asserted that, until August 2019, approximately 415 persons had been appointed. However, vide Office Note dated 30.09.2019, the President of the Bank raised concerns regarding appointments against the policy. Thus, no discriminatory treatment was meted out to the Petitioners by the respondent Bank. To bolster his submissions, learned counsel relied on Rule 18 *ibid* Rules, 2021, and cited case law: **2013 SCMR 642, PLD 2010 S.C. 676, PLD 2005 S.C. 806, PLD 2011 S.C. 132, PLD 2010 S.C. 676, 2014 SCMR 982, 2013 SCMR 840, 2013 SCMR 1383, 2021 SCMR 609, and 2022 SCMR 1256**. The learned Assistant Attorney General endorsed the submissions of the counsel for the Bank.

6. While exercising the right of rebuttal, Mr Kalwar submitted that the Bank is a government-owned and controlled entity, not a private corporation, but a corporate body established under statutory law, performing essential State functions. He further articulated that another learned Division Bench of this Court has rendered an edict declaring the Bank to be a statutory corporation amenable to the writ jurisdiction of this Court under Article 199 of the Constitution. He emphasized that the Bank's employees are entitled to seek redressal of their grievances regarding their service matters through writ jurisdiction; hence, this Court cannot adopt a contrary stance. To fortify his submissions, learned counsel relied on the unreported judgment in **C.P. No.D-4598/2021 dated 07.02.2023, PLD 2016 S.C. 377, and 2017 SCMR 2010**.

7. We have meticulously considered the submissions of the learned counsel for the litigating parties and have thoroughly reviewed the extant record. The N.B.P., being a statutory corporation, is amenable to the writ jurisdiction of this Court under Article 199 of the Constitution. Guidance to the above effect can be sought from the case of *Muhammad Naeem¹*, wherein Supreme Court of Pakistan has observed that “*we are cognizant of the legal position that the NBP, being a statutory corporation, is amenable to the writ jurisdiction of the High Courts under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and its employees when are governed or proceeded against under the statutory rules can also avail the recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters. However, this legal position does not merge the NBP,*

¹ Muhammad Naeem V. Federation of Pakistan and others (2023 SCMR 301)

a separate juristic person, into the Federal Government, nor in any manner blur the distinction between NBP, a Statutory Corporation, and the Federal Government, a constitutional body or in any manner turn the employees of the NBP into the employees of the Federal Government.”

8. Now, addressing the substantive merits of the instant Petition, the Petitioners assert their entitlement to be inducted into the Bank's service upon the demise of their father/husband based on the policies promulgated by the Bank. They contend that these policies were instituted to provide employment opportunities to the progeny and widows of deceased employees, thereby securing their financial stability and welfare. On the other hand, the Respondent Bank avers that the hiring process was suspended following an Office Note dated 30.09.2019, wherein the President of the Bank expressed concerns regarding the hiring practices under both the antecedent 2010 policy and the prevailing policy. Consequently, the aforementioned Office Note remained unapproved, and the hiring process has been ceasing.

9. While adjudicating the merits of this Petition, it is incumbent upon this Court to consider the most recent jurisprudential pronouncement of the Hon'ble Supreme Court of Pakistan, announced on 18.10.2024². This seminal judgment comprehensively addresses the practice of appointments based on a son/deceased quota. The pertinent Paragraphs No.18, 19, 23 and 25 provide authoritative guidance on the matter at hand. Consequently, it is judicious to reproduce the relevant excerpts as follows:"

“18. The widow/widower, the wife/husband and the dependent children of a civil servant who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service get pensionary and other benefits from the public exchequer, to which they are entitled. However, the above mentioned rules, policies, OMs, etc. which secure or provide appointments in different grades, without open advertisements and competition, to the widow/widower, wife/husband or a child of a civil servant of the Federal and Provincial Governments, who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service, is ex facie discriminatory against the other or ordinary citizens of Pakistan and the same cannot be termed as a reasonable classification as their object is to give an advantage by excluding others, which is not permissible under Article 25 of the Constitution. Article 27 of the Constitution which specifically attends to the service of Pakistan prohibits discrimination in services.

19. The Government and public sector employment cannot be allowed to be parceled out to the functionaries of the State. These jobs neither are nor can be made hereditary. The Constitution stipulates that equal employment and economic opportunities must be provided to all citizens. Economic justice, if we may add, is a component of social justice which focuses on creating equal opportunities for all within a society in all aspects.

² Judgment dated 18.10.2024 passed in Civil Petition No. 3390 of 2021 (Re: General Post Office, Islamabad & others vs Muhammad Jalal), avail on the website of Supreme Court of Pakistan https://www.supremecourt.gov.pk/downloads_judgements/c.p._3390_2021.pdf.

23. *The appointment of a widow/widower, wife/husband or child of a civil servant in different grades on contract or regular basis, without open advertisement, competition and merit is also violative of Article 18 of the Constitution which provides that subject to such qualification, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. Appointments obstructing ordinary qualified citizens to compete for entering into the profession of the service of Pakistan in accordance with their ability and eligibility also violate this fundamental right, and if such appointments are made they negate equality of opportunity, competition, merit and also defeat the object of good governance.*

25. *Any law, policy or rule which is manifestly inconsistent with the Constitutional commands, retrogressive in nature and discriminatory inter se the citizens is subject to judicial review. In the case of Government of Khyber Pakhtunkhwa through Secretary Agriculture v. Tahir Mushtaq and others¹³, while dismissing the claim of the son of a retired civil servant of the Agriculture Department of Khyber Pakhtunkhwa who sought appointment in BPS-5 on the basis of employee's son quota policy, it was held by a four member Bench of this Court that:*

'The Constitution of the Islamic Republic of Pakistan prohibits discrimination as stated in Article 25 and further stipulates and entrenches the principle in respect of service of Pakistan in Article 27. In preferring the children of a government servant or reserving seats for them offends the Constitution. The same also detracts from a merit based system of employment. The taxpayers hard earned monies pay for the salaries, benefits and pensions of government servants. The people's interest lies in having the best person for the job, and not to suffer those who secure employment on the basis of a filial relationship. The stated instructions undermine transparency and good governance, therefore, the Government of Khyber Pakhtunkhwa will be advised to withdraw all such instructions/notifications.'

For the above reasons, while granting leave, Civil Petition No. 3390 of 2021 is converted into an appeal and is allowed. The impugned order dated 13 April 2021 passed by the Peshawar High Court in favour of the respondent is set aside. Policies, office memorandums, employment under the Package of the Prime Minister, the Financial Assistance Package, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, Rule 10 (4) of the Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989, Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 or any other rule, policy, memorandum, etc. whereunder appointments without open advertisement, competition and merit, of the widow/widower, wife/husband or child of civil servants in different grades, who die during service or become permanently disabled/invalidated/incapacitated for further service and take retirement from service, are declared to be discriminatory and ultra vires Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution. The prescribed Federal and Provincial authorities are directed to withdraw the same. However, 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. It is further clarified that this judgment shall not affect the policies, rules or compensation packages of the Federal and Provincial Governments for

the benefit of the legal heirs of martyred personnel of the law enforcement agencies and of civil servants who die on account of terrorist activities.”

[Emphasis is supplied]

10. The Supreme Court of Pakistan has unequivocally ruled that appointments based on a son/deceased quota are discriminatory and violate the constitutional principles of equality and non-discrimination. Article 25 of the Constitution mandates equal treatment and explicitly prohibits discrimination in public service appointments. Reserving employment for the progeny and widows of deceased employees without subjecting them to open competition is inherently exclusionary and prejudices the rights of other qualified citizens. Moreover, Article 18 of the Constitution reinforces the emphasis on merit-based appointments by guaranteeing every citizen the right to enter any lawful profession. The Supreme Court has underscored that appointments made without open advertisement and competition undermine the principles of merit and fair competition, which are essential for good governance and the effective functioning of public institutions. The aforementioned judgment establishes a binding precedent that this Court must adhere to. Therefore, the practice of appointing individuals based on a son/deceased quota, as requested by the Petitioners, cannot be upheld.

11. In light of the binding judgment of the Hon'ble Supreme Court and the constitutional principles of equality and non-discrimination, the Petitioners' claim for appointment in the Respondent Bank based on a son/deceased quota is untenable. The Petition lacks merit and is hereby **dismissed**.

JUDGE

JUDGE