

# IN THE HIGH COURT OF SINDH KARACHI

**Present:-**

**Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Adnan-ul-Karim Memon**

**C.P. No.D-5330 of 2019**

Mujahid Hussain

.....

Petitioner

*Versus*

Government of Sindh through  
Chief Secretary and others .....

Respondents

Date of hearing: 28.08.2019

Date of judgment: 04.09.2019

Mr. Abdul Salam Memon, Advocate for the petitioner  
Barrister Shahryar Mehar, AAG Sindh for the respondents along with Mr.  
Muhammad Yousuf Alvi, Law Officer of Sindh Public Service Commission.

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

**ADNAN-UL-KARIM MEMON, J:-**, Basically, this petition has arisen out of the advertisement No. 09/2019 dated 30.7.2019, issued by the Sindh Public Service Commission (SPSC) Hyderabad and petitioner is a potential candidate, against quota reserved for Disable persons, for appointment to the posts in BPS-16 and 17. Abdul Salam Memon, learned Counsel appearing on behalf of the petitioner vehemently contended that the petitioner is a proposed candidate for recruitment against various posts in BPS 16 and 17 in various Departments of the Government of Sindh. He further argued that the advertisement provides eligibility criteria and quota for differently abled persons, but no upper age relaxation is provided to enable him to avail the chance to take part in the competitive selection process. The Counsel further contended that the proviso to sub rule (2) of Rule 12 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 provides 10 years relaxation in the upper age limit in respect of disabled persons; whereas, advertisement under reference issued by the Sindh Public Service Commission/the respondent No. 03 does not provide the said relaxation to disabled persons and the petitioner, a certified disabled person, who has crossed maximum age limit of 30 years prescribed in the advertisement is not eligible to participate in the Combined Competitive Examination, 2020. The learned Counsel referred to an advertisement

No. 38/2018 issued by the Punjab Public Service Commission for Combined Competitive Examination, 2019, available at page 61, which provides relaxation in upper age limit to disabled persons, and contended that same relaxation be provided to people in Sindh Province. Learned counsel pleaded discrimination by citing the clause 3(ii) of the advertisement 09/2019 dated 30.7.2019 i.e. Eligibility and contended that upper age limit has been relaxed for scheduled caste, whereas no relaxation is given to differently abled persons.

2. We asked the learned Counsel to explain whether relaxation up to ten years in upper age limit to persons, including differently abled persons, under sub-rule (2) of Rule 12 of the Sind Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 is applicable to the appointments against the posts in BPS-16 and 17 to be filled through SPSC Combined Competitive Examination-2020.

3. Learned Counsel replied that the Government of Sindh allowed both male and female including differently abled persons having at least 2<sup>nd</sup> Division Bachelor's Degree between the age of 21 to 33 years as on 1<sup>st</sup> September, 2019 are eligible and that excluding the proviso as provided under sub-rule (2) of Rule 12 of the Sind Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, by SPSC is against the basic spirit of law; that in case of candidates from the scheduled caste the upper age limit is relaxed up to 31 year as on 1<sup>st</sup> September, 2019 and in case of candidates serving in Federal Government/ Sindh Government having total continuous service of at least four years as on 1<sup>st</sup> September, 2019, the upper age limit shall be 35 years; that the petitioner has reasonable apprehension that his candidature/application for CCE, 2020 would not be considered on the premise of being over age; that raising of upper age limit from 30 years for the candidates belonging to scheduled caste and Government servants excluding differently abled persons is not reasonable classification; that the Petitioner has been given highly discriminatory treatment for no plausible reason whatsoever by non-inclusion of relaxation of upper age limit for differently abled persons in the impugned advertisement while allowing other categories as discussed supra is in violation of strict and prohibitory command contained

in Article 25 of the Constitution and sheer discrimination with the petitioner. Hence, the petitioner being aggrieved by this discrimination has filed instant Constitutional petition for direction to the Government of Sindh to enhance upper age limit as per law in respect of disabled persons as it has not been provided in the said advertisement. In support of his contention, he relied upon in the case of *Haroon Rashid and others vs. Registrar Balochistan High Court Quetta and others* (2013 PLC (CS) 81). Having argued the case as above, the Counsel for the petitioner prayed for allowing the instant petition.

4. Barrister Shaheryar Mehar, learned AAG assisted by Mr. Muhammad Yousuf Alvi, Law Officer of Sindh Public Service Commission, argued that the Sindh Public Service Commission announced Combined Competitive Examination, 2020 with upper age limit prescribed for different categories of the posts; that differently abled persons, having at least 2nd Division Bachelor's degree between the age of 21 to 30 years as on 1<sup>st</sup> September 2019 are eligible that the candidates from the scheduled caste, the upper age limit is provided as 31 years on 01<sup>st</sup> September 2019; that the serving candidates of the Federal Government / Sindh Government with a total continuous service of at least four years as on 01<sup>st</sup> September 2019, the upper age limit is provided as 35 years; that quota for differently abled persons is also provided; Besides, the respondent No. 3 has filed a Notification dated 14.9.2018 issued by the Chief Secretary Sindh, wherein, it has been mentioned that proviso to Sub-rule 2 of Rule 12 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 relating to 10 years relaxation of upper age limit in respect of disabled persons does not apply to the posts in police service & other posts to be filled through Combined Competitive Examination by the Sindh Public Service Commission, the said notification dated 14<sup>th</sup> September, 2018 is reproduced below:

**“NOTIFICATION**

No.SOII(SGA&CD)5-64/2011: In continuation of this Department's Notification of even number dated 02nd September, 2016 and with the approval of Chief Minister, Sindh, notwithstanding the contents of table given under Rule-12 (2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, and the orders contained in this Department's Standing Order No. SORI(SGA&CD)6/4/85, dated 19.04.2004, Standing order No.SORI(SGA&CD)6/4/85, dated 15.6.2004 and corrigendum dated 2.7.2004 issued in this behalf, Government of Sindh are pleased to allow relaxation up to maximum of fifteen (15) Years in the upper age limit to all the applicants applying for the vacancies in all the Departments of Government of Sindh (except Police Service &

the posts to be filled through Combined Competitive Examination by the Sindh Public Service Commission) to be filled during the period from 1st July, 2018 to 30th June, 2020 in relaxation of Rules.”

5. The learned AAG concluded that the Petitioner’s contention that the maximum age limit prescribed does not suit them is not sustainable in law, as well as, by any cannon of justice. He concluded that neither the Petitioner’s contention of discrimination is sustainable in law nor any law has been violated or his any right has been infringed. Besides, the respondent No. 03 has relied upon the judgment passed by this court in an unreported case of Muhammad Asim Abbasi and others Vs. Province of Sindh and others; whereby this court earlier dismissed his petition on the similar grounds of relaxation of upper age limit for disabled persons. He further contended that the aforesaid judgment was assailed before the Honorable Supreme Court in Civil Petition No.457-K of 2018, by other candidates, the Honorable Supreme Court dismissed the petition vide order dated 19.4.2018.

6. The learned AAG next contended that in the earlier round of litigation, the petitioner was non-suited by this Court vide judgment dated 30.3.2018 in C.P. No.D-2333 of 2018 (filed by petitioner). Thus, the similar question of relaxation in upper age limit for disabled person does not arise; that the petitioner is already heard on the aforesaid issue and decided through the above specified common judgment dated 30.3.2018 passed by this Court in earlier Petition No. No.D-2333 of 2018, which was challenged by the co-candidates of the petitioner before the Honorable Supreme Court in Civil Petition No.457-K of 2018, the Honorable Supreme Court dismissed the petition vide order dated 19.4.2018, therefore, similar relief cannot be claimed by filing subsequent legal proceedings as it would fall within the ambit of constructive res-judicata. Learned AAG has placed Reliance on the case of State Bank of Pakistan through Governor and others vs. Imtiaz Ali Khan and others (2012 SCMR 280). Learned AAG, having explained the case as discussed above prayed for dismissal of the instant Petition.

7. We have heard the learned Counsel for the parties, perused material available on the record.

8. The pivotal questions which need to be addressed in order to reach a just decision are as follows:-

i) Whether the petitioner was non-suited by this Court vide judgment dated 30.3.2018 in earlier round of litigation and the same view was affirmed by the Honorable Supreme Court in Civil Petition No457-k of 2018, vide order dated 19.4.2018, therefore, similar relief cannot be claimed by filing subsequent legal proceedings?

ii) Whether Rule 12 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 was amended vide Notification dated 14.9.2018 issued by the Chief Secretary Sindh, whereby relaxation up to maximum of fifteen (15) Years in the upper age limit to all the applicants applying for the vacancies in all the Departments of Government of Sindh were done away against the posts to be filled through Combined Competitive Examination by the Sindh Public Service Commission?

9. To address the first proposition, we deem it appropriate to have a look at the decision rendered by this court in the earlier round of litigation initiated by the petitioner and other candidates. For convenience sake, an excerpt of the common judgment dated 30.3.2018 passed in Petition No.D-2108 of 2018 and other connected petitions, by this court (*Re-Muhammad Asim Abbasi and others Vs. Province of Sindh and others and other connected petitions*).

17. Record reflects that the Sindh Public Service Commission conducted combined Competitive Examination (CCE)- 2017 and the upper age limit for the general candidates was fixed at 28 years and for the scheduled caste 29 years. The last CCE was held in the year 2008. However, In order to give a fair chance to the maximum number of candidates the Government of Sindh revisited the upper age limit and granted fifteen (15) years relaxation in upper age limit for all recruitments, except the Combined Competitive Examination and Police Service. Record further reflects that the Government of Sindh vide Notification dated 15.11.2017 revised the upper age limit for Combined Competitive Examination, 2017 and onwards (a) For General Candidates 30 years. (b) For Scheduled Cast Candidates 31 years. All the petitioners claim to have crossed maximum age of 32 years and have sought suitable age relaxation through this Court for CCE. 2018. The Govt. of Sindh's policy is in this regard is 10 embodied in office order dated 14.03.2018, which is reproduced below:-

SUBJECT: - REQUEST FOR AGE RELEXATION IN COMBINED COMPETITIVE EXAMINATION-2018 I AM DIRECTED TO REFER THIS DEPARTMENT'S LETTER No. SOII(SGA&CD) 11-6/2017 dated 15.11.2017 (Copy enclosed) and to forward herewith a copy of summary duly approved by Chief Minister, Sindh on the subject noted above and to inform that the Competent Authority i.e. Chief Minister Sindh has been pleased to revise the upper age limit in respect of General/Scheduled Cast/ Government Servants for all the candidates to make them eligible to appear in the Combined Competitive Examination-2018 as under: S.# Candidate From To 1. General 30 Years 32 Years 2. Scheduled Cast 31 Years 33 Years 3. Government Servants 35 Years 37 Years 2. The Sindh Public Service Commission is also advised to enhance the closing date of submission of online application forms as Friday, 30th March, 2018 instead of Thursday, 22nd March, 2018, which is presently announced by Sindh Public Service Commission. 3. In view of above, it is requested to take necessary measures for its wide publicity through all possible means of communication, so that all eligible candidates get a fair chance of participation.  
(NAVEED SADIQ) Section Officer-II

18. As it could be seen from the above Notification that upper age limit for various categories of the candidates for competing in CCE-2018 has been raised as shown in last column of the above table.

19. Fair and meritorious appointment to public office is requirement and spirit of law under Article 18 of the Constitution 11 of Islamic Republic of Pakistan 1973. Accordingly, the Respondent No.2 has issued Notification dated 14th March 2018. The judgment rendered by the Hon'ble Apex Court in the case of Ghulam Rasool vs. Government of Pakistan & others (PLD 2015 SC 6) provides guiding principle in this regard.

20. As regards the contention of the learned AAG that the Courts may not interfere with the policy matters of Government, we completely agree with the said contention of the learned AAG. This proposition of law is enunciated by the Hon'ble Supreme Court in the case of Government College University, Lahore through Vice Chancellor and others Vs. Syeda Fiza Abbas and others.(2015 SCMR 445).

21. It is a settled principle of law that for the purpose of maintaining a Constitution Petition it is the duty and obligation of the Petitioners to point out that the action of the Respondents was in violation of their Rules and Regulations, which the Petitioners have failed to point out and as such has failed to make out their case for discrimination as well.

22. Learned counsel for the Petitioners while laying emphasis on Rule-12(2) of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974) argued that Petitioners cannot

be non-suited on the ground of overage as there is general relaxation of upper age limit in all the departments of Government.

23. We are not impressed by the contention of learned counsel for the Petitioners that Services, General Administration and Coordination Department, Government of Sindh issued 12 various Notifications by allowing relaxation up to 15 years maximum in the upper age limit to all the applicants applying for the vacancies in all departments of Government of Sindh. Suffice it to say that Notification dated 26.02.2014 issued by the Chief Secretary, Government of Sindh clearly spells out that this relaxation is not applicable in combined Competitive Examination, which reads as follows:-

NOTIFICATION No. SO11 (S& GAD) 5-64/2011: In continuation of this Department's Notification No. SO-II (S&GAD 6-12/2004, dated 02.10.2012 and with the approval of Chief Minister, Sindh notwithstanding the contents of table given under Rule 12 (2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the orders contained in this Department's Standing Order No. SORI (SGA & CD) 6/4/85, dated 19.04.2004, Standing Order No. SORI (SGA & CD) 6/4/85 dated 15.06.2004 and Corrigendum dated 02.07.2004 issued in this behalf, Government of Sindh are pleased to allow relaxation up to maximum of 15 (fifteen) years in the upper age limit to all the applicants applying for the vacancies in all the years in the upper age limit to all the applicants applying for the vacancies in all the departments of Government of Sindh (except Police Service & the posts to be filled through combined competitive examination by the Sindh Public Service Commission to be filled during the period with effect from 1st July 2013 to 30th June 2014 in relaxation of Rules). (Emphasis added).  
Sd/- SALIM SAJJAD HOTIANA CHIEF SECRETARY GOVERNMENT OF SINDH

24. The Provincial Government issued Notification dated 02.09.2016 an excerpt of the same is reproduced as follows:

“No. SO-II (S& GAD) 5-64/2011: In continuation of this Department's Notification of even number dated 29th October, 2014 and with the approval of Chief Minister Sindh, notwithstanding the contents of table given under Rule 12 (2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the orders contained in this Department's Standing Order No. SORI (SGA & CD) 6/4/85, dated 19.04.2004, Standing Order No. SORI (SGA & CD) 6/4/85 dated 15.06.2004 and Corrigendum dated 02.07.2004 issued in this behalf, Government of Sindh are pleased to allow relaxation upto maximum of 15 (fifteen) years in the upper age limit to all the applicants applying for the vacancies in all the departments of Government of Sindh (except Police Service & the posts to be filled through combined competitive examination by the Sindh Public Service Commission) to be filled during the period from 1st July, 2016 to 30th June 2018 in relaxation of Rules)”. (Emphasis added).

24. In the light of forgoing clear provisions of the policy of the Government of Sindh contained in the Notification dated 14th March 2018 and dictum laid down by the Hon'ble Supreme Court of Pakistan in the case of Ghulam Rasool Vs. Government of Pakistan and others (PLD 2015 SC 6) that ordinarily the Courts should refrain from interfering in the policy making domain of the executive.

25. It is well settled law that even where appointments were to be made in exercise of powers conferred upon the competent authority, such powers are to be exercised reasonably and in a justified manner.

26. The case law cited by the learned counsel for the Petitioners are distinguishable on the facts and circumstances of the case in hand.

27. There is no material placed before us, by which, we can conclude that discretion has been wrongly exercised by the Government of Sindh by revising the upper age limit in respect of General/Scheduled Cast/ Government Servants for all the candidates to make them eligible to appear in the Combined Competitive Examination-2018.

28. We do not find any substance in the contention of the learned counsel for the Petitioners and Petitioners present in person, for interference in policy making domain of the executive unless the policy ipso facto seems to be violative of mandate given to the Courts by the Constitution of the Islamic Republic of Pakistan, 1973, which aspect in our view in the present petitions is totally lacking and it has not been demonstrated that the policy in any manner is mala fide or arbitrary which is across the board for all deserving candidates and also has been relaxed to the extent found suitable to accommodate the prospect candidates.

29. In result of foregoing discussion, we do not find any merit in the instant Petitions, which are hereby dismissed along with listed application(s).

**10.** The aforesaid judgment was impugned by the co-petitioner before the Honorable Supreme Court in Civil Petition No. 457-K of 2018, the Honorable Supreme Court dismissed the petition vide order dated 19.4.2018. An excerpt of the order is reproduced as under:-

“3. We have gone through the record carefully and considered the submissions of the learned ASC for the petitioner.

4. The Division Bench of the High Court after hearing the petitioner dismissed the petition by observing as under:-

“We do not find any substance in the contention of the learned counsel for the petitioners and petitioners present in person, for interference in policy making domain of the executive unless the policy ipso facto seems to be violative of the mandate given to the Courts by the Constitution of the Islamic Republic of Pakistan, 1973, which aspect in our view in the present petitions is totally lacking and it has not been demonstrated that the policy in any manner is malafide or arbitrary which is across the board for all deserving candidates and also has been relaxed to the extent found suitable for accommodate the prospect candidates.”

5. A look at the paragraph reproduced above reveals that the High Court having considered all the conceivable aspects of the case dismissed the petition filed by the petitioners. Given that many deserving persons having promise and potential to serve the country in a befitting manner may have been deprived to take part in a competitive examination held for their selection by holding examination with an inordinate or excessive delay but this cannot be made a basis for relaxing the age unless of course something patent and palpable is brought on the record to show that the belated advertisement of the vacancies or holding of competitive examination was with design of ill-will. Even otherwise, the High Court while exercising the powers of judicial review cannot substitute its own view for that the policy makers unless of course it is arbitrary or unreasonable. Since we do not see any design or ill-will behind belated advertisement of vacancies or holding of examination, we do not feel persuaded to interfere with the impugned judgment.

6. For the reasons discussed above, this petition being without merit is dismissed and the leave asked for is refused.”

11. From the forgoing position of the case, an important question of law arises whether petitioner is entitled for similar relief which was earlier declined by this Court and merged in the order of Honorable Supreme Court, further the petitioner is precluded from claiming similar relief by filing subsequent legal proceedings as it would fall within the ambit of doctrine of constructive res-judicata?

12. To address this proposition further, let us have a look at the prayer clauses of Petitioner, who earlier filed CP No.D-2333/2018 before this Court?

- a) Declare and direct that the advertisement bearing No. 01/2018, dated: 19-02-2018, without providing for the age relaxation in upper age limit for disabled candidates, is violative of Constitutional Provisions and International Commitments of Pakistan, hence to such extent is illegal, unlawful and of no legal consequence.
- b) Direct the respondents that in the case of persons with special abilities (disabled), 10 years' age relaxation in upper age limit may be provided for as in the case of Government of Punjab.
- c) Declare that the absence of 10 years relaxation in upper age limit in the case of petitioner and other disabled persons is causing gross discrimination by way of violating Article -25, of the Constitution of Pakistan.”

13. We have scanned the file of the instant Petition and found that the Petitioner is seeking the same relief except changing of advertisement. On this aspect of the matter, Section 11 of CPC is clear in its terms, which embodies the doctrine of res-judicata or the rule of conclusiveness of a judgment, as to the points decided, either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. The rationale behind the constructive res judicata is that if the parties have had an opportunity of asserting a ground in support of their claim or defence in a former suit and have not done so, they shall be deemed to have raised such

grounds in the former suit and it shall be further deemed that these grounds had been heard and decided as if these matters had been actually in issue. As such, such parties shall be precluded from raising these grounds in a subsequent suit. In our view that party once approaching the Court for seeking relief shall seek all the relief(s) to which it thinks is entitled to and if such relief, even if available but not asked for, cannot be claimed by filing a subsequent legal proceedings as it would fall within the ambit of constructive res-judicata. Since the issue raised by the petitioner in relation to the upper age relaxation for disabled person had been finally heard and decided by this Court and, thus, issue raised in the subsequent proceedings is hit by the principle of res-judicata within the contemplation of Section 11, C.P.C. On the face of the record, we are unable to find any legal infirmity, misconstruction of any material on record or misconception of law on the part of this Court. In the earlier judgment, this Court has dealt with the entire aspects of the case; which are not open to an exception through the present proceedings. On this ground the petitioner is not entitled to any relief as it has been handed down to him through the earlier judgment passed by this Court as discussed supra.

14. The learned Counsel in his abortive attempt vehemently insisted for conclusive findings on the issue in hand. Per learned Counsel in earlier round of litigation no discussion on the issue of upper age relaxation for disabled person was made in the judgment cited supra, more particularly the proviso of rule 12 (2) of rules 1974. He next added that the judgment rendered by this Court in earlier round of litigation is per incuriam.

15. We do not agree with this assertion, so far as the plea of per incuriam articulated by the Petitioner's Counsel, we would like to take the aid and assistance from Black's Law Dictionary, Ninth Edition to get the drift of true connotation of the expression and terminology "per incuriam":--A judgment per incuriam is one which has been rendered inadvertently, therefore in all fairness, we cannot revisit, explicate or expound the law on the issue decided by this Court vide judgment dated 30.3.2018, merged in the order dated 18.4.2018 passed by the Honorable Supreme Court in Civil Petition



No.457-K of 2018 which has binding effect on us. We also do not agree with the contention of the learned Counsel that this Court has not considered the age relaxation issue for disabled persons, for the simple reason that this Court while deciding the Writ Petitions bearing No. D-2108/2018 and other connected petitions considered all the conceivable aspects of the case and dismissed the petitions. The aforesaid factum has been endorsed by the Hon'ble Supreme Court at paragraph No. 5 of the order dated 19.4.2018. However, we take up this matter and it is expedient to discuss that Rule 12 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 provides as under:-

*12. (1) a candidate for appointment by initial recruitment must possess the educational qualifications and experience and be within the Age limit laid down for that appointment.*

*(2) The age limit laid down for appointment to the posts mentioned in column 2 of the table below may be relaxed up to the extent shown in columns 3, 4 and 5 thereof by the authorities respectively specified in the said columns.*

*Provided that the upper age limit in respect of a disabled persons as defined in the disabled persons (Employment and Rehabilitation) Ordinance, 1981, shall stand relaxed up to ten years in addition to the relaxation that may be granted under sub-rule (2).*

16. The proviso to the Sub-rule 2 of Rule-12 of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 has been superseded by the Government of Sindh vide Notification dated 14.9.2018 discussed and reproduced at Paragraph No. 04 (*supra*) and the impugned advertisement No. 09 of 2019 dated 30.7.2019 is absolutely in accordance with rules in force and no right of the petitioner has been infringed.

17. The above table shows that for posts in BPS-16 and above, maximum age limit can be relaxed up to 10 years by the Minister In charge or the Chief Secretary (where there is no Minister).

18. Perusal of the advertisement No. 09 of 2019 explicitly shows that the candidate for the post enumerated in the said advertisement must be within age limit as under:-

**“Eligibility**

(I) Both male and female including special persons, who are citizens of Pakistan, domiciled and permanent residents of Sindh, having at least 2<sup>nd</sup> Division Bachelor's degree between the age of 21 to 30 years as on 01 September 2018 are eligible.

(II) In case of candidates from the scheduled caste, the upper age limit shall be 31 years on 01 September 2018.

(III) In case of candidates Domiciled in Sindh who are serving in the Federal Govt./Sindh Govt with a total service atleast four years on 01 September 2018, the upper age limit shall be 35 years.”

**19.** Learned Counsel for the Petitioner while laying emphasis on Rule-12(2) of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 argued that Petitioner cannot be non-suited on the ground of overage as there is general relaxation of upper age limit in all the departments of Government. This assertion is also misconceived.

**20.** The Notification dated 14.9.2018 issued by the Chief Secretary, Government of Sindh clearly spells out that this relaxation is not applicable in Combined Competitive Examination; the Government of Sindh has issued the policy decision by excluding the proviso of Rule 12(2) of Rules, 1974 which has force of law. Besides, the Petitioner has not called in question such amendment and/or substitution brought by way of Notification dated 14.9.2018. In absence of such prayer, this Court cannot declare such amendment as ultra vires to the provision of the Constitution.

**21.** In the light of forgoing clear provisions of the policy of the Government of Sindh contained in the Notification dated 14<sup>th</sup> September, 2018 and dictum laid down by the Hon’ble Supreme Court of Pakistan in the case of *Ghulam Rasool Vs. Government of Pakistan and others* (PLD 2015 SC 6) that ordinarily the Courts should refrain from interfering in the policy making domain of the executive. Therefore, we cannot substitute our own view with that of policy makers unless it is arbitrary or unreasonable. In our view, even where appointments were to be made in exercise of powers conferred upon the Competent Authority, such powers are to be exercised reasonably and in a justified manner. The case law cited by the learned Counsel for the petitioner is distinguishable from the facts obtaining in this Petition.

**22.** There is no material placed before us, by which, we can conclude that discretion has been wrongly exercised by the Government of Sindh by revising the upper age limit in respect of General/Scheduled Cast/ Government Servants for all the candidates to make them eligible to appear in the Combined Competitive Examination-2019.

23. Adverting to the point raised by the learned Counsel with regard to discrimination, we have perused the entire case of the petitioner and find no discrimination which can be claimed viz. schedule caste candidate who were not similarly placed as against the present petitioner on the point of disability. In our view, discrimination can be claimed amongst equals if differently treated; schedule caste candidates competing for examination is a different category as against the present petitioner, who claims to be disabled person. If within those candidates on disable category, who were similarly placed with them on then the petitioner can claim discrimination; therefore, in absence of that, the petitioner has failed to make out a case of discrimination.

24. We do not find any substance in the contention of the learned counsel for the Petitioner, for interference in policy making domain of the executive unless the policy ipso facto seems to be violative of mandate given to the Courts by the Constitution of the Islamic Republic of Pakistan, 1973, which aspect in our view in the present petition is totally lacking and it has not been demonstrated that the policy in any manner is mala fide or arbitrary which is across the board for all deserving candidates and also has been relaxed to the extent found suitable to accommodate the prospect candidates.

25. In result of foregoing discussion, we do not find any merit in the instant Petition, which is hereby dismissed along with listed application(s).

**JUDGE**

**JUDGE**

Nadir/-