

## **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is the general public of Pakistan, which is being denied of efficient governance, as recruitments are still made on outdated quota system, which has already lived its useful age, as prescribed by the Constitution of Pakistan, instead of pure ability and merit.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 the federal government departments. Despite the cabinet's decision, the Constitution was not amended till **1999**. Through the **16<sup>th</sup>** 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, whereby more than two-third 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:

<b>MERIT</b>	<b>PUNJAB</b>	<b>KPK</b>	<b>SINDH-R</b>
7.5	50	11.5	11.4
<b>SINDH-U</b>	<b>BALUCHISTAN</b>	<b>FATA-GB</b>	<b>AJK</b>
7.6	6	4	2

5. 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.

**6. 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 Eighteenth 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.

7. 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.

8. Per contra, Mr. Muhammad Nishat Warsi, **DAG** and Mr. Ali Safdar Debar, **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 Eighteenth 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.

09. We have the learned counsels for the parties heard at length and given due consideration to their valuable contentions respectively.

10. Before dilating upon the issue raised in the petition it would be appropriate to look into the term "**Quota**" being *universally* accepted especially into the "**Black's Law Dictionary**"<sup>1</sup> which speaks as follows:-

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<sup>1</sup> 11<sup>th</sup> Edition Revised Fourth Edition by The Publisher's Editorial Staff St. Paul, minn. West Publishing Co. 1968



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**.

11. 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. It is therefore, his meaningful participation in the power sector has become inevitable and the same cannot be afforded and possible without advancing him opportunity to approach appropriate for indiscriminately that too with due representation numerically as well.**

12. 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 other not otherwise, while 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 upcoming generations of the nation. It would be conducive to reproduce Article 25 of Constitution of Pakistan 1973:-

**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.

[Emphasis supplied]

**13.** The careful glance of the both articles suggest that equivalence of the inhabitant of the state has equally protected in addition to the 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 the mind that whether the “**State**” has been capable to ensure free compulsory education to all the children in country? However, the Statics of literacy ratio<sup>2</sup> shows that a big gape is yet to be filled<sup>3</sup>.

**14.** Be that as it may, 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.

**15.** 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 rather prevailing in the advanced countries as well, including the neighbouring countries in the line of **Article 18** of the **UN Declarations of the rights of indigenous People 2007**<sup>4</sup> which secure the **rights** of the **native persons** as follows.

**Article 17 (3).**

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<sup>2</sup>[https://www.pbs.gov.pk/sites/default/files//population\\_census/census\\_2017\\_tables/sindh/Table12p.pdf](https://www.pbs.gov.pk/sites/default/files//population_census/census_2017_tables/sindh/Table12p.pdf)

<sup>3</sup>[https://www.pbs.gov.pk/sites/default/files//population\\_census/census\\_2017\\_tables/pakistan/Table12n.pdf](https://www.pbs.gov.pk/sites/default/files//population_census/census_2017_tables/pakistan/Table12n.pdf)

<sup>4</sup>[https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

**Indigenous** individuals have the right **not to be** subjected to any **discriminatory** conditions of labour and, inter alia, **employment** or salary<sup>5</sup>;

**Similarly, Article 18 of the declaration provides;-**

**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**<sup>6</sup>.

**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,

**[Emphasis supplied]**

16. Moreover, the **job quota** being maintained in the **Australia Public Services**<sup>7</sup> (**APS**) as well, as evince from its 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

<sup>5</sup> <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

<sup>6</sup> <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>

<sup>7</sup> (<https://www.apsc.gov.au/working-aps/diversity-and-inclusion/indigenous-capability-agency-portal/indigenous-recruitment-guide>)

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

**17. Irrespective** of the going in deep and discussing details of the above article the prominent fact *eminent* from above provisions that the same are **directory** and **compulsory** and to applied *coextensively*. Further Hon'ble Supreme Court of Pakistan held in the case **Muhammad Shabbir Ahmed Nasir's**<sup>8</sup> case regarding observing Quota, 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

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<sup>8</sup>Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad and another (1997 SCMR 1026)

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.”

**[Emphasis Provided]**

18. It has been recently held by the Apex Court in the **Punjab Public Service Commission’s** case<sup>9</sup> while discussing **Article 27** specifically 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)”.***

**[Emphasis Provided]**

19. Similarly, held in **Zarai Taraqiati Bank Limited’s** case<sup>10</sup> 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***

<sup>9</sup>Punjab Public Service Commission Vs Husnain Abbas (2021 SCMR 1017)

<sup>10</sup>Zarai Taraqiati Bank Limited’s case and others v. Said Rehman and others, 2013 PLC (C.S) 1233

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"

[Emphasis Provided]

20. **Whereas**, the Indian Supreme Court, *highlighted* the broad categories of legislation by reference and opined in the **In Rajya v. Gopikabai's** case<sup>11</sup> 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 later 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)".*

21. **Besides** that, we are also enlightened from **Malik Ubaidullah's case**<sup>12</sup> wherein Hon'ble 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:-

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<sup>11</sup>(AIR 1979 SC 79),

<sup>12</sup>Malik Ubaidullah Vs Government of Punjab etc. reported as 2021 PLC (CS) 65 Supreme Court of Pakistan.

*“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”.***

**[Emphasis Provided]**

**22.** Since the core issue revolves around **Article 27** of the Constitution of Pakistan 1973, so it would be appropriate to have a glance over the same, which reads as under:-

**Article 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)<sup>13</sup>**

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<sup>13</sup> Inserted by Constitution (Eighteenth Amendment Act, X of 2010

(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.”

**[Emphasis Provided]**

**23.** 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 as well. It says that since the **commencing** day of the **Constitution**, its period shall not exceed **forty years**. It is deemed to expire in **2013**. However, prior to expiry of said period, the 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*. As it is evident from a plain reading of third proviso to **Article 27** of the Constitution, that the **“necessary amendments”** have been made in the Rules of **1973** in accordance with the **mandate** provided by the **Constitution**.



24. Nevertheless, third Proviso to **Article 27(1)**, depicts that 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). Consequently, 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, *squarely* fall within the *exclusive domain* of the **executive** based upon the *trichotomy* of the *powers*, i.e legislature is vested with the function of law making, *conversely* the executive with its **enforcement** and the judiciary of interpreting the law. Moreover, the Court can *neither* assume the **role** of a policy maker or that of a **law maker** respectively. The reliance, if needed, can be placed on the **Executive District Officer (Revenue), District Khushab's**<sup>14</sup> case 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”.*

[Emphasis Provided]

25. Similarly, it has been laid down in the **Ghulam Rasool's case**<sup>15</sup> 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.”*

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<sup>14</sup> Executive District Officer (Revenue), District Khushab at Jauharabad and others v. Ijaz Hussain and another (2011 SCMR 1864)

<sup>15</sup> Ghulam Rasool's case Vs. Government of Pakistan & others (PLD 2015 SC 6)

**[Emphasis Provided]**

26. 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 and relevant authorities (Departments) as respondents whose appointments were made on the basis of the **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. The reference in this respect may be placed in Case of **Muhammad Irfan**<sup>1316</sup> wherein a division bench of this Court observed 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***

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<sup>16</sup> Muhammad Irfan and 5 others v. Post Master General and 5 others (1996 PLC (C.S.) 75

***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***”.

**[Emphasis Provided]**

27. Besides, the petitioner has failed to join other provinces as necessary party, despite he is seeking an order having effect all over Pakistan in the circumstances. It has been held in the **Qazi Munir Ahmed’s**<sup>1417</sup> case 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)”***.

**[Emphasis Provided]**

28. Now coming to the rule of *locus poenitentiae*, once a right is accrued to the employees (*appointed on the basis of quota system through competitive process*) 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

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<sup>17</sup> Qazi Munir Ahmed v. Rawalpindi Medical College and Allied Hospital through Principal and others (2019 SCMR 648),

*locus poenitentiae*, well recognized and entrenched in our jurisprudence. One may refer to the **Mst. Basharat Jehan's** case<sup>18</sup>.

**29.** 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 the national allocation of **quota** in other Provinces and areas that too without affording them opportunity of hearing. 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.

**30.** Let it come back to the averments of the petition before this court, 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 as well, but his such argument rather supports the "**Quota system**" i.e by reserving the jobs in **KPT & Navy** to the extent of local people of the 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 to 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. Thus, such stance of the petitioner falls within the ambit of **approve** and **reprobate**, and he cannot be allowed to breath hot and cold in simultaneously. The reliance in this respect can safely be placed in **Habiba Kassam's**<sup>19</sup> case 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 approve and reprobate, to the detriment of his opponent and this doctrine applies not only to the***

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<sup>18</sup> Mst. Basharat Jehan's v. Director-General, Federal Government Education, FGEl (C/Q) Rawalpindi and others (2015 SCMR 1418)

<sup>19</sup> Habiba Kassam and other v. Habib Bank Ltd. (1989 CLC 1433)

*successive stages of the same suit, but also in different suits”.*

[Emphasis Provided]

31. Furthermore, 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.

32. 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. ....
- d. ....
- e. ....
- 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. ....
- h. ....
- i. ....

33. 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.**

[Emphasis Provided]

34. Further, 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 the 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 Hon'ble apex Court **Akhtar Hussain Khan's**<sup>20</sup> case 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 its 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.”***

**[Emphasis Provided]**

**35.** 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.

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<sup>20</sup> Akhtar Hussain Khan vs Federation of Pakistan (2012 SCMR 455)

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

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