

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P No.D-3291 of 2021

DATE

ORDER WITH SIGNATURE OF JUDGE

Priority

1. For hearing of CMA No.13936/2021 (Stay Application)
2. For hearing of main case

20.08.2021

Mr. Sarmad Hani, Advocate for the petitioners
Mr. M. Nishat Warsi, DAG
Mr. Ali Safdar Depart, AAG

This petition challenges the Civil Service of Pakistan (Composition and Cadre) Rules, 1954, (hereinafter to be called as “Impugned Rules 1954”), reserving service posts in connection with the affairs of the Provinces as well as the Federation. Learned counsel for the petitioners by giving background states that the Government of India Act, 1935 through section 241 provided a mechanism for the appointment of Civil Servants for various civil posts within the territory of India to the extent that in the case of services of the Federation, and posts in connection with the affairs of the Federation, such appointment was to be made by the Governor-General, or such person as the latter may direct; whereas, in the case of services of Provinces, such appointments were to be made through Governor, or his nominee. Counsel contends that this provision was carried out through the earlier Constitutions of 1956 and 1962 and eventually took the shape of Article 240 of the Constitution of Islamic Republic of Pakistan, 1973. Learned counsel submits that following the rationale prescribed by the Indian Government Act, 1935, carried through the subsequent Constitutions, 1973 Constitution also upheld the long established distinction between the appointments made in connection with the affairs of the Federation and all Pakistan Service through legislation made by Majlis-e-Shoora (Parliament), whereas, for Provinces, appointment and conditions of service in connection with the affairs of the Provinces were left to be made through Act legislated by the Provincial

Assemblies. Learned counsel by drawing this Court’s attention to the explanation provided under the said Article of the Constitution states that “All Pakistan Service” were services common to the Federation and Provinces and remained in existence in such ratios as existing immediately before the commencement day of the Act created by the Majlis-e-Shoora (Parliament). Learned counsel next contends that oblivious of such distinctive duty casted upon the Constitution, the Impugned Rules 1954 are strangely still in existence, and not only so, time and again amended by the Federal Government without any consultation with the Provinces as perceived by the legislature. By referring to rule 7(1) of the Impugned Rules, 1954, the learned counsel elaborates that the sanctioned posts in the Provincial sub-Cadre of the Schedule specified under the said rule were reserved for the office of Pakistan Administrative Services as per agreed Posts-Sharing formula in the following manner:-

BS-17	BS-18	BS-19	BS-20	BS-21
25%	40%	50%	60%	65%

Learned counsel by referring to rule 17 of the Impugned Rules 1954 states that such Cadre-schedule was amenable to amendment, however, keeping the spirit of rule 7 alive, i.e. such amendments could only be made in consultation with the Provinces. Counsel by drawing attention to the relevant schedule reproduced on page 149 submits that under the said schedule, the Federal Government was given a total number of 97 posts in the Province of Sindh and subsequently by referring to the minutes and decisions of the meeting dated 19.09.1993 counsel makes a point that this issue of representation of the Federal Government through all Pakistan Unified Group Cadre (APUG) within the Provinces has already been thorn in the eyes of the respective constituents, however in the said meeting too the earlier rule 7’s ratios were agreed to be maintained for the Province of Sindh, least to say.

The learned counsel next, by referring to SRO 88(I)/2014 dated 10.02.2014, in terms of which, the Impugned Rules 1954 were amended,

states that whilst through the said amendment these Rules were largely re-organized as a successor to the erstwhile Pakistan Administrative Service pursuant to the aforementioned 1954 agreement, which were later sanctified by virtue of the successive Constitutional dispensations including Article 4, 146, 147, 193, 240, 241, 260 and 268 of the 1973 Constitution still did not fail to hold that any changes in rule 17 to the Impugned Rules 1954 pursuant to rules 6 and 7 would only be made in consultation of the Provinces. By referring to a more recent intrusion made in the Impugned Rules 1954 through S.R.O 1046(I)/2020 dated 14.10.2020, per learned counsel the words “Provincial Government” has been substituted with the words “Chief Minister or a person authorized by him”, meaning thereby, the principle carved by the Indian Government Act, 1935 exists till date and any amendment or change in the ratios of the Federal Government’s sanctioned posts in the respective Provincial sub-Cadre through the schedule as specified under the Impugned Rules 1954 could only be made with the consultation of the Provincial Government. Learned counsel while at the upper plane of statutory hierarchy, challenges the very maintainability of the Impugned Rules 1954 on the touchstone of Articles 240 and 242 of the Constitution, however at a more immediate recourse has challenged Notification No.13/14/2020/E-5 (PAS) dated 12.03.2021 issued under rule 17 of the Impugned Rules 1954 challenging the cadre strength of the Pakistan Administrative Services to an alarmingly high proportions to the extent that for the Province of Sindh, the earlier 97 posts have been now ballooned to the tune of 326 posts, as well as, similar astronomical increase has also been witnessed in respect of other Provinces, i.e. KPK, Balochistan and Punjab. Counsel by referring to the order passed by the Hon’ble Peshawar High Court in CM No.698 in W.P No.5547-P/2020 dated 26.03.2021 states that to arrest such a blatant illegality, the said Hon’ble High Court has suspended the aforementioned Notification and a similar order is sought from this Court at the first instance.

On 03.06.2021, notices were directed to be issued to the Attorney General for Pakistan under Article XXVII-A CPC and to the Advocate General,

Sindh for 22.06.2021, on which date, more time was sought by the learned DAG as well as Additional Advocate General to file their comments. Even today, same request is made by both the officers despite lapse of about two months. Learned counsel states that in case operation of the impugned Notification is not suspended there is a serious danger that Respondent No.2 will issue appointment notifications for a large number of officers under the impugned notification exponentially enlarging the controversy posed to this Court.

Contentions raised by the learned counsel for the petitioners merit consideration.

While extending the request of the learned DAG as well as learned AAG for the grant of additional time to file their comments, the matter is adjourned to 07.09.2021. However in the meanwhile, operation of the impugned Notification dated 12.03.2021 (page 79) to remain suspended till the next date of hearing.

Judge

Judge