IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Agha Faisal, **J**.
Abdul Mobeen Lakho, J.

CP D 1499 of 2025	:	Miss Sana vs. Province of Sindh & Others
CP D 1501 of 2025	:	Hamid Murtaza vs. Province of Sindh & Others
CP D 1520 of 2025	:	Mayassar Ali vs. Registrar High Court of Sindh & Another
CP D 1542 of 2025	:	Anum Salman Jamali & Others vs. Province of Sindh & Others
For the Petitioners	:	Mr. Amjad Ali Shar, advocate Mr. Hamid Murtaza (In person) Mr. Muhammad Haseeb Jamali, advocate Ms. Farkhanda Jabeen, advocate
Date of hearing	:	21.04.2025
Date of announcement	:	21.04.2025

ORDER

Agha Faisal, **J**. The Administrative Committee of the High Court of Sindh unanimously resolved, vide its meeting dated 17th August 2024, to seek amendment of Rule 8 of the Sindh Judicial Services 1994 ("Rules") and require a minimum period of two years' active practice as an eligibility requirement for application for posts of Civil Judge / Judicial Magistrate. Essentially, this decision has been assailed in these petitions today.

2. The aforesaid administrative decision, with the proposed amendment to Rule 8(1)(b) of the Rules, was conveyed to the Secretary Law, Parliamentary Affairs & Criminal Prosecution Department Government of Sindh. The matter was placed before the Provincial Cabinet for consideration and post approval the amendment was notified on 12th November 2024. The amendment read as follows:

> "In rule 8, sub-rule (1), in clause (b), after the words "*profession of law*", the words "*with minimum two years' active practice*" shall be added."

3. The petitioners aver infringement of their fundamental rights, per Articles 18 and 25 of the Constitution, and seek for the requirement / amendment to be struck down.

4. Petitioners' learned counsel were queried at the very onset as to whether judicial dispensation would be better served with experienced individuals; as opposed to those devoid of any experience. Not a single counsel articulated any cavil to the greater benefit of engaging experienced candidates, however, predicated their challenge on individual exclusions[1] disentitling petitioners to participate in the present competitive recruitment process; initiated vide advertisement dated 20th March 2025, last date of submissions of applications where under is today (21st April 2025).

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[1] Predominantly not having the relevant quantum of experience required on the cut off date.

2. Article 18 enshrines the freedom of trade, business or profession and the provision embodies the concept of regulation therein. Respectfully, the requirement to engage experienced professionals for dispensation of justice could not be demonstrated before us to be a proscribed encumbrance.

3. Article 25 envisages equality between citizens, however it allows for differential treatment of persons not similarly placed under a reasonable classification. Provided that the reasonable classification has to be based upon intelligible differentia having a nexus with the object sought to be achieved[2]. *Muhammad Junaid Ghaffar J* deliberated upon the concept in *Hakimsons*[3] and observed that it has to be established from the law that it has discriminated within the same class of persons and in order for the law to be struck down and it must be demonstrated that it is not based on intelligible criteria, devoid of nexus with the purpose of the law[4]. *I A Sherwani*[5] was relied upon to observe that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, however, it does contemplate that persons similarly situated or similarly placed are to be treated alike. It was maintained that reasonable classification is permissible provided it is based on an intelligible differentia, which distinguishes persons or things that are grouped together from those who have been left out, and that the differentia must have rational nexus to the object sought to be achieved by such classification. On the touchstone as aforesaid, no case for any discrimination stood set forth before us.

5. Learned counsel referred to Sindh Empowerment of Persons with Disabilities Act 2018 to suggest that the recruitment process was in dissonance therewith. The averment is *prima facie* inconsistent with the record as Note 7 to the advertisement dated 20th March 2025 specifically states that "*Disable quota will be followed as per Law*".

6. An argument was made that the age limit criterion lent unmerited antecedence to those graduating in law other than from Pakistan; since the Supreme Court had mandated a minimum five year period for a law degree and the same did not apply to similar programs overseas. The relevant judgment in such regard is the *Pakistan Bar Council case*[6] and paragraph 22 thereof explicates that any relevant grievance must be escalated before the apex Court and recourse to any other judicial forum, without permission of the Supreme Court, is barred. Therefore, there can be no occasion for this Court to enter into any deliberation regarding the tenure of legal qualifications under the said circumstances.

7. Notwithstanding the discussion supra, it has been observed at the very onset that the decision, to require a minimum period of two years' active practice as an eligibility requirement for application for posts of Civil Judge / Judicial Magistrate, is clearly an administrative / executive / policy decision of the Administration Committee of the High Court of Sindh; headed by the Chief Justice Sindh. Perusal of the record demonstrates that the cabinet approval and subsequent notification mirrors / gives effect to the aforesaid decision and it was never the case that there is any incongruence *inter se*. A five member bench of the Supreme Court in *Gul Taiz Khan Marwat*[7] has held that executive, administrative and / or consultative actions / decisions of the Chief Justice / Judges of a High Court are immune to challenge within remit of

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[2] Per *Umar Atta Bandial J* in *Hadayatullah vs. Pakistan* reported as *2022 SCMR 1691*.
[3] Per *Muhammad Junaid Ghaffar J* in *Hakimsons Impex vs. Federation of Pakistan* reported as *2024 PTD 451* / *PLD 2024 Sindh 132*.
[4] *Sheraz Kaka vs. Federation of Pakistan* reported as *2018 PTD 336.*
[5] *1991 SCMR 1041*.
[6] Per *Umar Atta Bandial J* in *Pakistan Bar Council vs. Federal Government* reported as *2018 SCMR 1891*.
[7] *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

Article 199 of the Constitution. The august court deliberated at length in such regard and illumined as follows:

> "... There is no sound basis on which Judges acting in their judicial capacity fall within the definition of 'person' and Judges acting in their administrative, executive or consultative capacity do not fall within such definition. In essence, the definitions of a High Court and Supreme Court provided in Articles 192 and 176 supra respectively are being split into two when the Constitution itself does not disclose such intention. It is expressly or by implication a settled rule of interpretation of constitutional provisions that the doctrine of casus omissus does not apply to the same and nothing can be "read into" the Constitution. If the framers of the Constitution had intended there to be such a distinction, the language of the Constitution, particularly Article 199 supra, would have been very different. Therefore to bifurcate the functions on the basis of something which is manifestly absent is tantamount to reading something into the Constitution which we are not willing to do. In our opinion, strict and faithful adherence to the words of the Constitution, especially so where the words are simple, clear and unambiguous is the rule. Any effort to supply perceived omissions in the Constitution being subjective can have disastrous consequences. Furthermore, the powers exercisable under the rules framed pursuant to Article 208 supra form a part and parcel of the functioning of the superior Courts. In other words, the power under Article 208 supra would not be there but for the existence of the superior Courts. This 'but for' test, as mentioned by the learned Attorney General, is pivotal in determining whether or not a particular act or function carried out by a Judge is immune to challenge under the writ jurisdiction under Article 199 supra. This test is employed by Courts in various jurisdictions to establish causation particularly in criminal and tort law - but for the defendant's actions, would the harm have occurred? If the answer to this question is yes, then causation is not established. Similarly in the instant matter, but for the person's appointment as a Judge (thereby constituting a part of a High Court or the Supreme Court under Articles 192 and 176 supra respectively), would the function in issue be exercised? If the answer to this question is yes, then such function would not be immune to challenge under Article 199 supra. In this case with respect to the administrative, executive or consultative acts or orders in question, the answer to the "but for" test is an unqualified no, therefore such acts or orders would in our opinion be protected by Article 199(5) of the Constitution and thereby be immune to challenge under the writ jurisdiction of the High Court."

8. The respective learned counsel for the petitioners remained unable to satisfy this Court on the count of maintainability and there was absolutely no endeavor to articulate as to how jurisdiction could be assumed by this Court in view of the binding edict in *Gul Taiz Khan Marwat*.

9. Therefore, these petitions are adjudged to be misconceived and *prima facie* devoid of merit, hence, dismissed, along with pending applications, in *limine*. The office is instructed to place copy hereof in each connected petition.

Judge

Judge