

Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

W.P.No.3176 of 2021

Faiz Ullah
Vs.
P.P.S.C., etc.

J U D G M E N T

Date of hearing	03.02.2021
Petitioner By:	M/s Syed Ali Hassan Zaidi and Muhammad Zeshan Zafar, Advocates
Respondents By:	Malik Abdul Aziz Awan, Addl. A.G. Mr. Muhammad Asif Bhatti, Addl. A.G. Ch. Faza Ullah, A.A.G. Mian Muhammad Iqbal, Law Officer on behalf of P.P.S.C. Mr. Abdul Jabbar, Section Officer (DF), Higher Education Department.

Faisal Zaman Khan, J:- Through this petition advertisement No.24/2020 dated 23.08.2020 publicized by respondent No.1 inviting application for the post of Lecturer (Male/Female) and order dated 29.10.2020 passed by respondent No.1 have been assailed.

2. Succinctly, the facts of the case are that a requisition was sent by respondent No.2 to respondent No.1 for making recommendations for making appointments on the posts of Lecturers (Male and Female), upon which Advertisement No.24/2020 dated 23.08.2020 was publicized by respondent no.1. Petitioner being a transgender person, in exercise of its option under Section 3 of the Transgender Persons Protection of Rights Act, 2018 applied for the post of **Lecturer (Female)**, however, the application of the petitioner was rejected vide order dated 29.10.2020 on the ground that the said posts have been

earmarked for Lecturers (Male/Female) and not for transgender persons, which culminated into filing of this petition.

3. On behalf of respondent Nos.2, 4 and 5, Malik Abdul Aziz Awan, Mr. Muhammad Asif Bhatti, Additional Advocates General Punjab and Ch. Faza Ullah, Assistant Advocate General Punjab appeared along with Mr. Abdul Jabbar, Section Officer (DF), Higher Education Department and the latter submitted that instructions have been forwarded to respondent No.1 for letting the petitioner participate in the recruitment process for the post of **Lecturer (Female)**.

4. The said fact has also been acknowledged by Mian Muhammad Iqbal, learned Law Officer appearing on behalf of respondent nos. 1 and 3 (Punjab Public Service Commission) and submits that petitioner will be allowed to join the recruitment process.

5. In view of the above conceding statements, this petition is **allowed**, as a sequel to which the impugned order dated 29.10.2020 passed by respondent No.1 is **set aside**, resultantly application of the petitioner for seeking recruitment on the post of Lecturer (Female) shall be considered by respondent No.1 and the petitioner will be allowed to participate in the recruitment process.

6. Before parting with this judgment, I must register my displeasure and dismay over the treatment, with which petitioner has been meted out with.

7. In a conservative society like ours where although rights of transgender persons have been recognized by the Honourable Supreme Court of Pakistan as well as this Court in judgments reported as *Dr. Muhammad Aslam Khaki and others v. S.S.P. (Operations) Rawalpindi and others (PLD 2013 S.C. 188)*, *Dr. Muhammad Aslam Khaki and another v. Senior Superintendent of Police (Operation), Rawalpindi and others (2013 SCMR 187)* and *Mian Asia v. Federation of Pakistan through Secretary Finance and 2 others (PLD 2018 Lahore 54)* upon which a comprehensive legislation in the shape of the Transgender

Persons (Protection of Rights) Act, 2018 (**ACT**) has been made through which they have been given equal rights as any other citizen of this Country, however, in practice, the said segment of society is still treated to be less equals or non-existent.

8. Imagine the plight of the transgender person, who in the first place had the courage to disclose its identity as a transgender person, document the same by disclosing it in its National Identity Card (CNIC), attend an educational institutions (which I am sure with lot of difficulties), get Post Graduate qualification not only for self-satisfaction but also to be a beacon for all other transgender persons and to show other genders that transgender persons are no less than others, with the expectation that it will get the equal status and treatment like other citizens of this Country in all walks of life, but the reality is otherwise.

9. In the case in hand, petitioner in exercise of option under Section 3 of the Act applied for the post of Lecturer (Female) but in a crude, demeaning and rude manner was at the outset shunted out of the process on the ground that the recruitment process is for **Males/Females** and not for **transgender persons**. The said refusal by respondent No.1 was not only violative of the Constitutional Guarantees ensured to the citizen of this country as enshrined in the Constitution of the Islamic Republic of Pakistan but also violative of Sections 4, 6, 9, 11 and 16 of the Act for which there is no explanation.

10. Acknowledging the right of the petitioner and feeling the social, moral and legal pressure, respondents conceded to the claim of the petitioner and allowed the petitioner to participate in the recruitment process but the mindset of the respondents is still to deprive the transgender persons as a community, which is reflective from the fact that during the course of arguments, one of the law officer categorically said that respondents are conceding only to the extent of the petitioner enabling it participate in the recruitment process, meaning thereby that they will not let the other transgender persons

participate in the recruitment process. This statement is not only shameful but discriminatory as well.

11. Be that as it may, it is the first and foremost duty/responsibility (moral and legal) of respondent No.5 to implement the provisions of the Act in letter and spirit by not letting the Government Department discriminate between male, female and transgender persons as being a transgender person is neither an option nor a preference but a recognized and respectable third gender all over the world.

12. In the above back drop, I issue a direction to respondent No.5 to at the earliest make a comprehensive policy for implementation of the Act in letter and spirit and ensure that the rights of the transgender persons are protected like any other citizen of this Country.

13. Office is directed to send a copy of this judgment to respondent No.5 for compliance.

(FAISAL ZAMAN KHAN)
JUDGE

Shafaqat Ali*

Approved for Reporting

JUDGE.