

## **Zahida Parveen v. Government of Khyber Pakhtunkhwa**

2025 SCP 107

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In *Zahida Parveen v. Government of Khyber Pakhtunkhwa*,<sup>1</sup> the petitioner, Zahida Parveen, was appointed as a primary school teacher at the Government Girls Primary School ('School'), District Karak after the death of her father under the 'deceased son/daughter quota' pursuant to Rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion, and Transfer) Rules, 1989 ('Rules'). Her appointment was later withdrawn by the District Education Officer without notice pursuant to a clarification from the Establishment Department ('Department') that married daughters were ineligible for appointment under this quota. The Khyber Pakhtunkhwa Service Tribunal ('Tribunal') upheld this withdrawal.

Through its judgment in *Zahida Parveen*, the Supreme Court ('Court') set aside the Tribunal's decision, holding that the executive clarification was discriminatory and *ultra vires* the Constitution of the Islamic Republic of Pakistan, 1973 ('Constitution'). Justice Mansoor Ali Shah ruled that Rule 10(4) of the Rules does not exclude married daughters, and the executive had no authority to amend or narrow the Rule through a clarification. Secondly, the clarification creates an unlawful and arbitrary classification by excluding married daughters while allowing appointments to married sons, thus violating the fundamental guarantees under the Constitution. Thirdly, the assumption that a married woman is automatically financially dependent on her husband is constitutionally and religiously unfounded. And fourthly, the Court censured the use of gender-biased language in the Tribunal's judgment, such as calling a married daughter a 'liability', for being inconsistent with constitutional provisions guaranteeing dignity and equality. The Court ordered that Zahida Parveen be reinstated to her position at the School with full benefits, and the

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<sup>1</sup> *Zahida Parveen v. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Civil Secretariat, Peshawar and others* 2025 SCP 107.

Court also reaffirmed that all judicial and administrative authorities must adopt gender-sensitive language and reasoning in line with constitutional values.

The main dispute before the Court was whether the Department, through its clarification, could exclude married daughters from the ambit of Rule 10(4) of the Rules. Justice Shah held that the Department had no such authority as under Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 ('Act'), the rule-making powers lie solely with the Governor.<sup>2</sup> By attempting to create a new classification (i.e., exclusion of married daughters), the Department effectively rewrote Rule 10(4), an act which it had no legal mandate to perform. The Court deemed this a classic violation of the separation of powers and held that an administrative clarification cannot operate as delegated legislation. The Court struck down the executive clarification as being *ultra vires* the Rules and also unconstitutional under Articles 25 (equality), 27 (non-discrimination in public employment), and 14 (dignity) of the Constitution.

Justice Shah's articulation of how patriarchal assumptions continue to shape legal and administrative decisions is both timely and necessary. It is commendable that the judiciary did not shy away from addressing the broader social implications of exclusionary state practices. Judicial recognition of such biases is essential, not only for delivering justice in individual cases, but also for setting transformative legal standards that can drive meaningful social change. Moreover, the judgment maintains fidelity to the settled jurisprudence that subordinate legislation and executive circulars cannot override the parent laws. The reaffirmation of the doctrine that compassionate appointment rules must be implemented as they are, without bureaucratic reinterpretation, strengthens legal certainty and protects against arbitrary exclusions.

However, while the Court focused heavily on marital status as a discriminatory marker, it missed an opportunity to reorient the legal analysis, more precisely, on economic dependency, as was invoked by the respondents. The government's argument was that a married daughter, 'living with her husband', was no longer financially dependent on her deceased parent, and thus not eligible under the compassionate appointment rule. However, Rule 10(4) of the Rules, as it stands, makes no mention of dependency when it entitles appointments based only on the applicant's

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<sup>2</sup> The Khyber Pakhtunkhwa Civil Servants Act 1973, s 26.

status as a child of the deceased civil servant. The textually grounded position is that the Rule's rationale is to provide posthumous compensation to the deceased's child, not to determine their economic dependence. Therefore, inserting dependency as a criterion, as insisted by the respondents, would amount to rewriting the Rule.

It can be argued that the intention behind Rule 10(4) is to provide for dependent family members, and dependency must be inferred even if unstated, or else the Rule loses its purpose under the title of compassionate appointment. However, the nature of such appointments is *ex gratia* (by favour) and therefore not subject to strict dependency thresholds. Even if it is argued that dependency is implicit, the selective exclusion of married daughters is still arbitrary. Thus, even if dependency is considered, gender-neutral criteria must be applied. This means that married daughters could be assessed on actual dependency, not presumed dependency based on their social roles. However, there are policy implications if dependency is adopted as the standard: making economic dependency the standard for compassionate appointments would entail individual factual inquiries, therefore potentially delaying relief and increasing administrative discretion and bureaucratic burden.

Recently, the Court, in another case, has declared Rule 10(4) of the Rules to be *ultra vires* the Constitution on the grounds that regular appointments without open advertisement violated the fundamental rights of the citizens.<sup>3</sup> On the other hand, the Indian Supreme Court has called compassionate appointments 'a means to tide over family crises under sudden circumstances.'<sup>4</sup> The Indian Supreme Court further clarified that such appointments are a concession, not a right.<sup>5</sup> Therefore, there appears to be a divergence between the Indian and the Pakistani Supreme Courts on this issue. If the position taken by the Indian Supreme Court—i.e. Rule 10(4) is a concession based on the loyalty of the worker for their services—were to prevail, then instead of differentiating between private and government employees, there should be a similar concession across all workplaces to tackle sudden familial crises.

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<sup>3</sup> *General Post Office, Islamabad v. Muhammad Jalal* PLD 2024 SC 1276.

<sup>4</sup> *Fertilizers and Chemicals Travancore Ltd v. Anusree K.B.* Civil Appeal No. 6958 of 2022.

<sup>5</sup> *Ibid.*

In conclusion, the Court's decision in *Zahida Parveen* reaffirms constitutional commitments to gender equality and non-discrimination, curbing executive overreach and patriarchal assumptions in administrative decision-making. Nonetheless, it also calls for a broader discourse on the nature, purpose, and scope of compassionate appointments, particularly in balancing welfare objectives with principles of merit and equality.