

Government of Pakistan
Revenue Division
Federal Board of Revenue
(Admn/HR Wing)

C.No.25(39)MIR-IV/2013(Vol.III)

Islamabad, the 13th November, 2024

To: **All Directors General/Chief Commissioners IR**

Subject: **APPOINTMENTS UNDER PRIME MINISTER'S ASSISTANCE PACKAGE-2015(PMAP) AND CONTRACT POLICY AS AMENDED VIDE ESTABLISHMENT DIVISION'S OM DATED 13.04.2005.**

In continuation of Board's letter No.25(40)MIR-IV/2013 dated 26th May, 2023 on the above subject, I am directed to forward herewith a copy of final Order dated 30.10.2024 passed by the Hon'ble Islamabad High Court, Islamabad in WP No.1146/2022 filed by Mst.Fazeelat Bibi alongwith 04 other identical Writ Petitions for information please.

2. I am further directed to say that although the initial restraining order dated 08.12.2022 passed by the Hon'ble Islamabad High Court, Islamabad in WP No.1146/2022 is no more in the field yet in the light of enclosed final order of the Hon'ble Islamabad High Court read with Order dated 26.09.2024 (announced on 18.10.2024) already passed by the Hon'ble Supreme Court of Pakistan in CP No.3390 of 2021, no appointment under the Prime Minister's Assistance Package-2015 or contract policy can be made without advertisement, till further instructions from the Establishment Division for which a reference has already been sent to them.

3. Therefore, I am directed to convey that all Heads of the field formations are requested not to process any case pertaining to appointments under the Prime Minister's Assistance Package-2015 or Contract Policy until revised instructions/policy on the matter is received from Establishment Division.

4. This issues with the approval of Member (Admn/HR), FBR.

Encl: As above


(Muhammad Shakeel Abbasi)
Secretary (Management/HR.IR-VI)

CC: Member (Admn/HR), FBR
Chief (Management/HR-Customs), FBR
Web-master PRAL for uploading on "Notice Board" of FBR's website

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 1146 OF 2022

Mst. Fazilat Bibi & another.

Vs

The Directorate General Immigration & Passports, through its Director General, Islamabad and others.

PETITIONERS BY: M/s Ch. Shafiq Ur Rehman and Syeda Kashmala Susan, Advocates, in Writ Petition No.1146 of 2022.
Ms. Rakshanda Azhar and Mr. Akseer Ahmed Abbasi, Advocates, in Writ Petition No.2024 of 2024.
Ch. M. Naeem Ali Gujjar, Advocate, in Writ Petition No.2706 of 2024.
Mr. Matloob Hussain Malik and Mr. Muhammad Asif Gondal, Advocates, in Writ Petition No.3577 of 2017.
Mr. Shah Nawaz Khan Katlang, Advocate, in Writ Petition No.1022 of 2020.
Mr. Muhammad Asif Gujjar, Advocate for the applicant in C.M. No.1523 of 2023 in Writ Petition No.1146 of 2022.

RESPONDENTS BY: Mr. Munawar Iqbal Duggal, Additional Attorney General, Mr. Aqeel Akhtar Raja, Assistant Attorney General, and Raja Muhammad Jawad Arslan, Assistant Attorney General.
Mr. Abdul Rahim Bhatti and Mr. Qaiser Rahim Bhatti, Advocates for FBISE.
Dr. Agha Ghulam Haider, Deputy Director (Legal), Ministry of FE&PT, Islamabad.
Mr. Muhammad Waqas Haral, S.O (Litigation), Establishment Division.
Mr. Asim Rashid, Assistant Director, Directorate General of Immigration & Passports, Islamabad.
Mr. Lal Zamir, Legal Assistant, Estate Office.

DATE OF DECISION: 30.10.2024.

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BABAR SATTAR, J.- This judgment will dispose of the afore-titled petition as well as the petitions listed in Annexure-A, as petitioners in all these cases are seeking the benefit of being granted an appointment pursuant to office memoranda and policies issued under the direction of the Prime Minister that have come to be known as Prime Minister's Assistance Package (**"PM's Assistance Package"**) for deceased civil servants.

2. The arguments of the learned counsels for the petitioners as well as the learned Assistant Attorney General recorded in W.P No. 1146/2022 by orders dated 04.04.2022, 08.12.2022 and 13.03.2024 and need not be recapitulated here.

3. In order dated 08.12.2022 this Court had noted that the offering of government jobs has to be in accordance with requirements of Article 4 read together with Articles 9, 18 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (**"Constitution"**) by providing a level-playing-field to all citizens. And that those in the higher echelons of the Establishment Division and the PM's office have no authority under the law and the Constitution to dispense state largesse at their whims. The Court had also issued a notice to the Attorney General's office under Order XXVII-A of CPC to determine the constitutionality of the PM's Assistance Package.

4. In order dated 13.03.2024, this Court had observed the following:-

"6. The salient feature of the Constitution is separation of powers between the Executive, the Judiciary and the Legislature. The question before the Court is the scope of authority vested in the Prime Minister under the laws framed by the legislature in relation to prescribing terms

requirement of equality, and is enforceable by the Courts of Pakistan."

5. Meanwhile the question of constitutionality of the PM's Assistance Package came before the Supreme Court in **General Post Office, Islamabad and others vs. Muhammad Jalal (Civil Petition No. 3390 of 2021)**, wherein by judgment dated 26.09.2024, the Supreme Court declared that the PM's Assistance Package and any other policies and office memoranda that promise grant of appointments to the next-of-kin of deceased or incapacitated civil servants without open advertisement and competition to be *ultra vires* the Constitution. The relevant excerpts from the judgment of the Supreme Court are as follows:-

"The Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 does not provide for nor envisages what OM dated 13 August 2001 issued by the Establishment Division had sought to do, that is, the appointment, without open advertisement, of a widow or one child of a civil servant of the Federal Government who dies during service,...

The widow/widower, the wife/husband and the dependent children of a civil servant who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service get pensionary and other benefits from the public exchequer, to which they are entitled. However, the above mentioned rules, policies, OMs, etc. which secure or provide appointments in different grades, without open advertisements and competition, to the widow/widower, wife/husband or a child of a civil servant of the Federal and Provincial Governments, who dies during service or becomes permanently disabled/invalidated/incapacitated for further service and takes retirement from service, is ex facie discriminatory against the other or ordinary citizens of

and conditions of service in a manner that has not been approved by the legislature through a statutory provisions or under rules prescribed pursuant to rule-making power delegated by the legislature. The content of the assistance packages, even if driven by bonafide and consideration compassionates, are such that appear prima facie to fall foul of provisions of the Constitution, including the right of citizens to be treated equally, to have equal protection of law, and to be considered for jobs and entitlements through an open and competitive process.

7. A perusal of various provisions within the PM assistance packages that have been issued reflect that they create distortions in the manner in which benefits are afforded to families of certain class of employees who die in service. It further creates a zone of discretion that is not guided by any principles of fairness and consistency and vest arbitrary authority in the office of the Prime Minister. It is now a settled proposition within administrative law that public office holders are vested with no authority to dispense jobs and other benefits as state largesse at their whims. And even where discretion is vested in a public official, it must be structured and exercised in a manner that is just, fair and reasonable.

8. Given that the question involves the authority of the Federal Government and specifically the Prime Minister, who is the highest elected official, this Court would stay its hand at this stage and would rather that the Issue of legality of the various assistance packages that are in field and have been issued by successive Prime Ministers be considered, in the first instance, by the Federal Cabinet to determine whether the same has been done in accordance with requirements of Article 240 of the Constitution read together with provisions of the Civil Servants Act or whether the assistance packages are a policy measure, the Federal Cabinet may wish to consider if there is need to frame legislation to give such policy the shape of law in a manner that is consistent with the constitutional

Pakistan and the same cannot be termed as a reasonable classification as their object is to give an advantage by excluding others, which is not permissible under Article 25 of the Constitution. Article 27 of the Constitution which specifically attends to the service of Pakistan prohibits discrimination in services.

The Government and public sector employment cannot be allowed to be parceled out to the functionaries of the State. These jobs neither are nor can be made hereditary. The Constitution stipulates that equal employment and economic opportunities must be provided to all citizens. Economic justice, if we may add, is a component of social justice which focuses on creating equal opportunities for all within a society in all aspects.

Policies, office memorandums, employment under the Package of the Prime Minister, the Financial Assistance Package, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, Rule 10 (4) of the Khyber Pakhtunkhwa Civil servants (Appointment, Promotion and Transfer) Rules, 1989, Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 or any other rule, policy, memorandum, etc. whereunder appointments without open advertisement, competition and merit, of the widow/widower, wife/husband or child of civil servants in different grades, who die during service or become permanently disabled/invalidated/incapacitated for further service and take retirement from service, are declared to be discriminatory and ultra vires Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution."

6. Given that the Supreme Court has already declared that any jobs offered to the next-of-kin of deceased or disabled civil servants pursuant to the PM's Assistance Package or any other memoranda or policies of the Federal Government without following an open, competitive and transparent selection process, are *ultra vires* the Constitution, the question of

constitutionality of the PM's Assistance Package, as framed by this Court, for which purpose notices were also issued to the Attorney General's office, stands answered. As the Supreme Court has declared grant of jobs to next-of-kin of deceased or disabled civil servants without complying with the requirements of transparency and merit and adopting a competitive recruitment process to be unconstitutional, no direction can be issued to the Federal Government for grant of jobs to the petitioners under the PM's Assistance Package.

7. The aforementioned petition and the petitions listed in Annexure-A are therefore **dismissed** accordingly in terms of the judgment of the Supreme Court in **Muhammad Jalal** to the extent that they are seeking jobs.

8. In Writ Petition No.2024 of 2024, the petitioner has made an additional prayer that she be allowed to retain the accommodation allotted to her late husband, who died during service on 16.11.2023. Let her file an appropriate application with the Secretary of Housing and Works, which application shall be considered in accordance with the provisions of the Accommodation Allocation Rules, 2002, as amended, and decided within a period of 60 days from the date of its filing. The petition (i.e. W.P No.2024 of 2024) is **disposed of** in the above terms.

**(BABAR SATTAR)
JUDGE**

ANNEXURE-A

Sr. No.	Case No.	Case Title
1.	W.P. No.2706/2024	Muhammad Usama Murtaza vs. Federation of Pakistan through Secretary Ministry of Federal Education and Professional Training, Islamabad and others.
2.	W.P. No.2024/2024	Mst. Nusrat Kalsoom Ejaz vs. Prime Minister Office through its Principal Secretary and others.
3.	W.P. No.1022/2020	Muhammad Nawaz vs. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others.
4.	W.P. No.3577/2017	Muhammad Imran Qureshi and another vs. Secretary, Ministry of Federal Education and Professional Training and another.