

Judgment Sheet  
IN THE LAHORE HIGH COURT AT LAHORE  
JUDICIAL DEPARTMENT

ICA No.497/2017

Government of the Punjab, Secretary Home Department through Deputy  
Secretary (Police) Interior Department, Lahore etc.

*Versus*

Qanoot Fatima etc.

**J U D G M E N T**

Date of Hearing	2.11.2017.
Appellants By:	Mr. Muhammad Ijaz, AAG on behalf of the Appellants along with Rai Muhammad Tahir, Additional IG Police/CTD, Jawad Qamar, SSP/CTD and Altaf Hussain, DSP/Legal, CTD.
Respondents By:	Mr. Naveed Iqbal Sivia, Advocate.

**Ayesha A. Malik J:** The instant appeal along with connected ICAs No.475/17, 487/17 and 488/17 arise out of the common order dated 2.3.2017 passed by the learned Single Judge in WP No.1134/2015.

2. In November, 2013 the Government of Punjab (Appellant here) invited applications for the post of corporals in the Counter Terrorism Department, Punjab (“CTD”). In terms of the advertisement both men and women could apply. Accordingly the Respondents before this Court applied for the post of corporals. They cleared the tests and interview and came on the merit list. However, they were not appointed as the Appellants were of the opinion that female candidates could not be appointed against the open merit seats. The Appellants appointed 75 female corporals against a 5% quota for women and denied the Respondents’ appointment because they did not fall within the merit of the top 75 female candidates. The Respondents challenged the decision of the Appellants and vide order dated 5.11.2014 passed in WP No.22217/2014, a direction was given to the Appellants to hear the Respondents and pass a speaking order. The Home Secretary, Punjab heard the Respondents and through order dated 6.1.2015 rejected the representation of the Respondents on the ground that the top 75 female candidates were selected and since the Respondents did not fall within the

merit of the top 75 female candidates, they cannot be appointed. In this regard, the Appellants relied upon notification dated 30.9.2014 issued by the Secretary, Government of Punjab, Home Department which provides that *Competent Authority has been pleased to fix 5% female quota in the recruitment process of Corporals in Counter Terrorism Department, Punjab, in view of approval of the Chief Minister dated 11.11.2013.* The Respondents challenged the order of 6.1.2015 by filing WP No.1134/2015 wherein the learned Single Judge set aside the order of 6.1.2015 and directed the Appellants to appoint the Respondents.

3. The Government of Punjab has impugned order dated 2.3.2017 passed by the learned Single Judge in WP Nos.1134/2015, 190/2015, 13326/2015 and 3687/2015 on the ground that 5% quota was fixed for the recruitment of female corporals in the CTD. 75 female candidates were adjusted against the 5% quota out of 1500 corporals and the Respondents before this Court being female applicants could not be appointed because their merit was less than the 75 female candidates who were appointed against the women quota. The impugned order, however directed the Appellants to appoint the Respondents and send them for training. Hence these appeals.

4. Mr. Muhammad Ijaz, AAG on behalf of the Appellants argued that the recruitment process commenced after the advertisement was issued in November 2013. However inadvertently the advertisement did not mention the 5% quota allocated for women applicants. He explained that 1500 corporals were to be appointed out of which 1425 would be male corporals and 75 female corporals. The quota was fixed by the competent authority much before the advertisement keeping in mind the nature of the job and the practical risks involved. In this regard Rai Muhammad Tahir, Additional IG Police/CTD explained that CTD is a counter terrorism force which plans and executes counter terrorism measures, operations and investigations. A transparent recruitment process was undertaken to select the best candidates in which written test, psychological test, medical examination and physical test were carried out in order to ensure that the appointees are not only physically but mentally capable to meet the challenges of the job. Given the strenuous and dangerous requirements of the job, it was decided that out of the total strength of

corporals being appointed, 5% should be women. He explained that the women corporals are not sent out in the field, as they are considered to be vulnerable and at risk. However in order to ensure that women are represented in the CTD, the required quota is maintained. As per his explanation, the CTD cannot appoint women beyond the given quota as the department needs corporals who will go into the field to carry out counter terrorism operations from time to time, whereas the female corporals are given desk jobs and cannot be sent out to do field work. As per his contentions it is a high paying job which should be given to men who are well suited for the job.

5. On behalf of the Respondents, learned counsel argued that the Respondents before this Court applied for the post of corporals and came on the open merit for the said post. The Appellants selected the top 75 female candidates and appointed them thereby restricting the other female candidates who came on the merit, simply on account of notification dated 30.9.2014. It is the case of the Respondents that fixing a female quota and restricting the female recruitment to the extent of the quota is discriminatory and prevented the Respondents from being appointed on merit.

6. Heard and record perused.

7. The Appellants issued an advertisement in November 2013 for the post of corporals in the CTD. Subsequent to the advertisement, notification dated 30.9.2014 was issued fixing a quota of 5% for female candidates. It is the case of the Appellants that female candidates can only be adjusted against the 5% quota and that the remaining seats being 1425 must be allocated to male candidates. As per their understanding even though the Respondents came on the open merit, they cannot be appointed because *their merit was below the merit of the 75 female candidates who were appointed against the women quota*. The impugned order finds that for the process of recruitment of corporals, the advertisement published in the newspaper did not stipulate a 5% quota for women. The quota was notified on 30.9.2014, after the advertisement even though it was approved by the Chief Minister on 11.11.2013 through a summary placed before him. Therefore, since the notification came much after the advertisement and after the commencement

of the recruitment process, the Court set aside the impugned order dated 6.1.2015 and directed the Appellants to appoint the Respondents and to send them for their training with the remaining batches.

8. We have heard the case at length and are of the opinion that while the learned Single Judge has relied upon the notification dated 30.9.2014 and held that it was not applicable to the recruitment process, the act of the Appellants of not appointing the Respondents even otherwise is discriminatory. We are of the opinion that the matter in issue goes beyond the issuance of the notification of 2014 fixing a 5% quota for women candidates. We find that the general understanding of the Appellants for recruitment against reserved seats is totally misconceived and goes against the spirit of reserving seats. Article 25(3) of the Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**") permits seats to be reserved for women, as a special measure for the protection of women. This special measure was considered necessary to ensure equal opportunity for women to encourage their participation in the public sector. The rationale of Article 25(3) was considered in *Mst. Attiyya Bibi Khan and others v. Federation of Pakistan through Secretary of Education (Ministry of Education), Civil Secretariat, Islamabad and others* (2001 SCMR 1161) wherein the august Supreme Court of Pakistan, while striking down a quota fixed for doctors' children for admission in medical colleges, upheld the requirement of reservation of seats for women and for those who are socially or educationally backward or are considered under- developed classes in order to ensure their advancement in society. Therefore in terms of the dicta laid down by the august Supreme Court of Pakistan reservation of seats can be made with the objective to secure genuine equality amongst different classes or groups. In order to ensure substantive equality the Constitution required measures to be taken to overcome the disparity and barriers which permit substantive equality. Therefore reservation of seats for women in public sector employment is an affirmative action to ensure that women get equal opportunity and equal access while applying for public sector jobs.

9. Article 4 of the Convention for the Elimination of all forms of Discrimination against Woman ("**CEDAW**") obligates member states to

take temporary measure, such as quotas, to neutralize the effect of barriers hindering women's participation in the public sector. Article 5 of the CEDAW also requires that appropriate measures are taken to modify social and cultural patterns of conduct for men and women with a view to achieve the elimination of prejudices, customary and other practices which are based on the idea of inferiority of women or on stereotype roles for men and women. Pakistan is a signatory to CEDAW since March, 1996, hence is required to take positive steps to achieve the standards set by CEDAW. The Government is therefore required to devise policies which will remove obstacles and barriers for the participation of women in all walks of life, be it political, social, economic or cultural. This participation is based on the fundamental principle that men and women must be treated equally and there can be no discrimination on the basis of gender. The Government of Punjab amongst other measures took some positive steps when introducing the Punjab Women Empowerment Package 2012 which required quota for women in public service employment to be increased. However the essence of fixing this quota and the commitment under CEDAW has been compromised by relegating female candidates who competed on open merit and satisfy the merit criteria, yet are adjusted against reserved seats. In our opinion, the essence of fixing quotas for women in public service was to enhance their participation and to ensure that equal opportunity is given to women applying for public sector jobs. The objective was never to reduce female participation to a quota.

10. In the present cases 49272 candidates applied out of which 9679 were female candidates. 12101 candidates passed the physical test, out of which 3544 were female candidates. 11835 appeared in the written test out of which 2948 candidates qualified including 730 female candidates. 1889 candidates were shortlisted out of which department chose only 75 female candidates and the remaining were all men. The Respondents before the Court came within the merit of the 1500 who were to be selected, in fact they were placed within the first 400 on the merit. They qualified at every level yet were denied appointment. The understanding of the Appellants on this issue totally negates the purpose of fixing reserved seats and the

objective of encouraging women to apply to such posts. When a candidate meets the merit, he or she cannot be placed on a quota list simply because of their gender, disability or being a minority. The quota is fixed to facilitate and encourage representation from groups which are considered to be under represented and cannot be deemed as the maximum representation from that group. We are of the opinion that the 5% reserved seats for female candidates means that the department should ensure that at least 5% of all candidates employed by CTD are female candidates and it does not bar them from employing all female candidates who fall within the merit. The fixation of quota for women in no way bars female candidates from competing on the open merit and being appointed on account of their succeeding on the open merit. The concept of a quota is to ensure representation and participation of females in the public sector and the quota represents the critical value below which it will be deemed that females are under represented. Essentially the quota ensures that in the very least 5% of the candidates should be women which will signify the very minimum representation of females in that department. Hence a quota does not bar the department from appointing female candidates beyond 5%. Since the Respondents fall within the required merit, in fact were on the higher side on the merit, it was incumbent upon the Appellants to appoint them.

11. We are also of the opinion that the act of the Appellants runs contrary to the very spirit of creating reserved seats, be it for women, disabled or minorities. By reducing the participation of the aforementioned classes to their respective quotas, the Appellants have in fact created another quota of abled bodied muslim men, ensuring that the open merit seats are filled by abled bodied muslim men. When women are reduced to only the reserved seats, the quota acts as a bar to employment and loses its facilitative objective as well as created another group or class which is given employment. By denying female candidates their right to employment on merit, the Respondents have ensured that the post of corporals is filled by men. Equal opportunity and equal access has effectively been denied, hence the constitutional mandate violated. Also it means that the seats are filled up by those who do not necessarily meet the merit. By reducing the female

candidates to the 5% quota, the merit is compromised as candidates who satisfy the merit are ousted on account of their gender and candidates who do not meet the merit or lower in merit are included. In effect mediocracy is promoted and the very purpose of setting up a rigorous induction plan is compromised. Competence cannot be measured through the gender lens. Competence must be seen strictly on the basis of the standards set. In this case, the standard was the combined result of the written test, psychological test, physical test, medical examination and interview. The selected female corporals all satisfied the merit. The Respondents also fulfilled the criteria but were ousted simply because they are women. Reserved seats or quotas are positive actions required to achieve substantive equality. It is a measure taken for promoting equality and is the bedrock of international conventions providing for protection against discrimination on the basis of sex, race and disability. Hence the act of the Appellants of employing only 75 women when the Respondents being female candidates were eligible on merit is discriminatory and against the spirit of the Constitution.

12. We also find it necessary to comment on the justification offered to us for restricting the employment of female corporals to 75. We were informed that even though female corporals are hired, they are not assigned field work because they are considered to be vulnerable and weak, hence they are given office jobs and no field work. This justification cannot be appreciated or given legal sanctity because if women have applied for the post of corporals in the CTD and have qualified the physical and mental tests set by the Appellants then those who fall on the merit must be trained along with their male counterparts and must be allowed to participate in the field work. The reasoning given is precisely the kind of gender stereotyping which Article 5 of the CEDAW requires to be prevented. Instead of treating male and female candidates as equal the Appellants have devised their own understanding of how to appoint female corporals. In our opinion this justification given amounts to discrimination because female corporals are being treated differently simply on account of their gender. Therefore gender stereotyping or classification based on stereotype roles or social expectations tantamounts

to discrimination which is not permissible under the Constitution and goes against the constitutional mandate of equality.

13. For what has been discussed above, all the appeals are **dismissed** and impugned order dated 2.3.2017 passed by the learned Single Judge in WP No.1134/2015 is maintained.

(JAWAD HASSAN)  
JUDGE

(AYESHA A.MALIK)  
JUDGE

Approved for reporting

*JUDGE*

*JUDGE*