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**IN THE FEDERAL SHARIAT COURT**

(Appellate Jurisdiction)

PRESENT

**MR. JUSTICE SHAHZADO SHAIKH**  
**MR. JUSTICE DR. FIDA MUHAMMAD KHAN**  
**MR. JUSTICE SHEIKH AHMAD FAROOQ**

SHARIAT PETITION NO.53/I OF 1991

Ch. Irshad Ahmad, Additional ..... Petitioner  
Draftsman, Ministry of Law and  
Justice Islamabad

Versus

Federation of Pakistan through ..... Respondent  
Secretary M/O Finance, Islamabad

Counsel for the Petitioner ..... Nemo

Counsel for the State ..... Nemo

Counsel for Federation ..... Nemo  
of Pakistan

Date of Institution ..... 29.07.1991

Date of hearing .... 16.10.2012

Date of decision .... 16.10.2012

-:-

**JUSTICE SHAHZADO SHAIKH, J:-** Shariat Petition

No.53/I/1991, was filed by Ch. Irshad Ahmad whereby he challenged Sub-section (3) of Rule 16 of the Revised Leave Rules, 1980 added by Notification No.F.1(8)-R4/89 dated 30.05.1991 of the Government of Pakistan in the Finance Division. The petitioner stated in his petition that Rule 16 of the Revised Leave Rules 1980, before it was amended on 30.05.1991, provided that the maximum period upto which a civil servant may be granted leave preparatory to retirement shall be 365 days. By a new sub-rule (3) added to the said rule by notification dated 30.05.1991 an officer of BPS 21 or 22 who opts to retire voluntarily has been made entitled to leave preparatory to retirement equal to the entire leave at his credit. Since the new sub-rule would apply discriminately and hence, it is repugnant to the Injunctions of Islam as expounded by the Honourable Supreme Court in its judgment in case Pakistan versus Public at Large reported as PLD 1987 S.C. 304. The Honourable Supreme Court in the said judgment taking notice of the application of different provisions of the Civil Servants Act, 1973 for different categories of Government employees held:

“It is clear from various Injunctions of the Quran that adal, qist and ehsan are the components of total and complete justice in Islam. It requires not only equal treatment between man and man but also protects the rights of one against unfair treatment (p.329).”

The Apex Court also held:-

“...the appearance of being arbitrary and subjective and this is what is repugnant to the concept of a delegated power held in trust (page 364-365).”

At page 373 of the report the findings are: ✓

اس قانون سے قانون مساوات کی نفی ہوتی ہے

The petitioner has prayed that this Court may declare Sub-rule (3) of rule 16 of the Revised Leave Rules, 1980, as repugnant to the Injunctions of Islam or its application may be extended to all categories of Government employees.

2. The impugned Notification No.F.1(8)-R.4/89 dated 30<sup>th</sup> May, 1991 contains the provision as under:

*".....In the aforesaid rules, in rule 16, after sub-rule (2) the following new sub-rule be added, namely:-*

*"(3) An officer of BPS 21 or BPS 22 who, on or after the 19<sup>th</sup> day of February, 1991, opts to retire voluntarily after he has completed twenty-five years of service qualifying for pension may be granted leave preparatory to retirement equal to entire leave at his credit in his leave account on full pay or till the date on which he completes the sixtieth years of his age, whichever is earlier;*

*Provided that such officer shall not be entitled to conversion of leave preparatory to retirement on full pay under rule 6 into leave on half pay"*

3. This petition (Sh. Petition No.53/I of 1991) was admitted to regular hearing on 17.12.1991 and the respondent/Federation of Pakistan was directed to file written statement.

4. The Federation of Pakistan submitted para-wise comments, as under:-

"It is stated that in a meeting held on 08.01.1990 regarding recruitment (Page 61 of petition) from less developed regions through lateral entry, the Prime Minister was pleased to observe the desirability of providing incentives to senior civil servants to proceed on Leave preparatory to Retirement (LPR) after completion of 25 ✓

years service. Accordingly, a Committee was set up under the Chairmanship of the then Deputy Chairman, Planning Commission to recommend a *package* of measures, inter-alia, as an incentive to the civil servants particularly at *Senior levels* who have completed 25 years service to *proceed on LPR voluntarily*. As a result the Committee in its report, among others recommended that “maximum limit of three hundred and sixty five days of LPR will be relaxed in their case. Leave at full pay will be calculated at 4 days per month of service, less leave on full pay available during the service. The balance would be allowed as LPR on full pay”.

(2). On the basis of recommendations of the Committee, the Prime Minister was pleased to approve the proposed package of incentive of retirement benefits to the superannuating and *additional incentives for civil servants of BS-21 and BS-22 who desire to proceed on retirement on completion of 25 years of service* w.e.f. 19-02-1991.

(3). The *above mentioned incentive as Sub Rule (3) of Rule-16 of the Revised Leave Rules, 1980 was added* vide Notification No.1(8)R-4/89 dated 30.05.1991.

(4). According to Rule-16(1) of the Revised Leave Rules 1980, a civil servant may be granted Leave Preparatory to Retirement (LPR) upto maximum period of three hundred and sixty five days at the *uniform rate from BPS-1 to BPS-22 without any discrimination*.

(5). Under Rule-16(2) of Revised Leave Rules 1980, LPR is granted *subject to availability either on full pay or partly on full pay and partly on half pay, or entirely on half pay at the discretion of the civil servant* (comments filed by Federal Government, Page 62 of petition). Here a civil servant enjoys his discretion to avail LPR as may be applied for, opted and classified depending on the availability of leave at his credit. This Sub Rule negates a civil servant to be treated

discriminately (comments filed by Federal Government, Page 62 of petition).

(6). As stated by the petitioner, the Sub Rule (3) of Rule-16 of the Revised Leave Rules 1980 is neither discriminatory nor repugnant to the Injunctions of Islam, rather manifold conditionalities are imposed to this provision extended to officers of BS-21 or BS-22 who, on or after the 19<sup>th</sup> date of February 1991, opted to retire voluntarily. At par with other Government servants, officers of BS-21 or BS-22 have to complete 25 years of service qualifying for pension for grant of leave preparatory to retirement (LPR) equal to entire period of leave at their credit in the leave account on full pay or till the date on which they complete their 60<sup>th</sup> years of their age, which ever is earlier.

(7). All Government servants have to complete 25 years of qualifying service for pension and the same condition is applicable to the officers of BS-21 or BS-22, which means that there is no discrimination involved in the limit of 25 years and no Government servant can opt to retire before the completion of 25 years of qualifying service.

(8). Further, the grant of leave preparatory to retirement (LPR) to an officer of BS-21 or BS-22 is also confined to the date on which he attains the age of superannuation i.e. 60<sup>th</sup> year of his age.

(9). Apparently It is being considered that an absolute privilege is available to an officer of BS-21 or BS-22 regarding the entire leave at his credit, however, a proviso exists in the case of officers of BS-21 or BS-22 under Rule 16(3) of the Revised Leave Rules, 1980. According to the proviso, an officer of BS-21 or BS-22 is not entitled to conversion of leave on full pay into leave on half pay under Rule-6 of the Revised Leave Rules, 1980. (Page 62 of petition).

(10). The critical analysis of the petition helps to understand that the case where an officer of BS-21 or BS22 is availing this provision as in the opinion of the petitioner, also involves a number of conditionalities. The Sub Rule (3) of Rule-16 of the Revised Leave ✓

Rules, 1980 is not in any way discriminatory, contradictory and repugnant to the injunctions of Islam.

(11). The petitioner has emphasized that most of the provisions of the Revised Leave Rules, 1980 have areas where the other Government servants are being discriminated except an officer of BS-21 or BS-22. As regards the contradiction of these Rules to the injunctions of Islam, it is worth mentioning here that Islam, being a complete code of life is maintaining such distinctions to carry on well the course of life. The study of Islamic History reveals that the Holy Fighters of *Jang-e-Badr*, the battle of Ohd and Khundaq enjoyed special privilege one over the other with regard to the Stipends.

(12). The Committee came to the conclusion that the increasing *reluctance to proceed on retirement* has its roots in the sharp decline in the earnings levels by proceeding on pension. This decline is particularly acute at the level of 20, 21 & 22 Grades because some of the benefits like rental support and free transport do not count for pension, nor do some of the allowances e.g. Secretariat Allowance, Entertainment Allowances, Orderly Allowance, etc. Hence, if the officers of BS-21 or BS-22 were offered such a provision for *voluntary retirement after 25 years service as compared to other Government servants on the basis of their seniority and senior posts benefits as a policy measure, there is no discrimination* with regard to the Rule 16 (3) of the Revised Leave Rules, 1980.

The prayer of the Federation of Pakistan is that the present Shariat Petition having no valid and clear ground and support of rules, this Court may kindly dismiss the petition." (Page 63 of petition). ✓

5. The Finance Department Government of Punjab vide No.FD (SR-II)2-125/06 dated 31<sup>st</sup> March, 2007 submitted their views as under:-

<u>View Point of the Petitioner</u>	<u>View Point of Finance Department Government of the Punjab,</u>
<p><b>(1) Ch. Irshad Ahmad:</b></p> <p>Sub Rule (3) of Rule 16 of Revised Leave Rules 1980 of Govt of Pakistan is discriminatory as entitles only to the officers in BS 21 &amp; BS 22 leave Preparatory to Retirement equal to the entire leave at his credit.</p>	<p>Rule-16 of Revised Leave Rules, 1981 of Government of the Punjab is uniform for all irrespective of the scale of the officers. This rule states that</p> <p><i>“(1) the maximum period upto which a civil servant may be granted leave preparatory to retirement shall be 365 days, (2) Such leave may be taken subject to availability either on full pay or partly on full pay and partly on half pay, or entirely on half pay at the discretion of a civil servant”.</i></p>

6. The Government of Sindh through Advocate General Sindh has submitted written statement, as under:-

- (1). That it is admitted to extent of Rule 16 of the Revised Leave Rules 1980 and subsequent amendment therein under notification NO.F.1(8)-R.4/89, dated 30<sup>th</sup> May, 1991. As regards its discrimination the position is not so. Various categories of Government servants are working under Government on different terms and conditions at different rates of remuneration for the same job with different nomenclature. ✓

The amendment in Rule 16 was made for *early voluntary retirement of BPS-21 and 22 officers to make room for induction of young team at the top level. Its universal application to grade 1 to 20 will make cost of non-effective establishment unbearable like Defence Services and will place undue burden on tax payers as the cost will be prohibitive.*

- (2). That the *petition does not disclose as to the extent or manner in which the impugned leave Rules is repugnant to Injunctions of Islam and Sunnah. No such injunction has been referred to.*
- (3). That the impugned rule does not confer unnecessary benefits on any class of civil servants nor does it cause any hardship to the civil servants. The operation of the rule is by choice and as such it does not militate against any injunction of Islam.
- (4). That the Rule complies with criteria of "*reasonable classification*" of Civil Servants. It does not offend any constitutional, legal or equitable provision.
- (5). That its *universal application is not possible due to different requirements of various services having divers service conditions. Besides, it would make cost of non-effective establishment like Defence Services unbearable.*
- (6). That the various categories of Government servants are working under Government of different terms and conditions for similar jobs having different nomenclature. The amendment in Rule 16 was made in order to encourage BPS-21 and 22 officers to take *early retirement so as to make room for induction of younger* ✓



*officers to top position.* Being voluntary in nature, there is no compulsion for the officers to have resort to this Rule. The precedent cited by the petitioner is not relevant, for in that case, a certain provision of the Law was detrimental to a particular class of civil servants.

The prayer of the Government of Sindh is that this Court may dismiss the petition of the petitioner.

7. The Finance Department Government of Balochistan has submitted parawise comments, as under:-

The existing policy with regard to leave preparatory to retirement under this Provincial Government is given below:-

Under Rule-14 of the Balochistan Civil Servants (Leave Rules) 1981, the maximum period upto which a civil servant may be granted leave preparatory to retirement shall be 365 days only (irrespective of his scale). Whereas, the privilege of granting leave preparatory to retirement only to officers of BPS-21 to BPS-22, opting for voluntary retirement after 25 years of qualifying service upto the entire period of leave at his credit as provided under sub-section-3 of Rule 16 of Federal Revised Leave Rules, 1980 *has not been adopted by this Provincial Government.*

The Finance Department Government of Balochistan has prayed that operation of *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980 may also be extended to all categories of Government employees or application of the same on a particular category of*

*officers, i.e. in BPS-21 to BPS-22 being discriminatory and without justified grounds may be declared as null and void.*

The Government of Province of Khyber Pakhtunkhwa has not yet filed any comments.

8. For today's hearing, Notice was sent to petitioner Ch. Irshad Ahmad as well as to the Secretary Ministry of Law, Secretary Ministry of Finance, Attorney General for Pakistan, Mr. Shabbir Mehmood Malik, Standing Counsel No.II for Attorney General for Pakistan, Mr. M. Nazir Abbasi, Standing Counsel for Federal Government, Chief Secretaries of all the four Provinces, Advocate Generals of Punjab and Balochistan, which were duly served but none of them were present.

The Federal Shariat Court in its suo motu case/judgment dated 27.04.1984 observed regarding equality as follows:-

“Equality before law and equal protection is the main principle in the Islamic law and polity. It is one of fundamental principles of Islam which cannot be ignored.”

We do not see any reason why any such distinction between two types of permanent Govt. servants be made. (SSM 263 A 83).”

It may also be pointed out that the issues of *compulsory* or *unwilling* retirement of senior officers and distinction between various categories of officers which results in creating discrimination, have already been discussed at length by the Federal Shariat Court and Appellate Bench of the Supreme Court. (SSM No: 263 A 83, PLD 84/1 FSC 34, PLD 87/1 SC 304)

So far issue of compulsory or unwilling retirement of senior officers is concerned, the same is not involved in *Sub-section-3 of Rule 16 of the*

*Revised Leave Rules, 1980*, and here it is not under discussion, because this section itself provides for *voluntary option* for retirement to the officers of BPS 21 and 22.

The only issue which requires consideration here is whether the newly introduced *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980*, creates distinction between different grades of civil servants which might result in discrimination.

The petitioner has challenged *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980* on the ground that it discriminates between civil servants of different grades and deprives a group or a class of civil servants of the rights which are available to the other group of civil servants, therefore, the petitioner thinks that it is repugnant to the Injunctions of Islam.

The *Sub-section-3 of Rule 16 of the Revised Leave Rules, 1980*, under consideration, provides that officer of BPS-21 or 22 who opts to retire voluntarily after completing twenty-five years of service, may be granted leave preparatory to retirement equal to entire leave at his credit in leave account on full pay or till the date on which he completes the sixtieth year of his age, whichever is earlier.

9. This case pertains to the year 1991; i.e., it is more than two decades old.

In the meantime, different Pay Committees were formed to consider, inter alia, these matters. The issue could have been agitated before such Committees during this period of more than two decades and got resolved. But there is no such reference. Furthermore, the petitioner does not ✓

seem to be interested to pursue this petition and he, in spite of service, remained absent on the following dates:-

08.12.1991, 30.04.1992, 11.05.1992, 19.10.1993,  
30.11.1993, 12.01.1994, 09.04.1994, 05.12.1995,  
25.01.2001, 25.01.2007, 02.04.2007, 07.05.2007,  
28.05.2007, 03.09.2007, 23.10.2007, 22.01.2008,  
29.01.2008, 27.03.2008, 08.04.2008, 30.04.2008,  
21.05.2008, 23.10.2008, 26.03.2012, 25.06.2012



From the record and replies reproduced above, it becomes clear that Government had brought in a scheme through Finance Division Notification No. F.1(8)-R.4/89 dated 30.05.1991 under which employees in Grade 21 to 22 were given the option to choose to retire before the date of their superannuation or completion of 30 years of service as earlier prescribed, with certain incentive in the form of encashment of leave at credit in the prescribed manner, i.e. as a sort of compensation because they were to be retired earlier, i.e., before their date of superannuation.


The Government has the power to make rules in respect of different categories and classes of employees and departments, therefore, the Government acted within its power, in this case also. These rules are still in force throughout Pakistan and in all the Provinces, with a difference in one, i.e., in Balochistan, as mentioned above, alongwith all the relevant amendments which have come in the meantime in the system of leave rules. There is no apparent violation of any rule and any inconvenience or infringement of any rights of employees.


Keeping in view the foregoing discussion and principles laid down by the honourable Apex Court, as quoted in paras above, it becomes clear that

Section 3 of Rule 16 of the Revised Leave Rules 1980, does not create any discrimination. But a voluntary option has been given to certain higher grades of civil servants/government employees, as a policy/scheme, to choose voluntarily for retirement on or after completion of very substantial portion of their service, i.e., 25 years, in order to create room for younger/junior lot to make to those positions. It can also provide a prospect for restructuring of higher service ladders and make room for balancing regional make up of services, remaining distorted due to many reasons. This can also be used to maintain and improve levels of efficiency at management and senior levels of policy and decision making.

10. In view of the foregoing discussion, Shariat Petition No.53/I of 1991 is dismissed.



  
  
JUSTICE SHAHZADO SHAIKH

  
JUSTICE DR. FIDA MUHAMMAD KHAN

  
JUSTICE SHEIKH AHMAD FAROOQ

Dated Islamabad the  
16<sup>th</sup> October, 2012  
M. Imran Bhatti

FIT FOR REPORTING.

  
  
JUSTICE SHAHZADO SHAIKH