ORDER SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN.
JUDICIAL DEPARTMENT

Case No: W.P.No.1033/2012

Muhammad Moeen Fakhar.   Versus   Government of the Punjab etc.

S. No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
	4.6.2014	Mr. Muhammad Junaid Khan, Advocate for the petitioner. Malik Muhammad Bashir Lakhesir, AAG. Dr. Zahida Qadir, Veterinary Officer (H) in person.

The grievance of the petitioner is that the petitioner being son of a deceased employee, namely Ghulam Fakar-ud-Din son of Nabi Bakhsh who died on 29.1.2010 while in service applied for his appointment under Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974; the petitioner was appointed as Junior Clerk but on contract basis. The departmental representative has stated that Government has changed its policy and shifted from regular to contract mode of recruitment to achieve the goals of good governance. The attention of this Court is drawn towards Notification No. SRO-III(S&GAD)2-10/2006 dated 26th January 2008. It is correct that this Court could not sit as Court of appeal over the policy decisions made by the Government unless the said policy is against the law.

2.   Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 reads as under:-

> "*17-A.   Notwithstanding   anything*
> *contained in any rule to the contrary*
> *whenever a civil servant dies while in*

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service or is declared invalidated/ incapacitated for further service, one of his unemployed children or his widow/wife may be employed by the Appointing Authority against a post to be filled under rules 16 and 17 for which he/she possesses the prescribed qualification and experience and such child or the widow/wife may be given 10 additional marks in the aggregate by the Public Service Commission or by the appropriate Selection Board or Committee provided he/she otherwise qualifies in the test/examination and/or interview for posts in BS-6 and above.

Provided further that one child or widow/wife of a government servant who dies while in service or is declared invalidated/incapacitated for further service shall be provided a job against posts in BS-1 to 5 and the posts of Junior Clerks (BS-7) in the department in which the deceased Government servant was working, without observance of formalities prescribed under the rules/procedure. Provided such child or the widow/wife is otherwise eligible for the post."

2.   The perusal of Rule 17-A ibid manifests that it is basically a beneficial rule and the rationale behind it is to accommodate one of the un-employed children or widow/wife of a civil servant who dies while in service or is declared invalidated/incapacitated for further service and it has been specifically provided that such appointment shall be made without observance of formalities prescribed under the rules/procedure. In Rule 17-A ibid there is no rider or proviso regarding appointment on contract basis. Simple and plain reading of Rule 17-A ibid provides that a child or widow/wife would be appointed if the civil servant dies during service or is declared invalidated/incapacitated for further service. As far the arguments that the appointments are being made to achieve goals of good governance; in my opinion, if a civil servant is inefficient or indisciplined, the proceedings can be initiated

against him/her under Punjab Civil Servants (Efficiency & Discipline) Rules, 1975 but appointing him/her on contract basis under Rule 17-A of the Punjab Civil Servants (Appointment & Conditions of Service) Rules, 1974 is against the spirit of the said Rule.

3. It is further observed that Rule 17-A ibid has been promulgated in exercise of powers conferred under Section 23 of the Punjab Civil Servants Act, 1974 and is thus a statutory instrument as the same is incorporated under the powers conferred through the statute. The executive policies circulated by Services & General Administration Department (Regulations Wing) cannot have an overriding effect over the statutory rule. It is an established proposition of law that the powers of judicial review can be exercised to strike down the executive act if the same is based on non-application of mind. It has been held by the Hon'ble Supreme Court of Pakistan in a judgment reported in **PLD 1995 Supreme Court 66 (Pir Sabir Shah versus Shad Muhammad Khan, Member Provincial Assembly, N.W.F.P. and another)** that when the Parliament makes a sub-Constitutional law, it does so in the exercise of its delegated legislative power given by the Constitution, and in the case of subordinate legislation, also, the maker exercises delegated authority. In each case, there is a law higher in authority, and the test to determine the vires is whether the subordinate law conflicts with the higher law. If it does, then it must be treated as of no legal validity. In my opinion the executive Notification to which the department has referred is an executive notification and when its vires is tested at the touchstone of Rule 17-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 it becomes abundantly clear that this executive notification is in direct violation to the legislative instrument.

4.   For what has been discussed above, this writ petition is disposed of with a direction to respondent No.1 to consider the case of the petitioner and decide the same in light of the observations made above. This exercise be completed by respondent No.1 within a period of three months from the date of receipt of this order.

(M. Sohail Iqbal Bhatti)
Judge.

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Approved for reporting

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LAHORE HIGH COURT,
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Application No. 54662
Date of Presentation 4-6-14
of application
Date of   4-6-14
In.
Cc   4 P
Ur
Es   8
At   2
Cour: 10
Total
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Date of   18-6-14
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