

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Ch. Ijaz Ahmed
Mr. Justice Rahmat Hussain Jafferi

Const. Petition No. 43/2009.

Dr. Muhammad Aslam Khaki & another. ...Petitioners

Versus

S.S.P. (Operation), Rawalpindi & others. ...Respondents

For the petitioners: Dr. M. Aslam Khaki, ASC (in person) with
Almas Shah alias Boby.

On Court notice: Mr. Shah Khawar, A.G.P.
Ch. Khadim Hussain Qaiser, Addl. A.G. Pb.

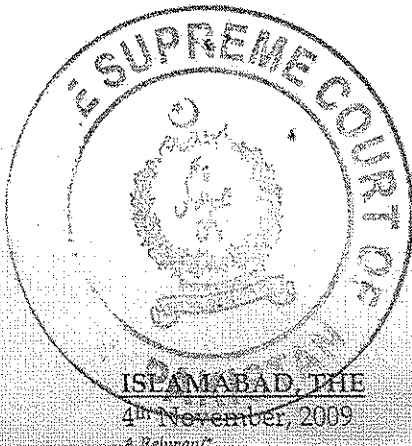
Nemo (for A.G. Sindh, NWFP and Balochistan)

Date of hearing: 04.11.2009

ORDER

Learned Attorney General for Pakistan requests that this case may be adjourned for one week enabling him to contact Chief Secretaries of the respective Provinces as well as the Advocate Generals because they were directed by the Court to furnish reports which they have not furnished so far except the Province of Punjab. Request is allowed. Adjourned to 20.11.2009.

2. In the meanwhile, Attorney General shall also prepare some proposals on the basis of which the Federal and the Provincial Governments can conveniently recognize the status of eunuchs to be the respectable citizens and to protect their right of inheritance in moveable and immovable properties left by their parents/ elders and their legal obligations to provide maintenance to them on account of disability due to which they are not being treated at par with other citizens of the country.



Sd/- Iftikhar Muhammad Chaudhry, C.J.
Sd/- Ch. Ijaz Ahmed, J.
Sd/- Rahmat Hussain Jafferi, J.

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[Signature]
Superintendent
Supreme Court of Pakistan
ISLAMABAD

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

MR. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ch. Ijaz Ahmed
MR. Justice Khilji Arif Hussain

Constitution Petition No.43 of 2009

Dr. Muhammad Aslam Khaki
And another ...Petitioners

VERSUS

SSP (Operations) Rwp & others ...Respondents

For the petitioners: Dr. M. Aslam Khaki, ASC
a/w Almas Shah @ Boby

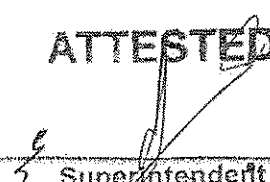
On Court Notice: Mr. Shah Khawar, Attorney General
Mr. Mehmood Raza, Addl. A.G.
Mr. Khadim Hussain Qaiser Addl.AG(Pb)
Mr. Zahid Yousaf, Addl. AG NWFP
Mr. Muhammad Akhtar Ghori,
Dir. Social Welfare (Sindh)
Mr. Afsar Khan, Dir. SW (NWFP)
Mr. Nazar Abbasi, Law Officer

Date of hearing: 20.11.2009

ORDER

Learned Attorney General states that he has convened a meeting with the learned counsel for the petitioners, learned Advocate Generals of the respective Provinces as well as with the representatives of the Social Welfare Department. During course

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whereof it has been decided to prepare a working paper for approval of the Government as well as for this Court, to protect the rights and welfare of unix.

2. It is to be noted that this class of the society has been neglected merely on account of gender disorder in their bodies, otherwise they are entitled to enjoy all the rights granted to them by the Constitution being its subject, including their rights in inherited property because normally to deprive them from their such legitimate rights, some time their families disowned them. As far as existing laws are concerned, there are no provisions on the basis of which they can be deprived from their legitimate rights to inherit the properties. Similarly NADRA is required to adopt a strategy with the assistance of the concern departments of the Govt. to record exact status in the column meant for male or female after undertaking some medical tests based on hormones etc. They are also entitled for entering their names in the electoral list. As far as the question of casting the vote is concerned, it could be decided separately, because they can, if need be, exercise the right of franchise etc.

3. As number of unix have been registered in all the Provinces as well as in the Federal Territory, therefore, Federal and Provincial Governments can also ensure for extending them opportunity of receiving education in childhood or in higher institutions/schools subsequently. On account of gender disorder in their bodies they can be accommodated against the

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jobs which they can perform quite conveniently. As the Government has already ensured the jobs to the disable persons, therefore, similar policy can also be adopted for them.

4. It has been published in the press that they are being harassed by the police and other agencies taking the benefit of their weaknesses. For this purpose we have already passed order dated 17.8.2009. The Government is required to ensure the implementation of above said order.

5. It is informed that in the name of unix some male and female who are otherwise have no gender disorder in their bodies have adopted this status and commit crimes on account of which a bad name is brought to unix. This aspect is to be checked by the police of the area where such like people are operating.

6. These matters, inter alia, can be considered by the Government quite conveniently with a view to provide them protection and respect so they may also spend their life in a respectable manner.

7. Learned Attorney General states that besides making the policy in this behalf, if need be, the Government will legislate a law in their favour and a Commission can also be constituted. We expect some positive outcome on the next date of hearing.

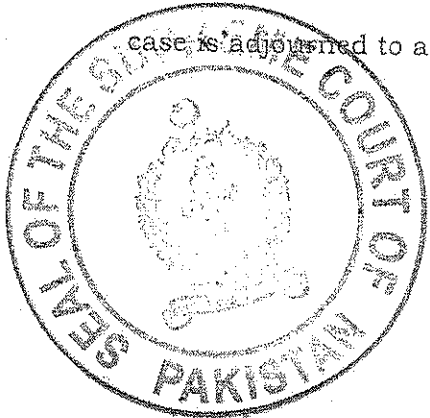
8. Copy of this order be sent to the Chief Secretaries/ Commissioners etc of respective Provinces who, with the consultation of the Secretary, Social Welfare Department and

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Superintendent

DCO will make efforts to implement the same. All the concerned Ministries are expected to cooperate with the learned Attorney General and Advocate Generals for implementation of the same and to prepare a policy in this behalf.

At the request of learned Attorney General for Pakistan case is adjourned to a date in office after one month.



Sd/- Aftikhar Muhammad Chaudhry, C.J.
Sd/- Ch. Ijaz Ahmed, J.
Sd/- Khilji Arif Hussain, J.

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Islamabad the,
20th. November, 2009.

Case No: 2784/10 Civil/Criminal
 Date of Presentation: 6-4-10
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12A/115

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Anwar Zaheer Jamali
Mr. Justice Khilji Arif Hussain

Constitution Petition No.43 of 2009

Dr. Muhammad Aslam Khaki & another

...Petitioners

Versus

S.S.P.(Operations) Rawalpindi & others

...Respondents

Petitioners: Dr. Muhammad Aslam Khaki, ASC
With Almas Shah, @Boby
On Court Notice: Mr. Shah Khawar, Act. Attorney General
With Mr. Javed Iqbal, SP (Legal), Islamabad
For Govt. of Punjab: Mr. Khadim Hussain Qaiser, Addl. A.G. Pb.
With Mr. Akhtar Ali, SHO, Taxila
Mr. Muhammad Nazir, SI
For Govt. of Sindh: Raja Abdul Ghafoor, ASC
With Dr. Iqbal Saeed Khan, Dir. Social Welfare Dept.
Dr. Saeed Ahmed Qureshi, focal person to Secy. Health,
For Govt. of NWFP: Mr. Ishtiaq Ibrahim, Addl. A.G.
With Waris Khan, S.O (Health)
For Govt. of Baluchistan: Mr. Mehmood Raza, Addl. A.G. Baluchistan
With Mr. Saeed Ahmed Kasi, S.O. Social Welfare Dept.
Date of hearing: 23.12.2009

ORDER

On the last date of hearing it was observed that unix/eunuchs are entitled of shares from inherited property in pursuance whereof their registration has been completed, therefore, the Secretaries Social Welfare Departments are directed that on the basis of such registration they should approach the respective DCOs and communicate the order of this Court to them that after tracing their family roots, it may be ensured that they get their shares of inheritance, if any, and if no inheritance, yet has opened, they should be considered at the time of opening of the same as there is no law of the land, which deprives them from their respective

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Intendant
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rights. The unix are also directed to cooperate with the authorities in this behalf. However, their family members who have deprived them from their due shares, are also advised not to deny their rights otherwise the law will take its own course. Reports in this behalf shall also be completed and be sent province-wise on the next date of hearing. In the meanwhile this order shall be treated as judgment in their favour for the purpose of getting right of inheritance etc. from moveable and immovable properties left by their predecessors.

2. Mr. Khalid Zaman, Section Officer, Ministry of Interior stated that copy of the order dated 20.11.2009 has been received in their office on 16th December, 2009 therefore, so far, Interior Ministry has not consulted with the NADRA for the purpose of recording exact status of unix in the column, meant for male or female after undertaking some medical tests based on hormones, therefore, on the next date of hearing progress in this behalf shall also be made.

3. Learned Attorney General stated that so far no progress has been made regarding entering the names of the unix in the electoral list. However, Mr. Aslam Khaki, learned ASC stated that names of so many unix have already been registered and some have also contested elections. The Election Authorities of the Provinces are directed to have a contact with the Secretaries Social Welfare Department and after getting the copy of the registration of the unix in the Provinces, they should enter their names in the voter lists on the basis of the I.D. Cards whatsoever they possess and if any change is recorded on the basis of NADRA's entries, the same shall also be carried out in the electoral lists. Copy of this order be also sent to the Chief Election Commissioner for making directions to the concerned authorities.

4. The Provincial and the Federal Governments have also not taken steps for ensuring the admission of the unix in the educational institutions. The Secretary, Social Welfare Department, Sindh, Mr. Iqbal Ahmed stated that steps are being taken for their admission and accommodation in the educational institutions. The remaining Provincial Governments through Secretaries Social Welfare Department, are also directed to follow the same practice and ensure their admission in the educational institutions, because it is their basic and fundamental right to get education in the institution in terms of Article 22 read with Article 25 of the Constitution.

5. Learned Attorney General stated that previously there was a scheme by the name of Adult Education, however, he will inquire from the Federal and the

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Provincial Governments whether such scheme is still there or not. However, in absence of any scheme, the government may ensure admission in the educational institutions including technical and vocational institutions, of all those unix who have not crossed the age of receiving the education so far.

6. It is informed by Mr. Iqbal Saeed, Director Social Welfare Department, Mr. Saeed Ahmed, Director Health, Government of Sindh that unix were involved by these two departments during Polio Vaccination Scheme of this month. Efforts made in this behalf by the Government of Sindh are highly appreciable and we expect that other Provincial Governments shall also follow the same practice. Besides, they shall also accommodate them against other jobs as has already been noticed that steps be made to create some respectable jobs so they may earn their livelihood respectably. In this behalf all the Secretaries of the Social Welfare Department of the Provinces shall submit a comprehensive report.

7. The police authorities apparently had not taken any step to ensure that unix are not being harassed and actions are being taken against those persons who in fact are not unix but by using such status are committing the crimes and ultimately the actual unix are being blamed for the same. In this behalf the IGPs shall instruct their subordinates to adopt a mechanism to ensure that they are not being harassed and their status being of unix be not exercised by other persons etc.

8. Learned Attorney General stated that the Government has decided to prepare a scheme and if need be, legislation shall be made to protect the rights of the unix, being citizens of this Country in terms of Article 25(3) of the Constitution on the same lines as are guaranteed to the other citizens of the Country. Adjourned to a date after one month for receiving the reports.

9. It has been pointed out that in the State of Bihar (India) a strategy has been evolved to provide respectable jobs to the unix like recovery of taxes from the habitual defaulter etc. Extract of such information has been downloaded from the internet which is reproduced herein below:

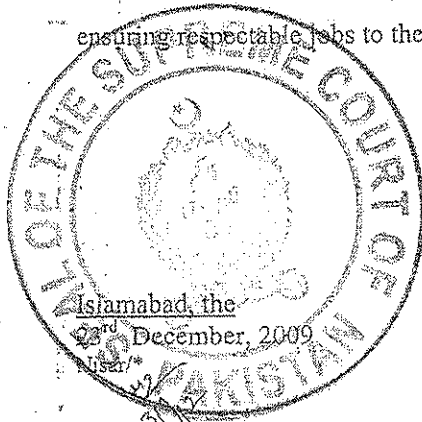
"The Bihar government is trying out innovative ways to involve the eunuchs, also called kinnars or hijras, in socially useful work. It has successfully used the services of eunuchs to recover taxes from habitual defaulters in Patna. Now, the social welfare department plans to rehabilitate them - in a first such rehabilitation scheme for eunuchs. Bihar Social Welfare Minister Damodar Raut told IANS that the government would soon launch a plan for the rehabilitation of eunuchs. "It is in the pipeline. The rehabilitation scheme for rehabilitation scheme for eunuchs will be a reality in the state soon, he said. Eunuchs will be

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provided literacy and vocational training to prepare them for respectable regular employment. It will give them the opportunity to enhance their socio-economic status," said Masood Hassan, director of the social welfare department."

10. The Government of Pakistan, Social Welfare Departments as well as the Provincial Governments may also take this information as well for the purpose of ensuring respectable jobs to the UNIX.



Sd/- Jafikhar Muhammad Chaudhry, C-3
Sd/- Anwar Zaheer Jamali, J
Sd/- Iqbalji Arif Hussain, J

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