

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.1890/2025;
Date of Institution 26.07.2025;
Date of Decision 30.10.2025.

Azad Jammu & Kashmir High Court Bar Association, Muzaffarabad through:-

1. Raja Waseem Younas Advocate Supreme Court (President), having office at High Court Building, Muzaffarabad;
2. Raja Zaffar Umer Khan Advocate Supreme Court (General Secretary) having office at High Court Building, Muzaffarabad.

Petitioners

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through its Secretary Law, Justice, Parliamentary Affairs and Human Rights having its office at New Secretariat Muzaffarabad;
2. Department of Law, Justice, Parliamentary Affairs & Human Rights of the State of Azad Jammu & Kashmir through its Secretary having its office at New Secretariat Muzaffarabad;
3. Azad Jammu & Kashmir Legislative Assembly through Secretary Legislative Assembly Azad Jammu & Kashmir;

4. Azad Jammu & Kashmir Cabinet through Secretary Cabinet/Chief Secretary office situated at New Secretariat Muzaffarabad;
5. Azad Jammu & Kashmir Cabinet Committee Constituted vide notification No.Admin/CS-4(04)/2021 dated 08.11.2021 to examine the matter pertaining to 'The Azad Jammu & Kashmir Recruitment (Through Third Party) Act, 2021' through its Chairman Deewan Ali Khan Chaughti Minister Elementary & Secondary Education office situated at New Secretariat Muzaffarabad;
6. Chief Secretary Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
7. Secretary Services & General Administration through its Secretary at New Secretariat Muzaffarabad;
8. Public-at-large.

Respondents

(2) *Writ Petition No.2106/2025;*
 Date of Institution 15.08.2025;

1. Fateh Mehmood-ul-Hassan S/o Mehmood-ul-Hassan Raja R/o Housing Scheme Kotli Azad Kashmir;
2. Tayyab Abbasi S/o Muhammad Sarwar Abbasi R/o Village Dhak Horot, Tehsil Dhirkot District Bagh;
3. Sheikh Taimoor Khurshid S/o Sheikh Jalal Khurshid R/o Jura Ashkot Tehsil Authmuqam District Neelum presently R/o Gojra Ward No.24, Muzaffarabad;

4. Israr Ahmed S/o Muhammad Riaz Khan R/o Village Mohra Mahil Tehsil Fatehpur Thakyalala District Kotli Azad Kashmir;
5. Shahzad Ahmed S/o Lal Din R/o Village Malik Seria Sharda Tehsil Sharda District Neelum;
6. Muhammad Khurshid S/o Raj Muhammad R/o Village Palhot Tehsil & District Muzaffarabad Azad Kashmir.

Petitioners

VERSUS

1. Azad Jammu & Kashmir Legislative Assembly having its office at Azad Jammu & Kashmir Legislative Assembly Chatter Muzaffarabad;
2. Azad Jammu & Kashmir through Secretary Services & General Administration Department Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
3. Department of Services & General Administration Department having its office at New Secretariat Muzaffarabad;
4. Department of Law, Justice, Parliamentary Affairs & Human Rights of the State of Azad Jammu & Kashmir through its Secretary having its office at New Secretariat Muzaffarabad;
5. Azad Jammu & Kashmir Cabinet through its Secretary Cabinet (Chief Secretary) Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;

6. Chief Secretary Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
7. Azad Jammu & Kashmir Government Printing Press through Controller Printing Press having its office near Neelum Bridge, Muzaffarabad.

Respondents

**WRIT PETITIONS UNDER ARTICLE 44 OF
THE AJ&K INTERIM CONSTITUTION, 1974**

Before:- **Justice Sardar Muhammad Ejaz Khan, J.**

PRESENT:

M/s Raja Sajjad Ahmed Khan, Sardar K.D. Khan, Kh. Muhammad Akbar, Saqib Javaid and Raja Amir Sharif, Advocates for the petitioners in both petitions.

Syed Faisal Gillani A.A.G. for the official respondents in both petitions.

Raja Ansar Khan Tahir Legal Advisor Law Department.

Ms. Farkhanda Ibrar Legal Advisor Printing Press in petition No.2106/25.

Mr. Amir Aziz Mughal Legal Advisor Azad Jammu & Kashmir Legislative Assembly.

JUDGMENT:

The captioned writ petitions have been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974.

2. As common questions of facts and law are involved in the instant writ petitions, hence, the same were consolidated and are being decided through this single judgment.

3. Synthesized facts, as per version of the petitioners, in petition No.1890/25 are that the petitioners are practicing lawyers and are endeavouring to uphold the supremacy of Constitution and other enabling provisions of law. It has been stated that under the command of Article 49 of the Constitution, *Ibid*, The Azad Jammu & Kashmir Civil Servants Act, 1976 has been enacted and promulgated while the recruitment against the posts of BPS-16 and above shall be made on the recommendations of Public Service Commission and the other posts pertaining to BPS-1 to BPS-15 shall be filled in according to procedure as determined by the

Government, which is a mandatory requirement of law regarding constitution of selection committees and boards but the criterion for selection under Rule 4(4) of the Azad Jammu & Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977 has not been determined till today. It has further been stated that on 02.06.2021 Act X of 2021 was promulgated for making appointments through fair and transparent manner, which provides safeguard against discrimination in services whereas after the change of Government vide notification dated 08.11.2021 a Committee under the Chairmanship of respondent No.5 along-with 4 Members has been constituted to examine the matter pertaining to The Azad Jammu & Kashmir Recruitment (Through Third Party) Act, 2021 and thereafter, two

more Members were included in the said committee vide notification dated 29.11.2021. It has been averred that the committee convened more than five meetings wherein it has been decided to retain the aforesaid Third Party Act while through Act XII of 2023 dated 15.12.2023, Act X of 2021 has been repealed without assigning any justifiable reasons, which is liable to be set-aside while restoring Act X of 2021 to meet the ends of justice.

4. In petition No.2106/2025, the petitioners, more or less, claimed the similar relief regarding the restoration of The Azad Jammu & Kashmir Recruitment (Through Third Party) Act, 2021 [Act X of 2021] while *setting-aside* repealed Act XII of 2023, hence, there is no need to incorporate the detailed facts of this petition, which have sufficiently been narrated in pre-paras.

5. The learned counsel for the parties argued the case according to their respective pleadings, however, Mr. Saqib Javaid, the learned counsel for the petitioners in petition No.2106/25 pressed prayer clause only to the extent of para ii & iii.

6. During the course of arguments, Barrister Humayun Nawaz Khan, Advocate, who was present before the Court assisted the Court on the proposition with his valuable assertion.

7. Having heard the respective arguments advanced by the learned counsel for the parties at bar, I have gone through record of the case with my utmost care and caution. As the learned counsel for the petitioners in petition No.2106/25 has not pressed para No.i, iv, v & vi of prayer clause,

hence, no deliberation is required to that extent.

8. The point is yet to be determined that what was the wisdom of the Legislature behind promulgation of The Azad Jammu & Kashmir Recruitment (Through Third Party) Act, 2021 [Act X of 2021] dated 02.06.2021 and whether any valid reason has been assigned for repealing the same by promulgating The Azad Jammu & Kashmir Recruitment (Through Third Party) (Repeal) Act, 2023 [Act XII of 2023] dated 15.12.2023, hence, both enactments would be adjudged and compared with touchstone of the preamble the Constitution. For proper appreciation of the matter, relevant portions of the preamble are usefully reproduced as under:-

“AND WHEREAS *the Muslims shall be enabled to order their lives in the*

individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah;

AND WHEREAS *a part of the territories of the State of Jammu & Kashmir already liberated by the people are known for the time being as Azad Jammu & Kashmir.*

AND WHEREAS *it is necessary to cause further empowerment of the Legislative Assembly of Azad Jammu & Kashmir and Azad Government of the State of Jammu & Kashmir as being chosen representative of the people of Azad Jammu & Kashmir to exhaustively exercise their legislative powers and executive authority, as the case may be, for the better governance, socio-economic development and in particular for general welfare of people of Azad Jammu & Kashmir in the sustained manner and other matters ancillary thereto besides pursuing and fostering our cause of securing self-determination under the UN Charter and according to the UNCIP Resolutions through the democratic method of free and fair plebiscite under the auspices of the of the United Nations;]*

(Underlinings are mine)

9. The preamble of a constitution is an introductory statement that outlines the

fundamental values, principles, and purposes upon which the constitution is based. It serves as a guiding framework for interpreting the provisions of the document. The preamble expresses the aspirations and intentions of the people who established the Constitution. It reflects ideals such as justice, liberty, equality. It defines the nature of the government and the source of its authority. Though not always legally enforceable, it holds significant interpretative value. Overall, it embodies the spirit and philosophy of the entire constitution. Under Article 3 of Constitution, the Islam shall be the State religion of Azad Jammu & Kashmir and principles set out in Article 3-A to 3-J shall be known as the principles of policy wherein Article 3-A, it has been defined that under these principles, it is the responsibility of each organ and authority of the State, and of

each person performing functions on behalf of an organ or authority of the State, to act in accordance with said principles in so far as they relate to the functions of the organ or authority and in Article 3-C, it is provided that steps shall be taken to enable the Muslim State Subjects, individually and collectively, to order their lives in accordance with the fundamental principle and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to Holy Quran and *Sunnah*. Under Article 3-I of principles of policy, the State shall promote social justice and eradication of social evils and shall make technical and professional education generally available and higher education equally accessible to all on the basis of merit. In sub-Article (6) of Article 31, no law shall be repugnant to the teachings and requirements

of Islam as set out in the Holy Quran and *Sunnah* and all existing laws shall be brought in conformity with the Holy Quran and *Sunnah*.

10. Under Sub-Article 4 of Article 4 of the Azad Jammu & Kashmir Interim Constitution, 1974 contains a list of 24 rights after 13th amendment, popularly called as the Fundamental Rights. General prohibition is envisaged against all the law making authorities, not to make law which has the effect of taking away or abridging the fundamental rights. Rights guaranteed by the ordinary laws are the legal rights and are enforceable by the ordinary Courts, while fundamental rights are the Constitutional rights enforceable by the Courts established under the Constitution. Ordinary legal rights can be changed by an ordinary process of legislation, but fundamental rights cannot be

modified without following the procedure of amendment of the Constitution.

11. Now, it has to be observed in the light of Preamble and Articles of Constitution, supra, that what was the intention and wisdom of the Legislature behind promulgation of Act X of 2021. After deep perusal of The Azad Kashmir Recruitment (Through third Party) Act, 2021 [Act X of 2021] promulgated on 03.06.2021, it depicts that the basic object is to provide a law for merit and competition based fair recruitment mechanism in Government and Corporation service through independent third party. It also provides safeguard against discrimination in services, ensures equality of all State Subjects and guarantees freedom of profession to all State Subjects. Under Section 3, this Act shall have application in relation to initial recruitment for all clear

vacant posts of BPS-7 and above, available on permanent basis, in Government or Corporation Service while under sub-section (1) of Section 4 of the Act, it has been defined that all administrative departments including attached departments, special institutions, corporations, autonomous bodies, as the case may be shall hire services of a Third Party for conducting tests against posts in Government Service or Corporation Service in BPS-7 and above and sub-section (2) of the aforesaid Section, it has further been defined that the selection authority shall conduct interviews of such candidates who have qualified the written test conducted by the Third party.

12. It is relevant to mention here that after promulgation of the aforesaid Act, supra, general elections were held in 2021 and after formation of new Government, the President in the light of decision of the Cabinet taken in

its meeting held on 28.10.2021 accorded an approval to constitute a Committee under the Chairmanship of respondent No.5 along-with 04 members to examine the matter pertaining to The Azad Jammu & Kashmir Recruitment (Through Third Party) Act, 2021 and thereafter, two new Members have been included in the said Committee vide notification dated 29.11.2021. As per record, the said Committee convened meetings wherein it has been decided to retain Act X of 2021 in its original form to ensure impartial selection through the Third Party. The recommendations of the said Committee constituted by Azad Jammu & Kashmir Cabinet were placed before the worthy Prime Minister under the relevant provisions of The Azad Jammu & Kashmir Rules of Business (Revised), 1985 for approval to be submission/placement of the same before the

Cabinet for consideration/approval. After approval, on 27.01.2022, 6th Cabinet meeting was held according to which a majority of participants urged to retain Third Party Act [Act X of 2021], however, it was decided to defer agenda item regarding The Azad Jammu & Kashmir Recruitment (Through Third Party) Act, 2021 for further deliberations. It is not clear under what circumstances, the aforesaid Act X of 2021 was repealed and what was the wisdom of the Legislature behind it. For that very purpose, the relevant record from the Law Department was summoned vide order dated 20.10.2025, which was produced by Section Officer concerned on 22.10.2025. After perusal of record, it transpires that a summary/draft bill for repealing Act X of 2021 was submitted for vetting in terms of Rule 19(1)(a) read-with Rule 34(2) Part-F Legislation of the State of

Jammu & Kashmir Rules of Business (Revised), 1985 by Services & General Administration Department to Secretary Law wherein the only reason for repeal of Act X of 2021 has been assigned that the recruitment through Third Party causes unnecessary delay in the recruitment against the clear vacant posts of BPS-7 and above on permanent basis hampering the disposal of business by all departments in the State, hence, the aforesaid law is required to be repealed through the proposed legislation, which is required to be vetted by Law Department. After vetting, the proposed legislation was submitted to S&GAD through covering letter dated 29.11.2023 and the same was requested to be presented in the Legislative Assembly of Azad Jammu & Kashmir and inclusion in the agenda of current session of the Assembly, which was

presented in session held on 30.11.2023. Record shows that no any deliberation has been made rather the same has been approved without deliberation. After approval, the Act known as The Azad Jammu & Kashmir Recruitment (Through Third Party) (Repeal) Act, 2023 [Act XII of 2021] was promulgated on 15.12.2023.

13. After comparison of both Acts [Act X of 2021] & [Act XII of 2023] in view of record with touchstone of Preamble and Articles of the Constitution mentioned above, I am fully convinced that The Act known as The Azad Jammu & Kashmir Recruitment (Through Third Party) Act, 2021 (Act X of 2021) was promulgated while assigning valid reasons because the wisdom of the Legislature not only upholds the merit based fair recruitment (Through Third Party) Act in Government and Corporation services but also it has

conformity with the Injunctions of Islam ordained by Allah Almighty while the same also upholds the Constitutional command after perusal of its rhyme and scheme. The Holy Quran has fixed a parameter of the selection of eligible person for getting appointments in verse No.26:28 (Al-Qasas):-

"ان خير من استاجرت القوى الامين"

(Truly the best of men for thee to employ is the man who is strong and trustworthy).

14. It is not out of place to mention here that the preamble to a Constitution expresses the political will and the purpose which the Constitution intends to promote and achieve. Its main function is to explain certain basic objectives which are necessary to be explained before the enactments in the Act can be understood. It is apt to narrate here that the preamble of Constitution is not a part of Constitution or of a law, but it serves

the purpose of understanding the purpose and object of the constitution or law.

15. Under the command of Constitution, Ibid, every State Subject shall have the right to compete and participate for appointment to a post in any civil service of Azad Jammu & Kashmir subject to such qualification, if any, prescribed by law on the basis of open competition, as such, no State Subject otherwise qualified for appointment in the services of the Azad Jammu & Kashmir shall be discriminated for participation in merit based selection, hence, the wisdom asserted in Act X of 2021 regarding merit based recruitment in all Departments Through Third Party meets the yardstick of Constitution.

16. Although the Legislature is one of the organs of the State and shall have the powers to make laws under Article 31 of the

Constitution, *Ibid*, yet all enactments are made for welfare of the citizen of the State. Wherein the principle of democracy, freedom, equality, tolerance and social justice as enunciated by Islam, should fully be observed. The mandate of the Constitution envisages that every person has to obey the Constitution as it demands loyalty and obedience. Constitution is a social binding contract between the State and the people. Every organ of the State should act with its parameters as defined by the Constitution without meddling into the matters of the other organs. The principle of trichotomy of powers is one of the foundational values of the Azad Jammu & Kashmir Interim Constitution, 1974, which envisages the trichotomy of powers amongst three organs of the State i.e. the Legislature, Executive and the Judiciary. A legislation can be invalidated

by the Courts of law when the same is found inconsistent with the Constitution or where there is violation of fundamental rights and if the Act violates any Constitutional restriction or limits, it is invalid and the Court, being the custodian and protector of the Constitution, is under an obligation to strike it down.

17. This Court under Article 44 of the Constitution, supra, has the jurisdiction to examine the validity of any law and in case any law/Act of Assembly violates any provision of the Constitution including fundamental rights the same can be struck down while the law can also be struck down if it provides unfettered powers/discretion to be exercised in a discriminatory manner. The Constitution is a living organism and has to be interpreted to keep alive the traditions of the past blended in the happening of the present and keeping an eye on the future as

well. The law must be interpreted keeping in view the entire canvas of the national fabric, be it political, social, economic or religious. It is not a document of past or present but so it is to be interpreted in a manner to meet the changing conditions of socio-religio and economic dynamics of the State, hence, all these parameters have to be examined by the Courts of law while interpreting law and the wisdom assigned in Act X of 2021 by the Legislature for providing fair, transparent and merit based recruitment system Through Third Party is *self-explanatory*, which falls within the purview of Constitutional command.

18. As stated in preceding paras, Act X of 2021 was promulgated with the wisdom to ensure impartial selection through Third Party wherein Section 5 is very clear that the Government may, by notification in

the official Gazette, make rules for carrying out the purposes of this Act but no such rules were made by the Government and The Azad Jammu & Kashmir Recruitment (Through Third Party) (Repeal) Act, 2023 was promulgated on 15.12.2023 while assigning sole reason that the recruitment through Third Party causes unnecessary delay in the recruitment against the clear vacant posts of BPS-7 and above on permanent basis hampering the disposal of business by all departments in the State, which reason alone is not justified to repeal Act X of 2021. As NTS system was introduced in different institutions of Azad Jammu & Kashmir in year 2015 and to examine the selection process conducted through NTS, the learned Legal Advisor NTS was directed to produce the same, which was produced by which it transpires that NTS conducted 33 projects, in

different departments of Azad Jammu & Kashmir, which were completed successfully due to which the academic institutions are enhancing quality education day by day while the record further shows that different hiring Third Party agencies are smoothly running for carrying out purpose of free, fair and transparent merit based recruitment in different institutions of Federal and Provinces of Pakistan. In the modern era, the state faces a range of emerging challenges driven by globalization, technological advancement, population growth, and evolving public expectations. These challenges demand efficiency, transparency, and meritocracy in public administration. However, traditional recruitment processes in many public institutions often struggle to keep pace with these changing demands due to bureaucratic delays, political influence, and outdated

procedures. To meet these challenges effectively, there was a dire need to introduce comprehensive legislation governing recruitment through Third-Party agencies. Such legislation would aim to ensure that hiring processes are impartial, transparent, and based on merit, while also leveraging the expertise and efficiency of specialized recruitment firms. Enhancing transparency requires reducing direct administrative involvement and minimizing potential bias, while improving efficiency through the adoption of modern assessment tools and technology-driven evaluations. Merit-based selection can be ensured by engaging professional bodies with expertise in recruitment best practices. Additionally, organizations should remain adaptable to evolving needs by employing flexible and specialized talent in emerging fields such as

digital governance, environmental management etc. However, this approach must be guided by strong legal and regulatory frameworks to prevent misuse, ensure accountability, and maintain public trust. The legislation should define the roles, responsibilities, and ethical standards of third-party recruiters while safeguarding the principles of equality and fairness. Third-party recruitment agencies use standardized testing, evaluation, and verification systems that enhance the quality of the workforce and organizational performance. By involving neutral experts, the process becomes more accountable and credible, increasing public confidence in employment systems. It also saves time and administrative effort for organizations while ensuring compliance with legal and ethical standards. Moreover, a fair recruitment process protects the rights and

interests of the general public, ensuring equal opportunities for all. Ultimately, transparent third-party hiring promotes good governance, reduces corruption, and strengthens institutional trust and efficiency in both public and private sectors. Thus, keeping in view the challenges of new era as enumerated above, it can safely be concluded that the wisdom assigned by the Legislature while introducing Act X of 2021 is under the command of Constitution.

19. The nutshell of the foregoing reasons is that the instant writ petitions are accepted and the impugned Act XII of 2023 known as The Azad Jammu & Kashmir Recruitment (Through Third Party) (Repeal) Act, 2023 is hereby struck down and the Act X of 2021 called as The Azad Jammu & Kashmir Recruitment (Through Third Party) Act, 2021 is hereby restored with immediate effect

and all the concerned authorities are directed to ensure recruitment in Government and Corporation services through Third Party against the posts of BPS-7 and above as provided under Act X of 2021. They are further directed to make Rules as provided under Section 5 for carrying out the purposes of the Act, *supra*. A copy of this judgment shall be annexed along-with the other relevant file. An attested copy of this judgment shall be sent to the concerned quarters for compliance.

Muzaffarabad:
30.10.2025(J.ZEB)

JUDGE

Approved for reporting

JUDGE