

HIGH COURT OF AZAD JAMMU AND KASHMIR



Writ petition No.251/2023.
Date of Institution 11.01.2023.
Date of Hearing. 17.12.2025;
Date of decision. 24.12.2025.

Irum Habib D/o Raja Habib Ullah Khan R/o village Tilee Kot Tehsil
Hattian District Jhelum Valley.

....Petitioner

VERSUS

1. The Competent Authority/Hon'ble Chief Justice of High Court of Azad Jammu & Kashmir through Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
2. The Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
3. Secretary Law, Justice, Parliamentary Affairs and Human Rights Department, Azad Govt. of the State of Jammu & Kashmir Muzaffarabad.
4. Azad Jammu & Kashmir Public Service Commission through Secretary Public Service Commission Muzaffarabad.
5. Chairman Public Service Commission having his office at Muzaffarabad.

.....Respondents

.....
Writ Petition No. 1137/2023;
Date of Institution. 18.03.2023;

Iqbal Akhtar S/o Akhtar Hussain, Advocate Supreme Court R/o
Kotli, AJ&K.

.....Petitioner

VERSUS

1. The Competent Authority/Hon'ble Chief Justice of High Court of Azad Jammu & Kashmir through Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
2. The Registrar High Court of AJ&K Muzaffarabad.
3. Secretary Law, Justice, Parliamentary Affairs & Human Rights Azad Government of the State of Jammu & Kashmir through Secretary Law Muzaffarabad;
4. Azad Jammu & Kashmir Public Service Commission through Secretary Public Service Commission Muzaffarabad.
5. Chairman Public Service Commission having his office at Muzaffarabad.

.... Respondents

.....
 Writ Petition No.1409/2023;
 Date of institution. 08.04.2023;

Rashid Nawaz S/o Noor Ali R/o village Kanyana Tehsil Hattian
 District Jhelum Valley AJ&K.

.....Petitioner

VERSUS

1. Competent Authority/Hon'ble Chief Justice of High Court of Azad Jammu & Kashmir through Registrar High Court of AJ&K, Muzaffarabad;
2. Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
3. Secretary Law, Justice, Parliamentary Affairs & Human Rights Azad Government of the State of Jammu & Kashmir through Secretary Law Muzaffarabad;
4. Azad Jammu & Kashmir Public Service Commission through Secretary Public Service Commission Muzaffarabad.
5. Chairman Public Service Commission having his office at Muzaffarabad.

.... Respondents

.....
 Writ Petition No.1431/2023;
 Date of institution. 11.04.2023;

Salma Tariq D/o Sardar Tariq Mehmood Khan R/o village Salyous
Hollar Tehsil Sehnsa District Kotli, AJ&K.

.....Petitioner

VERSUS

1. Competent Authority/Hon'ble Chief Justice of High Court of Azad Jammu & Kashmir through Registrar High Court of AJ&K, Muzaffarabad;
2. Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
3. Secretary Law, Justice, Parliamentary Affairs & Human Rights Azad Government of the State of Jammu & Kashmir through Secretary Law Muzaffarabad;
4. Azad Jammu & Kashmir Public Service Commission through Secretary Public Service Commission Muzaffarabad.
5. Chairman Public Service Commission having his office at Muzaffarabad.

.... Respondents

.....
Writ Petition No.1512/2023.
Date of institution. 12.04.2023.

Raja Ghazanfar Hayyat S/o Raja Khizar Hayyat R/o village Ringoli
Tehsil Dhirkot District Bagh, AJ&K.

.....Petitioner

VERSUS

1. Competent Authority/Hon'ble Chief Justice of High Court of Azad Jammu & Kashmir through Registrar High Court of AJ&K, Muzaffarabad;
2. Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
3. Secretary Law, Justice, Parliamentary Affairs & Human Rights Azad Government of the State of Jammu & Kashmir through Secretary Law Muzaffarabad;

4. Azad Jammu & Kashmir Public Service Commission through Secretary Public Service Commission Muzaffarabad.
5. Chairman Public Service Commission having his office at Muzaffarabad.

.... Respondents

WRIT PETITIONS

Before:- Justice Chaudhary Khalid Rasheed, J.

APPEARANCES:

Raja Amjad Ali Khan, Advocate for petitioner in writ petition No.251/2023.

Khalid Bashir Mughal, Advocate for petitioner in writ petition No.1137/2023.

Syed Zulqarnain Raza Naqvi, Advocate for petitioner in writ petition No.1409/2023.

Jahandad Khan Mughal, Advocate for petitioner in writ petition No.1431/2023.

Ansar Khan Tahir, Legal Advisor of Finance Department.

Raja Sajjad Ahmed Khan, Advocate for the petitioner in writ petition No.1512/2023.

AAG for the official respondents.

Mr. Imran-ul-Haq, Legal Advisor Public Service Commission.

VERDICT:

The instant writ petitions are hereby dismissed.

JUDGMENT:

FOREWORD:

The captioned writ petitions have been preferred under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974 through which the petitioners have sought direction for their appointments as Civil Judge/Magistrate First Class B-17 against withheld posts. Since all the supra titled writ

petitions raised common questions of facts and law, hence, were heard together and are decided through this single judgment.

STANCE OF THE PETITIONERS:

The learned counsel for the petitioners reiterated the facts and grounds already taken in the writ petitions by contended that 7 posts of Civil Judges BPS-17 against the quota of District Jhelum Valley (2), Bagh (1), Poonch (1), Kotli (1), Mirpur (1), Refugees Jammu and Kashmir including affectees Mangla Muzaffarabad Development Authority settled in Pakistan (1) were published vide advertisement No.01/2022. They further argued that petitioners participated in the test and interview against their respective quota and were listed in the waiting list. The learned counsel while referring to certain notifications/orders through which ad-hoc appointments have been made and ad-hoc services of the Civil Judges were extended, submitted with vehemence that several posts available at the time of sending requisition to the Public Service Commission were withheld by the department and if these withheld posts were advertised the petitioners would be appointed, thus, requested that direction may be

issued to the official respondents to issue appointment orders of the petitioners against withheld posts of Civil Judge/Magistrate First Class against the quota of their respective unit or in view of the notification dated 18.01.2007 on the basis of general order of merit.

REFUTATION OF THE RESPONDENTS:

The learned counsel for the respondents contended that all the available posts were requisitioned to the Public Service Commission and no post was withheld, hence, the writ petitions entail dismissal.

I have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

COURT OBSERVATIONS AND RELEVANT LAW:

At the very outset it has been observed that waiting list of the successful candidates is prepared under Rule 13 of the Azad Jammu & Kashmir Public Service Commission (Procedure) Rules, 1994 for the sole purpose that if a person appointed on the recommendations of Commission fails to join the service or is declared medically unfit, a candidate next in the merit shall be recommended.

For ready reference rule 13 of the Azad Jammu & Kashmir Public Service Commission (Procedure) Rules, 1994 is reproduced as under:-

“13. (1) A person appointed on the recommendation of Commission fails to join the service or is declared medically unfit, a candidate next in the merit from the waiting list shall be recommended, on the request of department concerned, and for this purpose the Commission shall prepare a waiting list.

(2) The waiting list prepared under sub-rule (1) shall remain valid for 180 days from the date of selection of the candidate.

(3) The waiting list shall not be valid in case of fresh vacancies referred to Commission just after tests and interview of the previous vacancy.”

A plain reading of Rule 13, supra, makes it blatantly obvious that there is no other purpose for preparing the waiting list except the one mentioned in the said rule, thus, no one can claim his appointment on the basis of waiting list except a successful candidate next in the merit list in a case a person got appointed on the recommendations of the Commission fails to join his service or is declared medically unfit. It is a well settled precept of law that the Courts are expected to interpret the law by giving weight to every word without any change or substitution and also cannot go beyond the wisdom of law.

Reliance can be placed on 2002 SCR 476 wherein it has been held as under:-

“According to the settled principle of interpretation, the Court while interpreting the provisions of a statute, can neither add to nor subtract anything from any provision.”

The same like principle has been laid down in PLD 2002 Karachi 60, wherein it has been observed as follows:-

Nobody can be allowed to contravene, flout or violate the statutes or the rules framed thereunder in the name of national interest or any other so-called high or sublime idea or ideal. The rule of law requires that every person in execution of law should follow strictly the law as lay down and should not exceed the limit of law for any reasons whatsoever.”

My this view also finds supported from the judgment of the Hon’ble Supreme Court of Azad Jammu & Kashmir reported as 2023 SCR 1200.

No doubt, the notifications referred to and relied upon by the petitioners depicts that some of the ad-hoc appointments as Civil Judge/Magistrate First Class have been made prior to the advertisement No.01/2022 but it does not mean that the said posts were not requisitioned to the Public Service Commission and posts advertised through

advertisement No.01/2022 were some other posts which were vacant and no ad-hoc appointment was made against them rather apparently it reveals that the posts referred to and relied upon by the petitioners against which ad-hoc appointment orders were issued were properly requisitioned to the Public Service Commission, advertised vide advertisement dated 01/2022. The extension of ad-hoc services of some of the Civil Judges also does not indicate that they are occupying the posts not requisitioned to the Public Service Commission rather they would have continued their ad-hoc services against the posts which became available after requisition by the requisitioning authority and conducting test by the Public Service Commission, hence, merely the fact that services of the ad-hoc employees have been extended does not establish that any post was withheld by the requisitioning authority at the time of sending requisitions to the Public Service Commission, thus, the writ petitions entail dismissal on this sole ground because the petitioners could not prove that any of the post was available to be filled in through initial recruitment at the time of requisition to the Public Service

Commission by the requisitioning authority but was withheld with mala-fide intention.

The petitioner have also based their claim on notification dated 18.01.2007 hence, legality and sanctity of the said notification is also required to be pondered. It also reflects from the record that Services and General Administration Department on 27.03.2003, issued a script whereby, it was provided that when the number of available posts is less than the administrative units then the posts shall be advertised on the basis of open merit, the candidates obtaining merit position shall be appointed and the quota of concerned unit shall be deducted in future but if more than one candidate qualifies from one unit only one candidate shall be appointed whereas the appointment against the other post shall be made on the basis of open merit from other units. This notification is not backed by any law because under section 11 of the Azad Jammu & Kashmir Public Service Commission Act, 1986 only the Government by notification in the official gazette may make rules for carrying out the purposes of the Act and the government has made the Azad Jammu & Kashmir Public Service

Commission (Procedure) Rules, 1994 under the said Act. Under Rule 13 of the said rules the Public Service Commission shall prepare a waiting list only for the purpose that if a person appointed on the recommendation of Commission fails to join the service or is declared medically unfit, a candidate next in the merit from the waiting list shall be recommended, thus the preparation or use of waiting list for any other purpose except the one mentioned in rule 13 of the aforementioned rules is not recognized by the relevant law. Similarly, the appointments on the basis of said waiting list even against any withheld post except in the eventuality mentioned in rule 13 is also alien to the relevant law. Likewise, notification dated 18.01.2007 which postulates that if no successful candidate from one unit is available the appointment shall be made from a successful candidate of other unit subject to the condition that on the availability of the post the same shall be deducted from the quota of the concerned district, has been issued by the Services & General Administration Department which is also not backed by any statutory law of the land. The policy notification can be issued by the authority competent to

make rules and a policy notification issued by any authority not authorized to make the rules has got no legal sanctity in the eye of law. Reliance may be placed on 2010 SCR 131 and 2010 SCR 201.

Since the notifications dated 27.03.2003 and 18.01.2007 have been issued sine any legal background thus have got no legitimate divinity in the eye of law, therefore neither any right can be claimed on the basis of said notifications nor any action taken under the garb of said notifications can be endorsed or protected. Furthermore, notification dated 27.03.2003 comes into operation when the posts are less than the total units and the posts are advertised on open merit but no such eventuality has arisen in the instant case because the posts were advertised against different units as mentioned in the preceding paragraph. The Supreme Court of Azad Jammu & Kashmir has held in 2023 SCR 1200 that appointments cannot be made more than the advertised posts, hence, any direction for appointments of petitioners against any withheld post, which was not advertised, would also be a flagrant violative of the judgment of the Honourable Supreme Court. The

Hon'ble Supreme Court of Azad Jammu & Kashmir in 2023 SCR 1200 issued several directives. Directive IV which is relevant to in hand controversy is at page 1212 of the judgment, reproduced hereunder:-

“IV. Adverting a position is only permissible when a vacancy has arisen and not otherwise; if two positions are advertised, only two appointments must be made, unless the relevant law provides otherwise.”

Thus, no direction can be issued to the authority for appointment of the petitioners against the posts which were not advertised.

It is also pertinent to mark that Rule 9 of the Azad Jammu & Kashmir Public Service Commission (Procedure) Rules, 1994 postulates that if the requisitioning authority intimates additional vacancies to the Commission before the date fixed for test or interview, a fresh advertisement/ amendment to previous advertisement shall be issued. For proper appreciation of the matter rule 9 of the Azad Jammu & Kashmir Public Service Commission (Procedure) Rules, 1994 is reproduced as under:-

“9. If the requisitioning authority intimates additional vacancies to the Commission before the date of test/examination or interview is

fixed, keeping in view the time factor, a fresh advertisement/amendment to previous advertisement shall be issued and fresh applications shall be invited. The candidates, who had already applied in response to the original advertisement, may not be required to apply again.”

The above reproduced provision of law indicates that on availability of additional post the requisitioning authority shall intimate the Commission whereupon the Commission shall issue amended advertisement, hence, how an appointment can be made against the post which was neither requisitioned to the Public Service Commission nor test and interview was conducted against the said post, so, in my considered view if it is admitted that any post was withheld by the department at the time of requisition to the Commission even then no direction can be issued for appointment from waiting list when the said post was neither requisitioned to the Commission nor any test and interview was conducted against it. I am alive of the fact that this Court as well as the Hon'ble Supreme Court of Azad Jammu & Kashmir in various cases directed the Commission to recommend candidates against withheld posts and the authority to issue appointment order on the basis of

equality before law, equal protection of law and that the post was not requisitioned by the authority with mala-fide intention to accommodate the favourites. This pivotal question has also been attended by the Honourable Supreme Court of Azad Jammu & Kashmir in 2025 SCR 364 and observed that under Rule 13, supra, the waiting list has to be prepared only for a specific purpose, discussed above, hence, the same cannot be used for any other purpose. Relevant observations recorded at page 374 of the judgment are as under:-

“Under sub-rule (1), it is explicitly provided that if a person appointed through the PSC recommendation does not assume office or is found medically unfit, the next meritorious candidate from the waiting list shall be recommended for appointment, provided that the concerned department formally requests such a recommendation.”

It is also relevant to mark that it appears from the record that ad-hoc services of many of the employees have been extended multiple times, while the Hon'ble Supreme Court of Azad Jammu & Kashmir has held in various judgments that an ad-hoc appointment can be made only for short time and in any emergent condition may be

extended for once but despite that extension of ad-hoc service for multiple times is not only against the norms of justice but also a blunt and naked violation of the order of the Apex Court which is liable to be proceeded under Article 45 of the Azad Jammu & Kashmir Interim Constitution. The ad-hoc appointment is recognized by Rule 23 of the Azad Jammu & Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977 which portrays that the ad-hoc appointment can be made by appointing authority in the public interest for the period of six months after forwarding a requisition to the selection authority till pending nomination of candidate by the selection authority. As per sub Rule (2)(4) of Rule 23, supra the appointment order certifies that a requisition has been sent to the selection authority, hence, any ad-hoc appointment without sending requisition of the said post to the selection authority is against the provisions of Rule 23, supra, thus, such practice is liable to show the doors.

DISPOSAL:

The sum and substance of the above discussion is, the instant writ petitions are hereby dropped, the

notifications dated 27.03.2003 and 18.01.2007 are declared anomalous, ab-initio-void and coram-non-judice with the caveat to refrain from acting upon any recommendations of the Public Service Commission for appointment of any candidate on the basis of waiting list except the supra stated eventuality indicated in Rule 13 of the Azad Jammu & Kashmir Public Service Commission (Procedure) Rules, 1994. The authority is expected to send requisition of all the available posts of Civil Judges/Magistrates First Class to the Public Service Commission, if already not requisitioned, forthwith sine any delay. The Registrar of this Court is hereby directed to place the matter before the authority for necessary steps. A copy of the judgment shall be sent to Secretary S&GAD for circulation to all departments to ensure strict adherence of the judgment.

Muzaffarabad;
24.12.2025.

JUSTICE

Approved for reporting.

JUSTICE