HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.2727/2025.
Date of institution 17.11.2025.
Date of decision 04.12.2025.

Adeel-uz-Zaman S/o Gul Zaman R/o Khawaja Seri Sharda Tehsil Sharda District Neelum, Azad Jammu and Kashmir.

...Petitioner

Versus

1. Public Service Commission of Azad Jammu and Kashmir through its Chairman office situated at Narrol District Muzaffarabad.
2. Chairman Public Service Commission of Azad Jammu and Kashmir office situated at Narrol District Muzaffarabad.
3. Secretary Public Service Commission of Azad Jammu and Kashmir office situated at Narrol District Muzaffarabad.
4. Deputy Director Public Service Commission of Azad Jammu and Kashmir office situated at Narrol District Muzaffarabad.

.....Respondents

WRIT PETITION

Before:- ***Justice Syed Shahid Bahar, J.***

PRESENT:
Raja Zaigham Iftikhar, Advocate for the petitioner.
Syed Atif Mushtaq Gillani, Legal Advisor on behalf of Public Service Commission.

Judgment:

Lex prospicit non respicit. Doctrine of Law speaks that law looks forward and not backward. It is also called doctrine of non-retroactivity.

2. **Doctrine above is the basic structure for protecting vested rights. It is not out of place to mention here that vested rights are concluded and completed rights that too enforceable rights.**

3. **So for as advertisement impugned is concerned, although rationally it is a part of incomplete process of selection, but what brings the same within the definition of completion is that when the last date for applying under the said advertisement has expired, door of submitting applications has been closed. Circumvention and change of selection fora requires fresh advertisement by the other selection fora, then Doctrine of legitimate expectations will come into play in a way to conclude the matter in light of the law holding the field at the time of advertisement.**

4. In the instant petition, filed under Article 44 of Azad Jammu and Kashmir Interim Constitution, 1974, the petitioner seeks the quashment of advertisement No.AJK-No.101N-1025 and corrigendum No.AJK-No.101NB-10/2025. These documents advertised the posts of Stenographers (BS-14) and Junior Clerks (BS-11).

5. The petitioner contends that the advertisement is without lawful authority because the Azad Jammu and Kashmir Recruitment (Through Third Party) Act, 2021 (the Act of 2021) was revived by this Court's judgment of October 30, 2025. The petitioner avers that the official respondents exceeded their jurisdiction by advertising the posts in question and initiating the test and interview process. This is because the revival of the Act of 2021 requires all such posts to be filled exclusively through the Third Party.

6. The Public Service Commission has filed para-wise comments, alleging that the posts in question were advertised prior to judgment of this Court dated 30.10.2025. Consequently, the test and interviews are liable to be conducted in pursuance of advertisement issued prior to the said judgment. It is further argued that the decision of this Court in this regard has **prospective effect** and previous proceedings pertaining to appointment in continuation of previous advertisement are not affected by judgment of this Court. It is useful to reproduce verbatim of the relevant para of para-wise comments herein below:-

''جہاں تک پٹیشنر کا یہ موقف کہ معزز عدالت کے فیصلہ مصدرہ 30.10.2025 درریٹ پٹیشن 'آزاد جموں وکشمیر بار کونسل بنام آزاد حکومت وغیرہ' جس میں معزز عدالت نے سکیل 07 بالا کے حوالہ سے Third Party Recruitment Process کا حکم صادر فرمایا ہے، وضاحت اس طرح ہے کہ متذکرہ مشتہر شدہ آسامیاں فیصلہ مصدرہ سے قبل خالی ہوئیں اور مشتہر بھی فیصلہ مصدرہ سے قبل ہوئیں اور متذکرہ فیصلہ موثر بماضی نہ ہے۔ اور اس ضمن میں آئندہ خالی ہونے والی آسامیوں پر معزز عدالت کے حکم کے مطابق کارروائی عمل میں لائی جائے گی، علاوہ ازیں کمیشن معزز عدالت العالیہ کے احکامات کے مغائر کارروائی کا تصور بھی نہ کر سکتا ہے۔''

7. Raja Zaigham Iftikhar, Learned counsel for the petitioner contends that the proceedings carried out in pursuance of the impugned advertisement are discriminatory, arbitrary and violative of Azad Jammu and Kashmir Interim Constitution, 1974. He further contends that the Public Service Commission has no lawful authority to continue the process of recruitment in violation of the judgment of this Court. Furthermore, he maintains that after delivering of the judgment by this Court dated 30.10.2025, all the posts are liable to be filled up through Third Party and the Public Service Commission-respondents herein ought to have stayed the proceedings initiated pursuance to the advertisement, even if the advertisement was

issued prior to the judgment provided the selection process had not yet been completed. Moreover, he asserts that the Act of 2021, is meant for bringing the transparency in the selection process, thus, the same cannot be ignored and brushed aside at all.

8. While, on the other hand, Syed Atif Mushtaq Gilani, Legal Advisor of Public Service Commission by withstanding the arguments of petitioner's counsel, stated that the writ can only be asked for where any violation of law is pointed out or proceedings have been initiated in violation of law but in the instant matter, proceedings have been initiated in pursuance of advertisement which are liable to be concluded/ completed in accordance with law. It is further added that when the advertisement was given in the newspaper, the law i.e. Act, 2021 was not in vogue and the Act of 2021 was revived by judgment of this Court. He further added that by any stretch of imagination the previous proceedings like the impugned advertisement are declared illegal then all the proceedings initiated prior to revival of said Act are liable to be reversed by this angle but as per his estimation law revived otherwise does not place any embargo upon the advertisement of the post of BS-1 to BS-16 and that too, said Act is not applied to the posts already advertised prior to enforcement of said Act of 2021. He added that in response of the advertisement roundabout 1500 applications have been received and selection process is already underway. Thus, 1500 desirous candidates are necessary party in the instant writ petition and the petition is incompetent on this count as well.

9. Preliminary arguments heard. Record perused.

10. It transpires from the bare reading of the advertisement dated 24.10.2025 that the same has been issued prior to judgment of this Court. Proposition is quite narrow in the light of the arguments advanced on behalf of the learned counsel for the parties but at the very outset, it is very useful to reproduce section 3 of "The Azad Jammu and Kashmir Recruitment (Through Third Party) Act, 2021":-

> "**Application:-** (1) Subject to Sub-section (2) 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.
> (2) This Act shall not apply to the recruitment against posts,:
> i. Which have been assigned to Public Service Commission under respective law
> ii. Of basic Pay Scale (BPS 1 to 6);
> iii. Which are required to be filled on temporary basis; and
> iv. Which have been advertised prior to enforcement of this Act."

Section 3(2) of the aforesaid Act has given exception to certain kinds of posts qua application of the said Act. Section 3 of the Act declares that the Act of 2021 does not apply to: posts assigned to the Public Service Commission carrying BS 1-6; posts required to be filled on a temporary basis; and posts advertised prior to the enforcement of the Act, 2021.

11. As it is reflecting from the record that the advertisement impugned herein, was published prior to the judgment rendered of this Court, that too, it has specifically enumerated in Section 3 of the

Act, referred hereinabove, that such like posts are not coming within the purview of the Act by any angle.

12. After vivisecting the Article 56-C of the Azad Jammu and Kashmir Interim Constitution 1974, it transpires that where a law is repealed or is deemed to have been repealed by under or by virtue of the Constitution, the repeal shall not, except as otherwise provided in the Constitution revive or existing at the time at which the repeal takes effect and effect of the previous operation of the law or anything duly done or suffered under the law as well as effect any right, privilege, obligations and liability accrued or incurred under law. Bare reading of Section 56-C is useful to reproduce herein under:-

> "56-C **Effect of repeal of laws**:- Where a law is repealed, or is deemed to have been repealed, by, under, or by virtue of the Constitution, by repeal shall not, except as otherwise provided in the Constitution,-
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect;
> (b) affect the previous operation of the law or anything duly done or suffered under the law;
> (c) affect any right, privilege obligations or liability acquired, accrued or incurred under law;
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or
> (e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty forfeiture or punishment;
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> and any such investigation, legal proceedings or remedy may be instituted, continue or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed."

13. Article 56-C pertaining to effect of repeal of laws provides protection simply to the rights, acquired under the repealed law.

14. In connection with the Article 56-C of the Interim Constitution the word right envisaged therein connotes a legally recognized and enforceable claim that a person has against another person, the state or society, in other words a right is a legal entitlement to do something, have something under the law. A right may be inchoate (incomplete) contingent i.e. conditional on something happening or expectant i.e. expected but not legally enforceable.

15. Comparatively a vested right is at higher pedestal qua its protection rather than mere right as it. Generally it acquires weaker legal protection, but constitution has given a protection to right which covers all facets of rights recognized by law.

16. As a general principle, every statute is prima-facie prospective, unless it is expressly or by necessary implication made to have retrospective effect.

17. Trite that when a law returns to force (is "revived") it is ordinarily treated as it comes into effect from the date of revival- not as if it remained in effect. The rational on the basis of what this doctrine is structured is seemingly fairness and legal certainty; people arrange their affairs based on the law as it stands at the time,

and retrospective revival could upset vested rights, obligations or expectations.

18. Nutshell is that a revival of statute will be treated as having prospective effect (i.e applies only from the time of revival forward)

Squeezed analysis

19. The petitioner has failed to array the candidates as party in the line of respondents, said candidates/applicants are legitimately expecting their participation in the selection process, thus in absentia of the necessary party neither any affective order can be passed on their back nor writ is competent in view of fundamental right number 19 of the Constitution, 1974.

20. Rights accrued under previous law cannot be frustrated retrospectively. Revival of law shall take effect immediately from the date when it is revived and not in retrospective manner (unless such effect is given by express wording).

21. For the above multiple reasons, the writ petition being denuded of substance is hereby **dismissed in limine** under the doctrine of limine control.[1]

Order was announced in the open court on 28.11.2025, after hearing preliminary arguments of the parties.

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[1]. Asif Saleem v. Chairman BOG, University of Lahore (PLD 2019 Lahore 407).

File shall be kept in archive.

Circuit Mirpur.
04.12.2025.*

JUDGE

Note:- Judgment is written and duly signed. Deputy Registrar Mirpur is directed to send the file alongwith the judgment in a sealed envelope to Headquarter Muzaffarabad, forthwith. Registry office Muzaffarabad is directed to intimate the parties or their counsel accordingly.

JUDGE

APPROVED FOR REPORTING

JUDGE