

**HIGH COURT OF AZAD JAMMU & KASHMIR**

*Writ Petition No.1650/2018.  
Date of institution 15.09.2018.  
Date of decision 06.07.2022.*

1. Abdul Hameed Awan Inspector Encroachment B-11 Municipal Corporation Muzaffarabad Azad Jammu & Kashmir.
2. Noman Shoaib Mirza Inspector Encroachment B-11 Municipal Corporation Muzaffarabad Azad Jammu & Kashmir.
3. Chaudhary Tariq Hussain Inspector Encroachment B-11 Municipal Corporation Mirpur of Azad Jammu & Kashmir.
4. Abdul Khaliq Inspector Encroachment B-11 Municipal Committee Bhimber of Azad Jammu & Kashmir.
5. Javaid Awan Inspector Encroachment B-11 Municipal Corporation.
6. Mirza Abdul Rasheed Inspector Encroachment B-11 Municipal Committee Kail district Neelum, AJ&K.

*....Petitioners*

**VERSUS**

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Local Govt. Board of Azad Jammu & Kashmir having office at upper Chatter Muzaffarabad.
2. Finance Department of Azad Jammu & Kashmir, through Secretary Finance, office at New Secretariat Muzaffarabad.
3. Secretary Local Government & Rural Development of Azad Jammu & Kashmir having office at lower Chatter Muzaffarabad.
4. Secretary Local Govt. Board of Azad Jammu & Kashmir having office at upper chatter Muzaffarabad.
5. Chairman Local Govt. Board/Minister Local Govt. Board of Azad Jammu & Kashmir, having office at new Secretariat Muzaffarabad.

*.... Respondents*

**WRIT PETITION**

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

**PRESENT:**

Sardar Jahandad Khan Mughal and Salma Tariq Sadozai, Advocate for the petitioners.

Kh. Ejaz Ahmed Mir and Saghir Javed, Advocates/Legal Advisors on behalf of Local Govt. department.

Amir Ali Awan, Advocate/Legal Advisor for Finance Department.

**Judgment:**

Above titled writ petition has been filed under Article  
44 of the Azad Jammu & Kashmir Interim Constitution, 1974,  
whereby infra relief has been beseeched as under:-

“It is therefore, very humbly prayed that while accepting this writ petition an appropriate writ may very kindly be issued in favour of petitioners and the respondents may very kindly be directed to upgrade the posts of Inspector encroachment B-11 Municipal Corporation Muzaffarabad Azad Jammu & Kashmir from BPS-11 to BPS-16 as the respondents have upgraded the scale of others posts in Municipal Corporation Muzaffarabad. Any other relief which the Hon’ble court deem proper may also be granted.”

# **I. BRIEF FACTS:-**

Petitioners are performing their duties in Municipal Corporation/Committee in district Muzaffarabad and other districts as Inspectors Encroachment B-11. It is contended on behalf of the petitioners that the posts of all others cadres in Municipal Corporation Muzaffarabad have been upgraded, even the posts of categories B-1 to B-5 have also been upgraded and even most junior employees have become senior from the petitioners. It is averred that this Court issued the direction to upgrade the posts of *Chungi Moharars* and *Chungi Inspectors* which was upheld by Hon’ble Supreme Court of Azad Jammu & Kashmir, consequent of which almost 40 employees of Municipal Corporations and District Council Muzaffarabad have been upgraded. It is contended that the department recommended the authorities for up-gradation of the post of the Inspector Encroachment B-11 to B-16, but the entire correspondence in this regard, as per petitioners’ version, is fruitless. It is maintained that posts of all low grade employees have been upgraded and hundreds of junior employees have become senior to the petitioners.

**II. PROCEEDINGS IN THIS COURT:-**

Instant writ petition was admitted for regular hearing on 03.05.2018. Respondents were directed to submit written statement and needful was done on behalf of them.

Vide order dated 26.05.2022 the learned counsel for the parties were directed to file written arguments in the case, thus, they submitted written arguments accordingly.

**I have gone through the written arguments submitted by the learned counsel for the parties and perused the same.**

**III. PETITIONERS' SUBMISSIONS:-**

Sardar Jahandad Khan Mughal and Salma Tariq Sadozai, the learned counsel for the petitioners filed written arguments wherein they reiterated the facts narrated in the petition and contended therein that the department-respondents have upgraded number of posts of different cadres during last some years i.e. posts of Senior Clerk, Cashiers, Accounts Clerk, Revenue Assistants, Accountant, Store Superintendent, Junior Clerk, Head Clerk, Tax Clerk, Octroi Clerk, Octroi Sub-Inspector, Perokar etc. The learned counsel further contended that the department recommended the authorities for up-gradation of the impugned post i.e. Inspector Encroachment B-11 to B-16 but up till now all the efforts have become fruitless. The learned counsel ardently contended that junior employees of the department have become senior to the petitioners and according to promotion criteria as well

as in accordance with the departmental rules, if the post of Inspector Encroachment BS-11 is not upgraded, the petitioners will never get further promotion. The learned counsel staunchly contended that according to the Constitution and in our religion all the state subjects are equal before law and entitled to equal treatment of law and there should be no discrimination among the equals. They maintained that the policy of pick and choose has been adopted while upgrading other posts and ignored the matter of petitioners, hence, the petitioners are also entitled for the same treatment and respondents are bound to upgrade the posts in question. The learned counsel vehemently contended that the Hon'ble Supreme Court of Azad Jammu & Kashmir has delivered plethora of judgments wherein they issued the direction for the up-gradation of the posts on the ground of similar treatment. He further contended that the official respondents deliberately refused from the up gradation of the impugned posts. He staunchly argued that the petitioners are serving in their department since long time in grade B-11, whereas, the posts of incumbents of similar grade or even lower in all other departments, have already been up-graded, the matter was brought into the notice of respondents but despite that the post of petitioners have not been upgraded up till now, resultant of which continuous discriminatory treatment is being meted out with the petitioners. The learned counsel strenuously maintained that under the provisions of fundamental rights as enshrined in view of equal protection of law and equality before law, the petitioners cannot be

treated in a discriminatory manner. Finally, the learned counsel prayed that by accepting the writ petition, the official respondents may be directed to upgrade the posts of Inspector Encroachment B-11 and seniority of employees of subordinates and junior grades from the petitioners may be framed/prepared according to past, before the date of up-gradation of the petitioners, herein. In support of the written arguments, the learned counsel attached some applications and orders alongwith unreported Judgment of this Court titled “Raja Tariq Vs. Azad Govt. and others, Mirza Gulraiz Akhtar and others Vs. Azad Govt. and others”

#### IV. RESPONDENTS’ SUBMISSIONS:-

In reply Amir Ali Awan, Advocate/ the learned Legal Advisor on behalf of Finance Department-respondent No.2 submitted written arguments wherein it is contended that according to prevailing service rules i.e. **Azad Jammu & Kashmir Local Council Service (Appointment and Conditions of Service), Rules, 1990** the post of Inspector Encroachment is of grade **(BPS-11)** and there is no reasoning for up-gradation of the same into grade **(BPS-16)**. The learned Legal Advisor further contended that due to financial crunch and to meet the need of payment of salaries the Government imposed ban upon upgradation and creation of posts, therefore, keeping in view this aspect of the matter, the post of petitioners, cannot be up-graded, thus, the writ petition is not maintainable. He further submitted that in the existing rules, the petitioners have an appropriate avenue of

promotion, hence, the petitioners are not aggrieved persons in the eye of law. The learned counsel fervently contended that some posts of MCM were upgraded on direction of this Court in case titled “Manzoor Ahmed Mughal & others Vs. Azad Govt. and others”. The learned Legal Advisor further contended that the referred judgments in the memo of writ petition are judgments in personam which can only be applicable to the extent of parties. He staunchly contended that the Hon’ble Supreme Court in Muhammad Rafique’s case reported as **2015 SCR 311** held that:-

“(b) Administration of justice:-

Every case has to be decided according to its facts, without similarity of the facts the principle of law enunciated in other cases cannot be applicable.”

Similarly, in recent case titled “Muhammad Amin & 3 others Vs. Azad Government & others, reported as 2020 SCR 66, the Hon’ble Apex Court held as under:-

“....case law to be applied according to factual and legal proposition involved in the case and case has to be decided on the basis of the peculiar facts.”

The learned Legal Advisor finally prayed that by accepting the written arguments on behalf of respondent No.2 (Finance Department) the writ petition may be dismissed with costs.

An application has been moved by learned Legal Advisor for Local Govt. department, to treat written statement of Secretary Local Govt. Board as written arguments on behalf of respondents No.1, 3 to 5. The request was allowed.

*I have considered the written arguments submitted on behalf of the parties and gone through the case with utmost care.*

**V. DETERMINATION BY THE COURT:-**

The prayer of the petitioners herein is that the respondents may be directed to upgrade the post of Inspector Encroachment B-11 on the ground that the posts of different cadres of the department have already been upgraded by the respondents whereas in case of petitioners they have been ignored by the respondents and discriminatory treatment has been meted out to them which offends the equality clause of the Azad Jammu & Kashmir Interim Constitution, 1974 i.e. Right No.15 besides Right No.1 as well. In the case of *Nazir Hussain Hashmi V. Capital Development Authority* reported as [PLD 1996 Lahore 1115] while interpreting the phrases “equality before law” and “equal protection of law” in Article 25 (corresponding to right No.15 of our constitution), it was held:-

- “(a) right of all persons must rest upon the same rule under similar circumstances regardless of race, religion, antecedents, physical appearance, intellect, public spirit, political view, wealth or occupation;
- (b) all persons shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed; and
- (c) equality or equal protection permits reasonable classification and mere differentiation or inequality of treatment does not amount to discrimination.”

Similarly, in the case of *Yahya Bakhtiar V. the State* reported as [NLR 1980 Quetta 815] it was held:-

“The term “equality before law” means that among equals law should be equal and should be equally administered and that like should be treated alike. The doctrine of equality before law or the equal protection of law does not signify that same law applies to every situation. It means same law for same situation and not when situations are different and entirely dissimilar.”

As adumbrated above, the petitioners voiced against discriminatory treatment meted out to them by the official respondents, by way of differently treating them among equals and similarly placed employees of the Corporation/department.

The petitioners further demonstrated that numerous junior employees after acquiring up-gradation and thereafter promotions have become senior in rank to the petitioners, they time and again approached the relevant quarters for administrative justice, resultant of which a summary was also launched by the Secretary concerned but all in vain.

Perusal of record reveals that the concerned department/official respondents have almost admitted the claim of the petitioners, even half hearted vague denial amounts to admission of facts alleged.

## **VI. ANALYSIS**

The concerned department has already made a proposal quo redressal of grievance of the petitioners, no plausible reasons are appearing to disagree with the said proposal.

So many posts in the institution have already stood upgraded by the official respondents. The official respondents in



their written statement have admitted the claim of the petitioners,  
reply of para No.6 and 10 are liable to be reproduced:-

ضمنی نمبر (6) یہ کہ ضمنی نمبر 6 درست ہے پیشتر نے خود تسلیم کیا ہے کہ ڈیپارٹمنٹ نے اصول مساوات کے تحت اپ گریڈیشن کی تحریک کر رکھی ہے۔  
ضمنی نمبر (10) یہ کہ ضمنی نمبر 10 کی حد تک گزارش ہے کہ ریسپانڈنٹ نمبر 4 کو پیشتر نے اپ گریڈیشن پر کوئی اعتراض نہ ہے تاہم معاملہ عدالت گرامی میں subjudice ہے محکمہ عدالتی احکامات پر پابند ہے۔

The petitioners have made out a case for direction.

For the above multiple reasons, the Constitution  
Petition in hand is accepted. The respondents are directed to redress  
the grievance of the petitioners by way of upgradation as prayed for  
in accordance with law within 03 months and compliance report  
should be sent to Registrar of this Court.

Muzaffarabad,  
06.07.2022.

-Sd-  
**JUDGE**