

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.3829/2021.
Date of institution 11.11.2021.
Date of decision 04.03.2024.

Abid Naseer Ali Sulehria S/o Muhammad Naseer Khan R/o District
Bagh presently R/o House No.278 Mohallah Lower Tariqabad Tehsil
District Muzaffarabad Azad Kashmir.

...Petitioner

Versus

1. Public Service Commission of Azad Jammu and Kashmir through its Chairman having his office at Jalalabad Muzaffarabad Azad Kashmir.
2. Secretary Public Service Commission of Azad Jammu and Kashmir having his office at Jalalabad Muzaffarabad Azad Kashmir.
3. Secretary Social Welfare Department of Azad Jammu and Kashmir having his office New Secretariat Muzaffarabad Azad Jammu & Kashmir.
4. Noreen Tariq D/o Raja Muhammad Tariq Khan (respondent No.4) C/o Sajid Chicken Shop Neelabut road Dhirkot, post office Dhirkot Tehsil Dhirkot District Bagh.
5. Syeda Noor-ul-Ain Bukhari D/o Syed Riaz Hussain bukhari shortlisted for interview by Public Service Commission against the post of Senior Teacher (B-17) Social Welfare.
6. Kabir Ahmed S/o Amir Ali shortlisted for interview by Public Service Commission against the post of Senior Teacher (B-17) Social Welfare.
7. Amina Sadique D/o Muhammad Sadique shortlisted for interview by Public Service Commission against the post of Senior Teacher (B-17) Social Welfare.
8. Bushra Mukhtar D/o Ghulam Mustafa shortlisted for interview by PSC against the post of Senior Teacher (B-17) Social Welfare.
9. Iffat Niaz D/o Raja Mohammad Niaz Khan (respondent No.9 C/o Raja Mohammad Niaz Khan (Budget & Accounts Officer Rtd.) PWD Chief Engineer Office Muzaffarabad).
10. Saima Mushtaq D/o Mushtaq Ahmed shortlisted for interview by Public Service Commission against the post of Senior Teacher (B-17) Social Welfare.
11. Shajeela Naz D/o Mohammad Hanif Sheikh (respondent No.11) c/o Read Foundation Dabistan Sardar Bhadur Ali Khan School and Science College Kharick (Boys) Rawalakot Poonch, Azad Kashmir.
12. Abad ur Rehman S/o Misry Khan shortlisted for interview by Public Service Commission against the post of Senior Teacher (B-17) Social Welfare.
13. Sehrish Arshad D/o Muhammad Arshad Khan shortlisted for interview by PSC against the post of Senior Teacher (B-17) Social Welfare.

14. Arooj Atif wife of Atif Kamal (respondent No.14) house No.993 Street No.92 Sector I-8(iv) Islamabad.
15. Fozia Mir Zaman D/o Raja Mir Zaman shortlisted for interview by PSC against the post of Senior Teacher B-17 Social Welfare.
16. Sughra wife of Abid Naqi Airport Housing Society House No.262 Street No.10 Sector 2 Rawalpindi.

.....Respondents

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Writ Petition No.4039/2021.
Date of institution 25.11.2021.

Sobia Sohrab W/o Raja Navid Khan R/o Khilla Tehsil and District Muzaffarabad, recently appointed as Adhoc Senior Teacher Physical Education, (B-17) in National Special Education Center Muzaffarabad.

....Petitioner

Versus

1. Public Service Commission through its Chairman having his office at Narrul, Muzaffarabad, Azad Jammu and Kashmir.
2. Secretariat of Social Welfare and National Special Education Azad Jammu and Kashmir through its Secretary having his office at new Secretariat Muzaffarabad.
3. Directorate of Special Education, Azad Jammu and Kashmir through its Director, having his office at New Secretariat Muzaffarabad Azad Jammu and Kashmir.
4. Principal National Special Education Center, Muzaffarabad, AJ&K.
5. Accountant General of Azad Jammu and Kashmir, Muzaffarabad.
6. Noreen Tariq D/o Raja Muhammad Tariq Khan.
7. Syeda Noor-ul-Ain Bukhari D/o Syed Riaz Hussain Bukhari.
8. Kabir Ahmed S/o Abid Ali.
9. Amina Sadique D/o Muhammad Sadique.
10. Bushra Mukhtar D/o Ghulam Mustafa.
11. Iffat Niaz D/o Raja Muhammad Niaz Khan.
12. Saima Mushtaq D/o Mushtaq Ahmed.
13. Shajeela Naz D/o Muhammad Hanif Sheikh.
14. Abad-ur-Rehman S/o Misry Khan.
15. Sehrish Arshad D/o Muhammad Arshad Khan.
16. Arooj Ejaz D/o Ejaz Ahmed.
17. Fozia Mir Zaman S/o Raja Mir Zaman.
18. Sughra D/o Suleman Khan.

.....Respondents

WRIT PETITIONS

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Kh. Junaid Pandat and Raja Jahangir Akram Khan, Advocates for the petitioners.

Sardar M.R. Khan, Saqib Javed, Syed Zulqarnain Raza Naqvi, Shahid Ali Awan, Sardar Jam Sadiq, Naila Sikandar, Advocates for the private respondents.

Aliya Abdul Rehman, Legal Advisor PSC.

Pirzada M. Sajad, A.A.G for official respondents.

Judgment:

Titled constitution petitions have been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974. Identical law points and facts are involved in both the petitions, therefore, these were clubbed up, heard together and are decided through this judgment.

2. In writ petition No.3829/2021, the petitioner Abid Naseer Ali Sulehria prayed as under:-

“1. Declaring list of shortlisted candidates dated 05.11.2021 as against the terms and conditions mentioned in advertisement No.1/2020 and against the judgment of this Court dated 24.01.2020 and 17.11.2020 by declaring the same as void-ab-initio by setting aside the same.

2. Directing official respondents to re-issue list of shortlisted candidates by including name of petitioner and by excluding names of persons who fails to apply in year 2018 in light of advertisement No.2/2018 and corrigendum and applied against the posts of Senior Teacher after advertisement No.1/2020 in violation terms and conditions fix in said advertisement as well as in judgment dated 24.01.2020 and 17.11.2020.”

3. In writ petition No.4039/2021, the petitioner Sobia Sohrab has solicited infra relief:-

“i. Declaring the impugned merit and short listing of candidates for the posts of Senior Teacheress BS-17 of Social Welfare dated

05.11.2021 null & void, contrary to law and natural justice.

ii. Respondents may kindly be directed to re-organize the merit of Senior Teachers BS-17 of Social Welfare (NSEC) as subject wise, under Rule 12(2) of Azad Jammu and Kashmir Public Service Commission rules 1994 and as per requirement of NSEC.

iii. That respondent be directed to appoint the petitioner as Senior Teacher Physical Education BS-17 in Social Welfare institute (National Special Centre Muzaffarabad) as being single Public Service Commission exam qualified candidate, having requisite qualification and experience against the advertised post of Senior Teacher Physical Education.”

4. Kh. Junaid Pandat, the learned counsel for the petitioner-Abid Naseer Ali, contended that the official respondent allowed non-eligible and irrelevant persons to take part in examination and have shortlisted those candidates who were not eligible in year 2018 as well as failed to apply in year 2018, hence, official respondents are liable to be directed to re-issue list of shortlisted candidates by excluding names of persons failed to apply in year 2018, or apply in year 2020 other than the candidates having qualification of Master Degree in Economics and Statistics. The learned counsel vehemently contended that advertisement No.1/2020 is very much clear in this regard only persons having qualification of Economics and Statistics were eligible to apply otherwise candidates who apply in year 2018 were to be considered but respondents act otherwise. The learned counsel finally prayed for acceptance of the writ petition.

5. Raja Jahangir Akram Khan, the learned counsel for the petitioner-Sobia Sohrab vehemently contended that the Public Service

Commission should prepare subject-wise merit and then short list the candidates for interview as per their subjects. He forcefully contended that NSEC is the institute where special children's are being taught, these special children needs a physical education teachers, to learn them exercise and games as per their disability, but respondents without considering the fact that these Senior Teachers are being selected for special children's education and there should be at least one teacher for each subject and merit list should be prepared separately as subject wise, whereas, the respondents selected the private respondents on the basis of their numbers in general on the basis of highest score, despite the fact that public service commission remain failed to prepare the MCQs paper for Senior Teacheress of Social Welfare as per syllabus as not a single question was asked from the 40% part of General knowledge, hence, the impugned merit list of selected candidates of Senior Teachers of Social Welfare dated 05.11.2021 is against the law, rules, as well as wisdom of legislature, against the requirement of institute, thus, liable to be set aside. The learned counsel pointed out that respondents in negation of their own conditions mentioned in advertisement allowed to apply some of private respondent alongwith others, who have qualification others then M.A Statistics and M.A Economics which sheer violation of condition mentioned in advertisement and also against the vested right of petitioner. The learned counsel argued that the selection process after written test against the post of Senior Teacher Social Welfare of PSC is against the law and rules, hence, the impugned merit list is liable to be set aside by declaring the same as illegal and respondents

may kindly be directed to re-organize the merit of Senior Teacher B-17 of Social Welfare as pre requirement of institute and subject wise.

6. In reply Sardar M.R. Khan, the learned counsel for private respondents No.12 and 13 (Abad ur Rehman and Sehrish Arshad) contended that PSC firstly advertised the posts of Senior Teacher BS-17 vide advertisement No.2/2018 and the qualification for the post in question was fixed according to rules, as Master degree in Special Education with 2nd Division in relevant subject i.e. Physical disable person, hearing impaired, mentally retired and visually impaired or Master degree alongwith Special Education, M.Ed. as required for institution, after that, vide corrigendum advertisement No.2/2018 while added further Education, M.Sc. Math/ Chemistry/ Biology/ Physical Education/ Computer Sciences/ M.A Special Education alongwith specialization hearing impaired, mentally retarded and visually impaired. The learned counsel vehemently contended that during the proceedings one Najia Gillani and Iffat Naz filed a writ petition before this Court on 16.08.2018 challenging the aforesaid corrigendum advertisement craving therein that two more subject Statistics and Economics may be added in advertisement in order to make them eligible to applying for the post of Senior Teacher (BPS-17), consequently, writ petition was accepted vide judgment dated 24.01.2020 by setting aside the advertisement No.2/2018 and directed the respondents to re-advertise the post of Senior Teacher B-17 after amending the advertisement in light of letter dated 03.07.2018 issued by Social Welfare Department, thus, the Public Service Commission re-advertised the post in question while inserting the

qualification as prescribed by rules, however, the words only the candidate having Master Degree in Statistics and Economics can apply vide advertisement No.1/2020, thus, the respondents applied for and participated in MCQs test as a result of which both the respondents were declared as successful and they were shortlisted for interview. The learned counsel zealously contended that the petitioner filed this petition just to hamper the process of interview of Public Service Commission, hence, writ petition is not maintainable.

7. Saqib Javed, the learned counsel for the respondents (No.8, 10, 15) contended that they were holding requisite qualification to apply and have been considered for the disputed posts, the answering respondents are qualified as per previous as well as subsequent advertisement and after written test obtained merit position in shortlisting candidates, thus, the instant petitions are baseless, hence, not maintainable in the eye of law.

8. The learned counsel for other private respondents supported the stance of the respondent mentioned above and prayed for dismissal of the writ petitions.

9. I have heard the learned counsel for the parties and gone through the available record with due care.

10. A perusal of file it reflects that on the requisition of Social Welfare Department for appointment against the direct quota 06 posts of Senior Teacheress B-17 were advertised by Public Service Commission vide advertisement No.2/2018. The last date for submission of documents was fixed as 6th July 2018. The social

Welfare Department again written a letter to PSC that the academic qualification for the said post may be amended afresh and degrees of M.Sc. Economics and M.Sc. Statistics be included in the advertisement but the PSC refused to do so. After that some of the candidates moved to this Court through writ petition sought direction against the respondents for including the aforesaid required qualification in the advertisement, whereupon this Court directed the PSC to issue fresh advertisement in light of letter written by Department of Social Welfare dated 03.07.2018, thus, advertisement No.01/2020 was issued afresh in accordance with law and rules. According to relevant rules of the department, following criteria has been mentioned for the recruitment against the post of Senior Teacher

B-17:-

S.#	Name of the Department	Functional Unit	Name of post with grade	Appointing Authority	Minimum Qualification for appointment by		Method of Recruitment	Age for recruitment		Examination/Training required for confirmation
					Initial Recruitment	Promotion		Min	Max	
1	2	3	4	5	6	7	8	9	10	11
1.	Ushar and Zakat, Social Welfare & Women Development
2.	--do--	National Special Education Center	Senior Teacher B-17	Minister In-charge	i) Masters Degree in Special Education with specialization in the required field i.e. Physically Disabled, Hearing Impaired, Mentally Retarded and visually impaired. <u>OR</u> ii) Master Degree in a subject as required by the institute with M.Ed in Special Education.	Master Degree	i) 75% by initial recruitment as per Col.6. ii) 25% by promotion on the basis of seniority cum fitness from amongst Instructor BPS-14/ Vocational Teachers/Brailist, Brail Teachers BPS-11 having 10 years experience.			

11. The Public Service Commission re-advertised the post in question while inserting the qualification as prescribed by the aforesaid rules, however, the words only the candidate having Master Degree in Statistics and Economics can apply vide advertisement have been added. In pursuance of the advertisement, the eligible candidates applied against the advertised post i.e. Senior Teacher BS-17, appeared in MCQs test. Thus, qualified candidates have been shortlisted in light of their merit position.

12. Furthermore, the condition imposed by the Public Service Commission is alien to Service Rules. Therefore, any barrier in shape of the condition mentioned in the advertisement cannot be allowed to override the scheme of qualification mentioned in the relevant Rules.

13. So far as the stance of the petitioner that Public Service Commission has failed to arrange and prepare the merit subject-wise or for that matter by taking into consideration the exigencies and requirement of the department, this argument is near to hypothesis and having no legal backing, thus, hereby repelled. Exigencies and requirement of the department is by any stretch of imagination pertaining to the policy decision and this Court cannot embark upon the matter pertaining to such like policy, even otherwise rule 12(2) of the Public Service Commission Rules is not attracted and not helpful to the petitioners by any way.

14. The other argument advanced by Mr. Junaid Pandat learned counsel for the petitioner in writ petition No.3829/2021 that

the process of shortlisting is arbitrary and illegal as respondents are not eligible to be considered and while shortlisting the private non-petitioners it was incumbent upon relevant quarter to shortlist as per requisite qualification. Be that as it may as the petitioners were eligible to be applied and to be considered for the post of Senior Teacher B-17 according to scheme of departmental Rules and PSC accordingly entertained their applications and allowed them to participate in written test, thus, if any barrier even otherwise is assumed by any way even then it will be deemed that same has been waived and relaxed by the PSC in a way to allow the private non-petitioners to participate in written test. It is celebrated principle of law that beneficiary of any impugned order, act and instrument cannot be penalized if any incarceration, loophole or inadvertence of the authority; furthermore, no one can be penalized for the wrongs committed by others, answering respondents cannot be penalized for the mistake committed by the authority. Therefore, keeping in view of this aspect of the matter, argument advanced by the counsel for the petitioner in writ petition No.3829/2021 is baseless and is not tenable in the eye of law.

15. Be that as it may the non-petitioners No.12 and 13 are equipped with requisite qualification contained in the departmental Rules and qualified the 1st step of selection and accordingly shortlisted for viva voce. Modification framing and amending the rules is a legislation process coming within the domain of rules making authority, rules cannot be amended in guise of a letter or whims if any candidate is not fulfilling the requisite criteria/qualification.

16. In fact the petitioners in both writ petitions are not satisfied with shortlisting process resultant of which they have not come up to the set criteria.

17. Stance of the petitioners that merit should be prepared subject-wise and not in general as per Rule 12(2) of AJ&K Public Service Commission Procedure Rules, 1994. Requirement of the department/institution pertaining to subject wise teaching staff is a matter between the institution and the relevant quarters. It is a policy matter to be taken up and dealt by the Govt. So far as the responsibilities of the Public Service Commission are concerned, with reference to the instant controversy simply the requisition in consonance with the relevant rules is yardstick for advertisement of the posts and only such qualification is to be considered which is provided in the departmental Rules. No qualification can be added/enhanced or altered without amending the rules.

18. It is trite that Act cannot militate against the Constitution or rules cannot be framed in violation of Parent Act, vis a vis policy notification or circular cannot be made contrary to the rules and statutory scheme.

Squeezed Analysis

19. The petitioners at present are performing their duties against the posts of Senior Science Teacher BPS-17 on ahoc basis.

20. In the scheme of Rules i.e. Azad Jammu and Kashmir Special Education Center Muzaffarabad Employees Rules, 2017,

listed with the writ petition No.4039/2021 as Annexure “PG”
postulates minimum requisite qualification as infra:-

(1) Masters degree in Special Education with
Specialization in the required field i.e. Physical
disabled, Hearing impaired, mentally retarded and
visually impaired

OR

Masters in a subject as required by the institution with
M.Ed. in special education.

21. Through corrigendum dated 05.06.2018 the qualification
already mentioned in the requisition and advertisement which was
completely in accordance with rules was altered/modified which is
reflecting from the corrigendum speaks as under:-

”متذکرہ اسامی کی تعلیمی قابلیت لفظ یا کے بعد ماسٹر ڈگری کم از کم درجہ دوم مع ایم ایڈیشنل ایجوکیشن (ایم ایس سی میتھ) کمپسٹری، ہائیو/فریکل
ایجوکیشن/کمپیوٹر سائنس/ایم اے فائن آرٹس، انگلش/اسلامیات/اُردو/ایم اے سیشنل ایجوکیشن مع سپیشلائزیشن قوت سماعت و گویائی لکھی اور پڑھی
جائے۔“

22. Minimum qualification modified through corrigendum is
not matching with the relevant rules as already observed above that
qualification mentioned in the rules could not be altered without
altering and amending the relevant rules by competent authority.
Thus, qualification introduced through corrigendum is violation of
rules which simply cannot be read as such and liable to be ignored.
Seemingly such like attempt is arbitrary and meant for extending
undue benefit to someone (obviously the adhoc employees).

23. Before parting with the decision, I would like to hold it is
bounded duty of the Public Service Commission that at the time of
advertisement or re-advertising a post to go through the relevant rules

for the post and the department concerned is also bound to append attested copy of rules with the requisition at the time of sending the requisition.

24. The petitioner has not made out a case for indulgence in an extra-ordinary jurisdiction, thus, relief prayed for is declined

25. The crux of the above discussion is that finding no force in these writ petitions, therefore, the petitions stands dismissed. However, PSC is directed to convene its meeting for the purpose of via voce within 01 month and compliance report be submitted before the Registrar of this Court. Files shall be kept in archive.

Order was announced in the open Court on 27.02.2024, after hearing arguments of the learned counsel for the parties.

Muzaffarabad,
04.03.2024._(RAK)

JUDGE

Approved for reporting