**High COURT OF AZAD JAMMU AND KASHMIR**

Writ Petition No. 2263/2021.

Date of Institution 18.06.2021.

Date of decision 25.06.2024.

Abid Naseer S/o Muhammad Naseer R/o Hajibal Tehsil Khursheedabad District Haveli Kahuta, Azad Jammu and Kashmir.

.…Petitioner

Versus

1. Department of Live Stock & Dairy Development through its Secretary Agriculture, Live Stock, Irrigation & ESMA, having his office at New Secretariat Muzaffarabad.
2. Director General, Department of Live Stock and Dairy Development Department, having his office at Domail Muzaffarabad, Azad Jammu and Kashmir.
3. Director Livestock Extension, Research and Development Department, having his office at Domail Muzaffarabad, Azad Jammu and Kashmir.
4. Selection Committee for the appointment/selection of the post of Live Stock Assistant B-09 Research Extension, and Development through its Chairman Director Livestock Extension, Research and Development Department having his office at Domail Muzaffarabad, Azad Jammu and Kashmir.
5. District live Stock and Poultry Development Officer Bagh, Azad Jammu and Kashmir.
6. Azaz-ul-Hassan Live Stock Assistant Extension Center Chamyati Tehsil Dhirkot District Bagh, Azad Jammu and Kashmir.
7. Safdar Kiani S/o Abdul Qayyum Khan Kiani Live Stock Assistant Extension Center Bani Pasari District Bagh, Azad Jammu and Kashmir.
8. Farhan Wazeer R/o Patan Shair Khan Stock Assistant Health Veterinary Dispensary Plangi District Haveli/Kahutta Azad Jammu and Kashmir.
9. District Accounts Officer District Bagh, Azad Jammu and Kashmir.
10. District Accounts Officer District Haveli Kahutta, Azad Jammu and Kashmir.

…Respondents

writ petition

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

In presence of:

Kh. Mehmood Ahmed, Advocate for the petitioner.

Legal Advisor and Representative of Department of Live Stock and others.

Ch. Shabir Ahmed, Advocate for respondent No.6.

**DICTA:-**

1. Under umbrella of the Constitution, State functionaries from highest cog to lowest ebb are mandated to act fairly and reasonably. Non observance of canon of due process of law gives birth to lawlessness. Law is not meant for to take it virtually but it required to be implemented, enforced and adhered to literally.

2. Gross violation of Constitutionally Fundamental Right No.1, 15 and 19 observed. Such like act shocks the judicial conscience. When fundamental rights guaranteed by the Constitution are under threat or violated, Court can leave aside procedural shackles and technicalities. Appropriate writ issued.

**Factual Canvas**

3. Through filing the writ petition No.2263/2021, the petitioner projected his grievance by alleging that as being 1st Class State Subject and permanent dweller of Hajibal Tehsil Khursheed-abad he applied against one of the post of Live Stock Assistant BPS-9 vacant in Live Stock Department in response to an advertisement (listed with the writ petition as Annexure “PC” and “PC/1”). As per stance of the petitioner, only 04 posts were advertised while at the eve of advertisement various posts were available for advertisement. Ultimately, he participated in the selection process and secured top position in merit from District Haveli.

4. As the department withheld 10 posts as well as appointed respondent No.6 (who neither applied nor participated in selection process) that is why the petitioner was deliberately deprived from appointment. Similarly the appointment of respondent No.7 is lacking backing of recommendation of selection committee.

5. The petition was admitted for regular hearing. Right of defence of the respondent No.7 and 8 was closed while official respondents No.1 to 5 and respondent No.6 filed written statement.

6. Written arguments offered.

7. Kh. Mehmood Ahmed, learned counsel for the petitioner staunchly contended that appointments of respondents No.6 to 8 are illegal; petitioner despite qualifying for appointment was arbitrarily deprived from appointment and discriminated. He also alleged that the official quarter also admitted the stance of the petitioner and prayed for redressal of his grievance.

8. While in juxtaposition the official respondents in their written arguments admitted the stance of the petitioner. It is useful to reproduce the relevant paragraphs:-



9. Admittedly, the non-petitioner No.6 neither participated in the selection process, nor his appointment is recognized by the law, likewise, appointment of respondent No.7 is lacking recommendations of respective selection committee. Thus, such appointments are declared temporary. Permanent appointment against such like posts shall be made after following the requisite procedure.

10. Squeezing the factual scenario in a way to clinch the issue, I am inclined to issue a direction qua redressal of the grievance projected by the petitioner.

11. Trite judicial approach is that successful candidate acquires an indefeasible right to be appointed which cannot be legitimately denied.

12. No geometric progression is required when a case has been made out by an aggrieved person for indulgence, particularly where official answering respondents themselves admitted the stance of the petitioner and record speaks in support of the version taken by the petitioners. Writ is like a beam of hope and source of enlightenment in the dark atmosphere of administrative injustice.

(Underlining is mine)

13. For the above multiple reasons, the petition at hand is accepted and the official answering respondents are directed to redress the grievance of the petitioner by appointing him against any vacant available post of Stock Assistant BPS-9, thus, appointments of the respondents No.6 to 7 are declared temporary/ made in stopgap arrangement, and needful shall be done also for filling in the post held by the private respondents i.e. 6 to 8 for permanent appointment by initiating due course of law qua selection on merit. File shall be kept in archive.

Muzaffarabad.

25.06.2024. (RAK) **JUDGE**

**Approved for reporting**

**JUDGE**