

HIGH COURT OF AZAD JAMMU AND KASHMIR

*Writ Petition No. 1028/2022.
Date of Institution 10.03.2022.
Date of Decision 17.03.2022.*

Abrar Ahmed Junior Drawing Teacher BPS-9
Government Boys High School Sena Daman
Tehsil Hattian Bala District Jhelum Valley.

Petitioner

VERSUS

1. Secretary Elementary & Secondary Education Azad Jammu & Kashmir Muzaffarabad;
2. Director Public Instructions Azad Jammu & Kashmir Muzaffarabad;
3. Director Technical Elementary & Secondary Muzaffarabad;
4. Divisional Director Elementary & Secondary, Azad Jammu & Kashmir Muzaffarabad;
5. District Education Officer Elementary & Secondary District Muzaffarabad;
6. Headmaster Government Boys High School Sena Daman Tehsil Hattian Bala District Jhelum Valley;
7. Headmaster Government Boys High School Hattian Bala District Jhelum Valley Azad Jammu & Kashmir;
8. District Accounts Officer District Jhelum Valley.

Respondents

WRIT PETITION UNDER ARTICLE 44 OF
AJ&K INTERIM CONSTITUTION 1974

Before:- Justice Sardar Muhammad Ejaz Khan. J.

PRESENT:

Mr. Mehtab Ahmed Khan, Advocate for the petitioner.

Nemo for the respondents.

JUDGMENT:

Through this writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the petitioner implored the following relief:-

- (i) *To issue a direction to the official respondents to act in judicious manner;*
- (ii) *To issue a direction to official respondents to promote the petitioner against the post which has been vacated due to retirement of one Liaqat Hussain Senior Drawing Teacher on 10.03.2022 after attaining the age of superannuation;*
- (iii) *Directing the respondents to place the name of petitioner at top of final seniority list being eligible and having required qualification as Bachelor of Fine Art;*

(iv) *Restraining the respondents to fill in the impugned post of Senior Drawing Teacher which is lying vacant due to retirement of Liaqat Hussain Senior Drawing Teacher on 10.03.2022.”*

2. The petitioner sought direction to the respondents to promote him against the post of Senior Drawing Teacher, which became vacant due to retirement of one Liaqat Hussain on 10.03.2022 and place his name at top of final seniority list while restraining the respondents to fill in the post in question.

3. Preliminary arguments heard. Record perused.

4. From bare reading of record, it transpires that the petitioner was appointed as Junior Drawing Teacher BPS-09 in Govt. Boys High School Sena Daman vide order dated 17.10.2018 which was acted upon through joining report dated 20.10.2018. According to seniority list appended along-with the writ petition (*annexure “PE”*), the petitioner is falling at serial No. 9 of the said list

prepared for Junior Teachers (Drawing) District Jhelum Valley whereas Junior Teachers from serial No. 1 to 8 ahead to the petitioner have not been arrayed as party in the memo of writ petition, hence, without version of said employees, the petitioner cannot be ordered to be placed at top of the merit list. For the sake of arguments, it is supposed that the petitioner is sole employee having requisite qualification but the fact remains that no any sufficient proof has been brought on record that employees from serial No.1 to 8 have not possessed the requisite qualification and they have wrongly been placed ahead to him or he filed objections against that seniority list. Date of issuance of seniority list is nowhere mentioned, which is unattested photostat copy, hence, the same under the relevant of provisions of law cannot be read in evidence. It further reflects from the record that retirement order of one Liquat Hussain Senior Drawing Teacher dated 10.03.2022 has not been brought on record to which it can be ascertained

that the said incumbent is going to be retired, hence, the writ petition has been filed on surmises and false hopes of the petitioner. Even otherwise, it is incumbent upon the concerned Department to determine the seniority of the employees time to time as provided by law as such it is an administrative matter falling within the exclusive domain and policy decision of the Government or the competent authority, which cannot be determined through writ jurisdiction.

5. It is relevant to mention here that according to Departmental Statutory Rules appended along-with writ petition (*annexure "PC"*), the mode for promotion against the post of Senior Drawing Teacher has been defined as under:-

- "i) 50% by initial recruitment as per col.6;*
- ii) 50% by promotion on the basis of seniority-cum-fitness from the amongst Junior Drawing Teachers BPS-09 with eight years' service as such and having qualification as per col.7."*

6. Whereas, the petitioner, according to the record annexed along-with the writ petition, was appointed as Junior Drawing Teacher in year 2018 who according to Departmental Statutory Rules has not possessed the requisite length of service to be considered for promotion. As the petitioner claimed that he is only employee who has possessed the required decree i.e Bachelor of Fine Art for consideration against the post in question but nothing has been brought on record whether post in question is likely to be filled in by observing 50% quota of initial recruitment or 50% of promotion quota, hence, it is prime duty of the petitioner to substantiate his claim by producing reliable documents to which it can be assumed that the stand taken by the petitioner in his pleadings is genuine because while exercising powers conferred under Article 44 of the Azad Jammu & Kashmir Interim Constitution 1974, the matter can only be decided on the strength of available record as such question of facts cannot be determined by this Court

while exercising that powers. Thus, the rule of law laid down by the apex Court in a case titled *Sarfraz Ahmed Khan vs. Azad Government and others* [2012 PLC (C.S.) 755] is fully applicable in the instant case. For proper appreciation of the matter, here I would like to reproduce the relevant portion of *Sarfraz Ahmed's* case, *supra*, which reads as under:-

“The petitioners have specifically alleged that the posts have been withheld by the department. They failed to bring on the record any proof to substantiate their claim. If the party discharges the burden, then it shifts on the other party. The petitioners failed to substantiate their claim from the record that the posts have been withheld by the department and from the perusal of the record produced by the Education Department, we are satisfied that at the time of relevant advertisements no posts were withheld by the department.”

7. Thus, in this backdrop of the case, the petitioner is neither an aggrieved party within the meaning of Article 44 of the Azad Jammu & Kashmir Interim Constitution 1974 nor has *locus-standi* to invoke the extra-ordinary jurisdiction of this Court by-way of writ petition. Law is well settled that writ

lies where any violation of rules or departure of law has been made and in this regard, there is nothing apparent on the face of file.

8. The logical inference of the foregoing reasons the instant writ petition, having no statutory backing, is hereby dismissed in *limine* and the same shall be consigned to record.

Muzaffarabad:
17.03.2022 (ZEB)

-Sd-
JUDGE

Approved for reporting

-Sd-
JUDGE