

# HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.608/2019.  
Date of institution 10.04.2019.  
Date of decision 16.02.2023.

1. Adnan Siddique s/o Siddique-ur-Rehman r/o Village Therian Union Council Therian Tehsil & District Muzaffarabad;
2. Raja Faisal Naseer Khan s/o Raja Mohammad Naseer Khan r/o Village Therian Union Council Therian Tehsil & District Muzaffarabad.

Petitioners

VERSUS

1. Director Public Instructions (DPI) Colleges Azad Govt. of the State of Jammu & Kashmir, having his office at new District Complex Muzaffarabad;
2. Divisional Director (Colleges) Muzaffarabad Division Muzaffarabad, having his office at new District Complex Muzaffarabad.

Respondents

## WRIT PETITION (1)

Writ petition No.596/2019.  
Date of institution 08.04.2019.

1. Faiz Karamat s/o Karamat Hussain Khan r/o Village Therian Union Council Therian Tehsil & District Muzaffarabad;
2. Shahab Karamat s/o Karamat Hussain Khan r/o Village Therian Union Council Therian Tehsil & District Muzaffarabad;
3. Aqib Javeed s/o Aurangzaib Khan r/o Village Therian Union Council Therian Tehsil & District Muzaffarabad;
4. Mohammad Mansoor Khan s/o Mohammad Manzoor Khan r/o Village Akhraila Parthama, Union Council Therian Tehsil & District Muzaffarabad;

5. Wahid Manzoor s/o Mohammad Manzoor Khan  
r/o Village Akhraila Parthama, Union Council  
Therian Tehsil & District Muzaffarabad.

Petitioners

VERSUS

1. Director Public Instructions (DPI) Colleges Azad Govt. of the State of Jammu & Kashmir, having his office at new District Complex Muzaffarabad;
2. Divisional Director (Colleges) Muzaffarabad Division Muzaffarabad, having his office at new District Complex Muzaffarabad.

Respondents

### WRIT PETITION (2)

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

#### PRESENT:

Raja Gul Majeed Khan, Advocate for the Petitioners in writ petition No.608/19.

Raja Hamid Javed, Advocate for the Petitioner in writ petition No.596/19.

Raja Nasir Latif Khan, Advocate for the Interveners.

#### JUDGMENT:

The supra titled writ petitions have been addressed under Article 44 of Azad Jammu & Kashmir Interim Constitution 1974, whereby, the petitioners sought for cancellation of impugned advertisement issued in "Daily Mohasib" dated 27.03.2019.

2. The case of the petitioners is that the posts of Sweeper, Chowkidar, Mali, Naib Qasid, Lab Boy, Scale B-1 in Government Inter College Therian Tehsil & District Muzaffarabad fell vacant and respondent No.1 issued an

advertisement in daily newspaper "Mohasib" on 27<sup>th</sup> March 2019 and invited applications from the desirous candidates. As per contents of petitions, the supra advertisement is liable to be cancelled because as per departmental rules, the appointing authority of Lab Attendant, Naib Qasid, Sweeper, Chowkidar and Gardner B-1 is head of Institution or an officer of B-17, whereas, the aforesaid advertisement was issued by respondent No.1 who is an officer of BPS-20, and has no authority to issue the same, therefore, the impugned advertisement to the extent of serial No.3 to 7 is liable to be set at naught.

3. Both the writ petitions were admitted for regular hearing on 12.04.2019 and respondents were directed to file written statement, who filed the same, whereby, the contents of writ petitions were refuted in toto and it has been averred that the posts have been advertised as per law and the appointments shall be made by the competent authority.

4. The learned counsel for the parties argued the case as per their respective pleadings.

5. The proposition involved in the instant cases is that the DPI is not competent and has no authority to advertise the posts of BPS-1 and the supra advertisement

has been issued by the respondents against the law and departmental rules just to accommodate their favorite persons. I have gone through the departmental rules and as per said rules, the appointing authority for the posts of Mali/ Cooli/ Chowkidar/Water Carrier/Ground Man/ Sweeper/ Lab Attendant/Waiter BPS-1 is officer of BPS-17. For proper appreciation the segment of the rules is as under:-

Name of the department	Functionary Unit	Name of the Post with Grade	Appointing Authority	Initial recruitment . or transfer
Directorate of College	Ministerial	Mali/Cooli/Chowkidar/Water Carrier/Ground Man/Sweeper/Lab Attendant/Waiter B-1	Officer of B-17	By initial recruitment

As per supra rules, the posts of BPS-1 shall be filled in by the officer of BPS-17 through initial recruitment on the basis of suitability and fitness. In the instant cases the posts of BPS-1 were advertised by the Director Public Instructions BPS-20, which in my considered view is not the relevant authority, so, the impugned advertisement dated 27.03.2019 has been made in violation of departmental rules, which is liable to be set-at-naught.

**A Communi Observantia non est recedendum**

When a thing is required to be done in a particular manner, it must be done in that very fashion and not otherwise.



Ready reference in this regard horizontal and vertical is tabulated as infra:-

**2020 CLC 1945 "Asad Jamal Vs. Assistant Commissioner.**

It has been held in the above judgment that "It is also well settled law that things required to be done in a particular manner the same are to be done in that manner and if anything is done contrary to that the same shall be deemed to have not been done at all".

The Hon'ble Supreme Court of Azad Jammu & Kashmir while dilating upon the matter in the case titled "AJ&K Govt. Vs. Mohi-ud-Din Islamic University reported as **2014 SCR 382** laid down that:-

"The law is settled on the point that things provided to be done in a prescribed manner must be done in that way and no deviation can be made from it".

While same view has been taken in 2004 SCR 378 in a case titled "Habib-Ullah Vs. DIG Police. The Apex Court of Pakistan in a case titled "Govt. of Punjab Vs. Messers United Sugar Mill reported as 2008 SCMR 1148" has taken the above quoted view. Hon'ble Peshawar High Court in the case titled "Afzal Khan Vs. Govt. of KPK" reiterated the supra view, while in the case titled "Syed Bashir Hussain Vs. Abdul Waheed 2013 MLD 1675 and in case titled "SNGPL

Vs. OGRA PLD 2013 Lah 289, Cantonment Board Vs. Sultan Ahmed 2016 CLC 1751, the Human rights cases Nos. 4668 of 2006, PLD 2010 SC 759 and Shahida Bibi Vs. HBL, PLD 2016 SC 995, almost similar verdict has been given.

The nutshell and conclusion is that if foundation is contra jus, thus, entire edifice built upon the same even with mathematical accuracy cannot acquire recognition in the eye of law and would fall on the ground.

#### SQUEEZED ANALYSIS:-

As adumbrated, relevant authority has not advertised the posts, thus initial brick in the process of selection is unlawful. It is celebrated principle of law that a thing which is required to be performed in a specific manner cannot be done otherwise. Infringement of law is oozing from record, which calls for issuance of high prerogative writ of certiorari.

*Quae mala sunt inchoate in principio vix bono preraquantur exitu.*

Above maxim of law denotes that things bad in commencement seldom end well. Stricto sensu adherence of relevant rules and procedural fairness is a foremost Confidence Building Measure (CBM) which can restore the confidence of public at large on the Institutions.

Therefore, in view of above, both the writ petitions are accepted and the impugned advertisement

dated 27.03.2019 to the extent of serial No.3 to 7 is hereby set-aside and the respondents are directed to re-advertise the posts as per departmental rules and fill up the same in accordance with law (advertise and fill in by the officer of BPS-17 as mentioned in the rules). The applications already submitted by the candidates/applicants for the supra posts shall be considered and to their extent there is no need to file the fresh one.

Writ Petitions Accepted.  
(Announced)

Muzaffarabad.

16.02.2023 (Saleem)

JUDGE