

HIGH COURT OF AZAD JAMMU & KASHMIR

*Writ Petition No.114/2016;  
Date of Institution 08.01.2016;  
Date of Decision 16.08.2025.*

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1. Amjad Ali Khan Advocate Supreme Court Vice Chairman Azad Jammu & Kashmir Bar Council;
2. Syed Hazoor Imam Kazmi President Supreme Court Bar Association Azad Jammu & Kashmir;
3. Sardar Karam Dad Khan Advocate Supreme Court;
4. Raja Zulqarnain Abid Khan Advocate High Court Member Central Bar Association, Muzaffarabad.

*Petitioners*

*VERSUS*

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
2. Azad Jammu & Kashmir Legislative Assembly through its Speaker having its office at New Secretariat Muzaffarabad;
3. Secretary Azad Jammu & Kashmir Assembly having its office at New Secretariat Muzaffarabad;
4. Department of Services & General Administration through its Secretary at New Secretariat Muzaffarabad;

5. Department of Law, Justice and Parliamentary Affairs of the State of Azad Jammu & Kashmir through its Secretary having its office at New Secretariat Muzaffarabad;
6. Department of Finance of the State of Azad Jammu & Kashmir through its Secretary having its office at New Secretariat Muzaffarabad;
7. Azad Jammu & Kashmir Public Service Commission through its Chairman Public Service Commission having its office at Old Secretariat Muzaffarabad;
8. Secretary Azad Jammu & Kashmir Public Service Commission having its office at Old Secretariat Muzaffarabad;
9. Azad Jammu & Kashmir Council through its Secretary having its office at F/6-2 near Kashmir House, Islamabad;
10. Chairman Azad Jammu & Kashmir Council through Secretary Kashmir Council office at F-6/2 near Kashmir House Islamabad;
11. Secretary Azad Jammu & Kashmir Council office F-6/2 near Kashmir House Islamabad;
12. Department of Health through Secretary Health office situated at New Secretariat Muzaffarabad;
13. Department of Animal Husbandry through Secretary Animal Husbandry office situated at New Secretariat Muzaffarabad;
14. Department of Public Works (Design) through Secretary PWD having its office at New Secretariat Muzaffarabad
15. Department of Civil Defence through Inspector General Police/Secretary

- Civil Defence Office situated at New Secretariat Muzaffarabad;
16. Department of Tourism through Secretary Tourism office situated at New Secretariat Muzaffarabad;
  17. Department of Development through Additional Chief Secretary Development office situated at New Secretariat Muzaffarabad;
  18. Forest Department through Secretary Forest Department office situated at New Secretariat Muzaffarabad;
  19. Riaz Ahmed MLA L-Advisor-XXXIV Jammu-I, C/o Secretary Azad Jammu & Kashmir Legislative Assembly having its office at New Secretariat Muzaffarabad;
  20. Maqbool Ahmed MLA LA-xxxV, Jammu-II, C/o Secretary Azad Jammu & Kashmir Legislative Assembly having its office at New Secretariat Muzaffarabad;
  21. Hafiz Raza MLA LA-XXXVI Jammu-II C/o Secretary Azad Jammu & Kashmir Legislative Assembly having its office at New Secretariat Muzaffarabad;
  22. Muhammad Akmal Sargala MLA LA-XXXVII Jammu-IV C/o Secretary Azad Jammu & Kashmir Legislative Assembly having its office at New Secretariat Muzaffarabad;
  23. Muhammad Akbar Chaudhary MLA, LA-XXXVIII Jammu-V, C/o Secretary Azad Jammu & Kashmir Legislative Assembly having its office at New Secretariat Muzaffarabad;
  24. Raja Muhammad Siddique MLA, LA-XXXIX Jammu-VI C/o Secretary Azad Jammu & Kashmir Legislative

- Assembly having its office at New Secretariat Muzaffarabad;
25. Amir Abdul Ghaffar Lone, MLA, LA-XL, Valley-I, C/o Secretary Azad Jammu & Kashmir Legislative Assembly at New Secretariat Muzaffarabad;
  26. Ghulam Mohi-ud-Din Dewan MLA, LA-XLI, Valley-II, C/o Secretary Azad Jammu & Kashmir Legislative Assembly, at New Secretariat Muzaffarabad;
  27. Muhammad Asim Sharif MLA L.A-XLII Kashmir Valley C/o Secretary Azad Jammu & Kashmir Legislative Assembly having its office at New Secretariat Muzaffarabad;
  28. Javaid Butt MLA L.A-XLIII Kashmir Valley-IV, C/o Secretary Legislative Assembly having its office at New Secretariat Muzaffarabad Azad Jammu & Kashmir;
  29. Muhammad Raza Qadri MLA L.A-XLIV Kashmir Valley-V, C/o Secretary Legislative Assembly having its office at New Secretariat Muzaffarabad Azad Jammu & Kashmir;
  30. Abdul Majid Khan MLA-XLV, Kashmir Valley-IV, C/o Secretary Legislative Assembly having its office at New Secretariat Muzaffarabad Azad Jammu & Kashmir;
  31. Basharat Khan S/o Raja Izhar Khan;;
  32. Abdul Rasheed Sheikh S/o Siraj Din Sheikh;
  33. Muhammad Ameen S/o Salam Din;
  34. Akthar Khan S/o Hameed Khan;
  35. Khawaja Khrunsid S/o Khawaja Chargh Din Refugees of 1989-90;

36. Syed Imtiaz Ahmed S/o Syed Ghulam Haider R/o Narrual Ward No.6 Muzaffarabad Azad Jammu & Kashmir;
37. Muhammad Iqbal S/o Ghulam Yaseen R/o Domail Syedan;
38. Manzoor Iqbal S/o Fojdar Butt R/o Manakpiyan;
39. Iqbal Mir S/o Abdul Rehman Mir R/o Ambore Tehsil & District Muzaffarabad Azad Jammu & Kashmir;
40. Ghulam Hassan Butt S/o Abdullah Butt R/o Ambore;
41. Muhammad Altaf S/o Muhammad Aziz R/o Mohajar Camp Chatter No.II Tehsil & District Bagh Azad Kashmir;
42. Raja Israr Khan S/o Shahmir r/o Maankpian Tehsil & District Muzaffarabad;
43. Muhammad Shabbir S/o Shair Khan R/o Manakpian;
44. Shahid Iqbal Awan S/o Muhammad Iqbal Awan R/o Domail Syedan;
45. Riaz Ahmed Awan S/o Muhammad Shafique;
46. Amir Zaman S/o Muhammad Zaman R/o Mankpian;
47. Saira Bibi S/o Umer Din R/o Mankpian;
48. Fiaz Din S/o Umer Din R/o Manakpian;
49. Riaz Ahmed Awan S/o Muhammad Shafi R/o Chella Bandi;
50. Ilyas Qureshi S/o Muhammad Bashir Qureshi R/o Ambore;
51. Anzar Ahmed Butt S/o Muhammad Ashraf Butt R/o Chella Bandi Tehsil & District Muzaffarabad Azad Kashmir.

*Respondents*

- (2) *Writ Petition No.1878/2022;*  
*Date of Institution 12.05.2022;*  
*Date of Decision 14.08.2025.*

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Aroosa Ajaz D/o Ajaz Ahmed Refugees  
Camp Basnarra Tehsil & District  
Muzaffarabad Azad Kashmir.

*Petitioner*

*VERSUS*

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
2. Secretary High Education Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
3. Director Public Instructions Colleges Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
4. Divisional Director Colleges Muzaffarabad Division Muzaffarabad Azad Jammu & Kashmir;
5. Divisional Director Colleges Mirpur Division Mirpur Azad Kashmir.

*Respondents*

- (3) *Writ Petition No.1900/2024;*  
*Date of Institution 25.07.2024;*

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1. Kisa Batool D/o Akhlaq Hussain Shah  
R/o Poonch Azad Kashmir;

2. Nazia Bibi W/o Azkar ahmed Kiani R/o Nagani Kaiser Kot Tehsil Chikar District Jhelum Valley Azad Kashmir;
3. Kashan Shabir s/o Shabir Hussain R/o Abbaspur Chathara District Poonch Azad Kashmir;
4. Muhammad Naveed S/o Muhammad Fareed;
5. Sakeena Shair Alam S/o Muhammad Jahangir Khan R/o Kalar Beerpani District Bagh;
6. Aurangzaib Shair Alam S/o Shair Alam R/o Birpani;
7. Naila Khatoon W/o Raja Sohail Afazal R/o Baghsar Tehsil Dhit Kot District Bagh;
8. Azhar Abbas S/o Muhammad Abbas Khan R/o Noshera District Jhelum Valley Azad Kashmir;
9. Mawaia Tazeem Abbasi S/o Muhammad Tazeem Abbasi R/o Chamnkotli District Bagh, Azad Kashmir.

*Petitioners*

**VERSUS**

1. Azad Government of the State of Jammu and Kashmir through Secretary Law, Justice and Parliamentary Affairs and Human Rights having its office at New Secretariat Muzaffarabad Azad Jammu & Kashmir;
2. Department of Higher Education through its Secretary High Education having its office at New Secretariat Muzaffarabad;

3. Secretary High Education having its office at New Secretariat Muzaffarabad;
4. Public Service Commission through its Chairman Public Service Commission having its office at Narrual Muzaffarabad;
5. Secretary Azad Jammu & Kashmir Public Service Commission having its office at New Secretariat Muzaffarabad;
6. Quota Calculation Committee through its Senior Member Khawaja Farooq Ahmed Khan Member Legislative Assembly;
7. Department of Services and General Administration Azad Jammu & Kashmir through its Secretary having its office at New Secretariat Muzaffarabad

*Respondents*

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(4) *Writ Petition No.2551/2024;*  
*Date of Institution 03.10.2024;*

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1. Raja Shafiqullah Khan Advocate Ex-Member Azad Jammu & Kashmir Bar Council District Bar Association Bhimber postal address Bar Council office at Headquarter Muzaffarabad;
2. Chaudhary Zaffar Iqbal Advocate President District Bar Association Bhimber;
3. Mohammad Akram Councillor Municipal Committee Bhimber/President Traders Associations Bhimber;



4. Mohammad Sajjad Juournalist  
Member Press Club Bhimber;
5. Mohammad Rafique member Local  
Council Dhandar;
6. Chaudhary Mohammad Alyas Social  
Activist Overseas Pakistanis Forum  
Oman R/o Bhimber;
7. Mohammad Ali Akhtar S/o Moh  
Ashraf R/o Ward No.3 Mohallah  
Qasimabad Bhimber;
8. Muhammad Haroon Alyas r/o  
Dakhari P/o Bandala Tehsil Samahni  
District Bhimber;
9. Zainab Saeed D/o Muhammad Saeed  
Ward No.1 Mohallah Qasimabad Near  
Eidgah Bhimber;
10. Ummaya Khan Advocate C.B.A.  
Muzaffarabad;
11. Zeehshan Khan Advocate C.B.A.  
Muzaffarabad.

*Petitioners*

*VERSUS*

1. Azad Government of the State of  
Jammu and Kashmir through  
Secretary Services and General  
Administration Azad Jammu &  
Kashmir having its office at New  
Secretariat Muzaffarabad;
2. Services and General Administration  
Department Azad Jammu & Kashmir  
through its Secretary having its office  
at New Secretariat Muzaffarabad;
3. Azad Jammu & Kashmir Public  
Service Commission through its  
Secretary having its office at Narrul  
Muzaffarabad;

4. Governing Body Azad Jammu & Kashmir Medical Colleges through its Chairman/Prime Minister of Azad Jammu & Kashmir through Principal Secretary to Prime Minister having its office at Muzaffarabad;
5. Nomination Board of Azad Jammu & Kashmir for admission in proposed Education Institutions through its Secretary at Muzaffarabad;
6. Joint Admission Committee for admission in Medical College through its Secretary/Principal Azad Jammu & Kashmir Medical College, Muzaffarabad.

*Respondents*

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(5)      *Writ Petition No.2881/2024;*  
            *Date of Institution 14.11.2024;*

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1. Arshad Mehmood S/o Muhammad Akbar R/o Dhana Tehsil Kotli District Kotli Azad Kashmir;
2. Qazi Muhammad Fahad S/o Qazi Muhammad Ibraheem R/o Sharian Tehsil Hattian Bala District Jhelum Valley Azad Kashmir.

*Petitioners*

*VERSUS*

1. Azad Government of the State of Jammu and Kashmir through its Chief Secretary Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;

2. Secretary Religious Affairs, Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
3. Public Service Commission through its Chairman having its office at Narrual Muzaffarabad;
4. Secretary Azad Jammu & Kashmir Public Service Commission having its office at New Secretariat Muzaffarabad;
5. Quota Calculation Committee through its Senior Member Khawaja Farooq Ahmed Khan Member Legislative Assembly;
6. Department of Services and General Administration Azad Jammu & Kashmir through its Secretary having its office at New Secretariat Muzaffarabad.

*Respondents*

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(6)            *Writ Petition No.206/2025;*  
                  *Date of Institution 22.01.2025;*

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Raja Arbab Zaheer Khan S/o Raja Muhammad Zaheer Khan R/o Kathair Tehsil & District Muzaffarabad Azad Kashmir.

*Petitioner*

*VERSUS*

1. Azad Government of the State of Jammu and Kashmir through its Chief Secretary Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;

2. Department of Law, Justice and Parliamentary Affairs Azad Jammu & Kashmir through its Secretary having its office at New Secretariat Muzaffarabad;
3. Secretary law, Justice, Parliamentary Affairs and Human Rights Azad Jammu & Kashmir having its office at New Secretariat Muzaffarabad;
4. Public Service Commission through its Chairman having its office at Narrual Muzaffarabad;
5. Secretary Azad Jammu & Kashmir Public Service Commission having its office at New Secretariat Muzaffarabad;
6. Quota Calculation Committee through its Senior Member Khawaja Farooq Ahmed Khan Member Legislative Assembly;
7. Department of Services and General Administration Azad Jammu & Kashmir through its Secretary having its office at New Secretariat Muzaffarabad.

*Respondents*

**WRIT PETITIONS UNDER ARTICLE 44 OF  
THE AJ&K INTERIM CONSTITUTION, 1974**

Before:- **Justice Sardar Muhammad Ejaz Khan, J.**

**PRESENT:**

Sardar Karam Dad Khan, Advocate for the petitioners in petition No.114/16.

Raja Amjad Ali Khan, Advocate for the petitioners in petition No.2551/24.

Raja Zaigham Iftikhar, Advocates for the petitioners in petitions No.1900/24 &

No.288/24 and for respondents No.36 to 51 in petition No.114/16.

M/s Waheed Bashir Awan and Raja Nasir Latif Khan, petitioners in petitions No.1878/22 & 206/25.

Advocate General for the official respondents/Govt. in all petitions.

Mr. Asghar Ali Malik, Advocate for respondents No.1 to 4, 6, 15 & 16.

M/s Syed Atif Mushtaq Gillan/Saqib Zaman Chaughtai Legal Advisors Higher Education in petitions No.114/16 & 1878/22.

Abdul Naeem Chaudhary, Advocate for respondent No.22 in petition No.114/16.

Malik Muhammad Naseer, Advocate for respondent No.28 in petition No.114/16.

M/s Umad Mushtaq Janjua and Ch. Muhammad Altaf, Advocates for respondent No.23 & 30.

Mrs. Uzma Sherian, Advocate for respondents No.31 to 35 in petition No.114/16 and respondent No.2 in petition No.2881/24.

Mrs. Alia Abdul-ur-Rehman Legal Advisor Public Service Commission in petition No.114/16 and No.255/24.

Mr. Shahid Ali Awan, Advocate for the interveners-Nadeem Tabassum & others in petition No.1900/24.

M/s Ch. Shoukat Aziz and Barrister Humayun Nawaz Khan, Advocates, as Amicus Curiae.

### JUDGMENT:

The captioned writ petitions have been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution,

1974 wherein common questions of law and facts have been raised, which are of public importance, hence, the same were consolidated and are being decided through this single judgment.

2. The petitioners, Amjad Ali Khan & others, in petition No.114/15 implored the following relief:-

*“a. That notifications dated 12.03.1972, 05.07.1972, 19.08.1980, 24.11.1987, 22.10.1996, 04.01.2013 and all other notifications in continuation of these notifications to the extent of the quota reserved for the refugees settled in Pakistan or refugees settled in Azad Jammu & Kashmir and refugees of 1989, 25% quota reserved in civil services Azad Jammu & Kashmir read-with rule 12 of the Azad Jammu & Kashmir Public Service Commission (Procedure) Rules, 1994 or any other law or notifications, Policy, Circular, Directive having the force of law in this regard may kindly be declared illegal, void, without lawful*

*authority, violative of constitutional norms, capricious, discriminatory, against the principle of 'rights and obligation reciprocally' against the fundamental principle of 'no tax no rights' within the State, against the ideology of two nation theory against the State Subject laws and rules & same may kindly be struck down. It is further prayed that the advertisement No.01/2016 issued by the Public Service Commission to the extent of 25% quota/19% for refugees settled in Pakistan, 6% for refugees 1989 may kindly be declared illegal, void without lawful authority, against the law, State Subject laws and all other principles mentioned above and the same may kindly be struck down to the extent of 25% reserve quota for refugees;*

- b. That Azad Jammu & Kashmir Government and the Assembly may kindly be directed to make laws in accordance with Constitution command;*
- c. It is further prayed that Azad Jammu & Kashmir Assembly, Government, Services and General Administration, Public Service Commission,*

*Department of Law & other State functionaries may kindly be directed to act according to law and rules, in its letter and spirit, to abide by the Constitutional command while making subordinate legislation rather to fulfil the slogan of political ruling parties in violation of constitutional norms as well as the fundamental rights of State Subjects residing within the territorial limits of Azad Jammu & Kashmir as has been defined in the Interim Constitution;*

- d. Any other relief, which is admissible under law may also be granted in favour of the petitioners.”*

3. In petition No.1878/22, the petitioner-Aroosa Ejaz solicited the following relief:-

*“It is, therefore, very humbly prayed that by accepting the instant writ petition and appropriate writ may kindly be issued on the following manner:-*

- i. To issue a direction to the official respondents to act in judicious manner;*
- ii. To issue a direction to the official respondents to*



- implement the Government notification dated 28.10.1996, 24.01.2001, 04.05.2005 and 16.10.2009;*
- iii. To issue a directed to the official respondents not to appoint any person against the post of Stenographer and Junior Clerk on contract as well as permanent basis without calculating the quota of refugees of 1989;*
- iv. Any other relief which this Court deems fit may be granted in favour of petitioner to meet the ends of justice.”*

4. Petitioners Kisa Batool & others in petition No.1900/24 sought relief in the following manner:-

*“It is, therefore, very humbly prayed on behalf of the petitioners that this Court by accepting this writ petition, high prerogative writ in the interest of justice may kindly be issued, the impugned advertisement No.1/2024 to the extent of the posts of lecturers may kindly be set-aside for being against the law, rules and against the constitution. It is further prayed the official respondents may kindly be directed to implement the notification dated 04.01.2013 and after re-advertising the posts*

*of Lecturers on open merit basis bases, the same be filled in by providing equal opportunity to all State Subjects of Azad Jammu & Kashmir. Any other relief, which this Court may deem fit may also be granted in favour of the petitioners to meet the ends of justice.”*

5. Petitioners, Raja Shafique-Ullah Khan & others, in petition No.2551/24, solicited the following relief:-

- i. Setting-aside notification dated 12.11.2021 for being unlawful and illegal as the same provides extension of a non-existing/dead/repealed by lapse of time mentioned in itself dated 04.01.2013 and declare all the proceedings carried out under or in compliance of notification dated 12.11.2021 unlawful and without any legal effect;*
- ii. Directing the respondents to enforce a policy/system based on open merit in all walks of life including induction in civil/Govt. services and admissions in educational system as the respondents are not vested with the powers to enforce any policy in conflict with fundamental rights and the*

- parent laws made by the legislature in any field;*
- iii. Setting-aside the conditions in respect of quota of different administrative units in the advertisements No.1/2022, 02/2022, 03/2022, 04/2022, 01/2024 and 02/2024 and directing the respondents to determine merit on open merit against all the posts advertised through the said advertisements and make appointments accordingly;*
  - iv. Setting-aside the merit list prepared by the Joint Admission Committee of Azad Jammu & Kashmir Medical Colleges for the year and directing the Joint Admission Committee to prepare the same on open merit basis and accordingly admit the most deserving students to Medical College;*
  - v. Any other relief, which this Court may deem fit may also be granted in favour of the petitioners with costs.”*

6. Likewise, the petitioners, *Arshad Mehmood & another*, in petition No.2881/24 craved the following relief:-

*It is, therefore, very humbly prayed on behalf of the*

*petitioners that this Court by accepting this writ petition, high prerogative writ in the interest of justice may kindly be issued, the impugned advertisement No.1/2024 and further process in connection of advertisement to the extent of the posts of Tehsil Mufti may kindly be set-aside for being against law, rules and against the constitution. It is further prayed that the official respondents may kindly be directed to implement the notification dated 04.01.2013 and after re-advertising the post of Tehsil Mufti on open merit basis and filled the same by providing equal opportunity to all State Subjects of Azad Jammu & Kashmir. It is also further prayed that the respondents may kindly restrained to extend the grace period regarding implementation of para-6 of notification No.S&GAD/Admin/G-7(6) 2012 (P-III) dated 04.01.2013. Any other relief, which this Court may deem fit may also be granted in favour of the petitioners to meet the ends of justice.”*

7. In petition No.206/25, the petitioner, Raja Arbab Zaheer Khan, beseeched the following relief:-

*“It is, therefore, very humbly prayed on behalf of the petitioner*

*that this Court by accepting this petition, high prerogative writ in the interest of justice may kindly be issued, the impugned advertisement No.2/2019 and 01/2020 along-with press release and further process in connection with advertisement to the extent of the posts of Section Officer may kindly be set-aside for being against the law, rules and against the Constitution. It is further prayed that the official respondents may kindly be directed to implement the notification dated 04.01.2013 and after re-advertising the posts of Selection Officer on open merit basis and filled in the same by providing equal opportunity to all State Subject of Azad Jammu & Kashmir. It is also further prayed that the respondents may kindly be restrained to extend the grace period regarding implementation of para-6 of notification No.S&GAD/Admin/G-7(6) 2013 (P-III) dated 04.01.2013. Any other relief, which this Court may deem fit may also be granted in favour of the petitioners to meet the ends of justice.”*

8.           Sardar Karam Dad Khan, the learned counsel for the petitioners in petition No.144/16 argued that the Govt. of Azad Jammu & Kashmir vide notifications dated

12.03.1972, 05.07.1972, 24.11.1987, 19.08.1980, 28.10.1996 & 04.01.2013 fixed 25% quota out of 100 posts in civil services in State territory for refugees settled in Pakistan and afterward, 25% quota allocated for refugees settled in Pakistan was bifurcated by which 06% quota was allocated for refugees of 1989 for which the Azad Jammu & Kashmir Public Service Commission was compelled to observe the quota system divided on all units under Section 12 of the Azad Jammu & Kashmir Public Service Commission (Procedure) Rules, 1994 while under State Subject laws notifications dated 12.04.2027 & 27.06.1932 were issued through which the State Subjects who are not residing within the State territory are not entitled to get integral rights and the wisdom behind these enactments was that if the person who lives within the territorial limits of the State has to

pay taxes by abiding all laws of the Government reciprocally then is entitled to equal protection of law as per fundamental rights defined in Constitution, Ibid. The learned counsel maintained that the people having State Subjects of the Azad Jammu & Kashmir settled within the limits of the Federation of Pakistan are not entitled to get any premium without fulfilling the obligations of paying different taxes like liberation cell, education cess etc. in Azad Jammu & Kashmir because they are enjoying all rights and facilities in the Federation of Pakistan like business, civil service etc. in lieu of obligations. The learned counsel added that under the relevant provisions of law, after two generations they remain no more State Subjects to get the rights from Azad Jammu & Kashmir Government, hence, quota determined for refugees settled in Pakistan is

violative under the relevant provisions of Constitution, supra, and against the fundamental rights of State Subjects residing within the limits of Azad Jammu & Kashmir and in this regard, the Government may be directed to annul the existing laws regarding 25% quota and make legislation to meet the ends of justice.

9. Mr. Waheed Bashir Awan, Advocate, in petition No. 1878/22, more or less, reiterated the grounds of writ petition and argued that a direction may be issued to the Government to implement the notifications dated 28.10.1996, 24.01.2001, 04.05.2005 and 16.10.2009 and restrain to appoint any person against the post of Stenographer/Junior Clerk either contract or permanent basis without calculating the quota of refugees of 1989. The learned counsel craved that the petitioner is entitled



to be appointed against 6% quota reserved for refugees of 1989 because Higher Education Department has not calculated the exact quota in the light of directive issued by this Court in writ petition No.1063/21 dated 25.03.2021, hence, the respondents may be directed to appoint the petitioner in accordance with law.

10. Raja Zaigham Iftikhar, representing the petitioners in petitions No.1900/24 & No.2881/24, reiterated the grounds as incorporated in writ petitions and argued that the impugned advertisements No.01/24 to the extent of posts of Lecturers and Tehsil Mufti may be set-aside because the same was issued contrary to law and rules and against the spirit of Constitution, Ibid while implementing the notification dated 04.01.2013. The learned counsel further added that the respondents may be directed

to re-advertise the posts in question on open merit while providing an opportunity to all the State Subject holders of Azad Jammu & Kashmir and craved for acceptance of petitions in the larger interest of justice.

11. Raja Amjad Ali Khan, Advocate, for petitioners, Raja Shafique-Ullah Khan & others, argued that vide notification dated 04.01.2013, three years period granted in view of para-6, which has no legal effect because the same has become non-existent on 04.01.2016 and no effect cannot be given to notification dated 12.11.2021, hence, the quota bifurcated on different administrative units in the impugned advertisements No.01/2022, 02/2022, 03/2022, 04/2022, 01/24 and 02/24 may be *set-aside* and the respondents may be directed to re-advertise all the posts on open merit. The learned counsel maintained that merit should be

determined in all Government institutions of Azad Jammu & Kashmir on the basis of open merit so that every State Subject may apply on equivalent basis, which is mandatory requirement of Constitution, Ibid. The learned counsel further added that the basic notification dated 12.03.1972 through which and all subsequent notifications were issued in furtherance thereof, is violative of the relevant provisions of the Constitution, Ibid, because Islam being the State religion and supreme law of the land does not permit discrimination on the basis of place of birth, sect, race etc., hence, the quota system is not only violative of Constitution, Ibid, but also against the injunction of Islam ordained by Allah Almighty. The learned counsel averred that any job, post and opportunity is created through public exchequer, which has to be granted to the most deserving State Subject,

hence, the Govt. is under the legal obligation to carry on its business and functions on open merit not only in civil services but also in all educational institutions of Azad Jammu & Kashmir in the interest of justice.

12. Raja Nasir Latif, Advocate, for petitioner, Raja Arbab Zaheer Khan, in petition No.206/25, reiterated the grounds taken in writ petition and contended that the operation of the impugned advertisements No.2/2019 & No.01/2020 may be *set-aside*.

13. On contrary, Sheikh Masood Iqbal, the learned Advocate General representing the officials respondents in the captioned writ petitions produced plethora of notifications regarding the quota system and argued that the last notification was issued by the Government in the light of the Cabinet decision in which 03 years extension in grace period w.e.f. 01.07.2020 regarding

implementation of para-6 of notification dated 01.01.2013 was granted and stated that that no any notification is existing in the field w.e.f. 01.07.2023, hence, the instant writ petition have become infructuous. He maintained that every State Subjects have a right to compete and participate for appointment in services on the basis of open merit because all State Subjects are equal under the Constitutional command, hence, the quota system is not only violative of fundamental right No.17 & 15 of Article 4 of the Constitution, Ibid but also is against the Injunctions of Islam.

14. M/s Atif Mushtaq Gillani and Saqib Zaman Chaughtai representing the Higher Education Department and Shahid Ali Awan representing the interveners vehemently argued that the petitioners neither fall within the ambit of aggrieved person nor have *locus-*

*standi* to invoke the *extra-ordinary* jurisdiction of this Court by-way of writ petitions while the impugned advertisements have been issued in accordance with law and rules because in response thereof, a valuable right has been accrued to the candidates who applied against the posts in question. They further argued that the impugned notifications have been issued in accordance with law and are existing in the field while all the impugned notifications have got Constitutional protection in view of Article 51 of the Constitution, Ibid, hence, the official respondents are legally bound to complete the selection process against the advertised posts in accordance with law. The other learned counsel representing the private respondents in the captioned writ petitions reiterated the same version, which need not to be incorporated here in black and white.

However, the Legal Advisor representing Public Service Commission argued that the impugned advertisements have been issued in accordance with law because the Commission is bound to advertise the posts on the basis of requisition submitted by the concerned departments.

15. Barrister Humayun Nawaz Khan, Advocate, was appointed as Amicus Curiae who elaborately argued that the controversy in the light of the arguments advanced by the learned Advocate General has become narrow down and contended that the Azad Jammu & Kashmir Interim Constitution, Ibid, guarantees some fundamental rights to all the State Subjects under Article 4 of the Azad Jammu & Kashmir Interim Constitution, 1974, which provides that any law or any custom or usage having the force of law in so far as it is inconsistent with the rights

conferred by the this Article to the extent of such inconsistency be void while the notifications, under challenge, clearly violate and offend rights No.8, 15 & 17 of the Constitution, Ibid, hence, the same are liable to be *set-aside* and in support of his contention, he referred to and relied upon the plethora of case law handed down by the Hon'ble Superior Courts of Pakistan.

16. Ch. Shoukat Aziz, Advocate, as Amicus Curiae assisted the Court with his valuable arguments while reiterating the brief history of quota system and zealously argued that I am not convinced with the arguments advanced by the learned counsel for the petitioners in petitions No.114/16, No.2551/24, No.1900/24 & No.2881/24 and learned Advocate General representing the official respondents in all petitions because the notifications, under challenge, having the



Constitutional backing are still holding in the field. He pressed into service that in view of para-6 of notification dated 04.01.2013, it was affirmed by suggesting that after passing three years grace period, possible measures shall be taken to make all the appointments on open merit rather this para is a suggestive in nature and it has not finally been decided that after passing three years grace period, the notifications regarding quota system would be non-existent.

17. Having heard the respective arguments advanced by the learned counsel for the parties as well as the Amicus Curie, I have gone through record of the cases with my utmost care and caution.

18. After deep scrutiny of all the petitions, it would be advantageous to narrate precise version of petitioners. In petition No.114/16, the petitioners sought annulment

of 25% quota reserved in civil services of Azad Jammu & Kashmir for refugees settled in Pakistan and refugees of 1989 while in petition No.1878/22, the petitioner sought implementation of Government notifications dated 28.10.1996, 24.01.2001, 04.05.2005 and 16.10.2009 through which 6% quota was allocated for refugees of 1989. In petitions No.1900/24, No.2881/24 & 206/25, the petitioners sought implementation of notification dated 04.01.2013 to the extent of para-6 while the respondents may be directed to re-advertise the posts on open merit and fill in the same by providing equal opportunity in civil services to all State Subjects of Azad Jammu & Kashmir. In petition No.255/24, the petitioners, Shafique-Ullah Khan & others, sought annulment of all notifications regarding quota system in civil services of the Azad Jammu & Kashmir on the ground that

the same are against spirit of Constitution, 1974 and also against the injunctions of Islam and it has further been claimed that the respondents may be directed to enforce policy on the basis of open merit in all walks of life including induction in civil/Govt. services and admissions in educational institutions so that all eligible State Subjects of Azad Jammu & Kashmir may be treated on equal basis under the command of Constitution.

19. For resolving the real controversy between the parties in the captioned writ petitions, first of all I proposed to take up *Raja Shafique-Ullah Khan & others'* case, it is a leading case for reaching logical conclusion because entire relief has been sought in depth, which leads to roots of whole controversy involved in the captioned cases.

20. At the very outset, the learned counsel for private respondents and

interveners raised preliminary objection that the petitioners in the captioned petitions do not fall within the ambit of aggrieved party and they have no *locus-standi* to invoke the Constitutional jurisdiction of this Court, hence, the writ petitions are liable to be dismissed. It is evident from bare reading of record that the petitioners in petitions No.1878/22, No.1900/24, 206/2025, 2881/24 & No.206/25 are candidates who directly aggrieved from issuance of the impugned advertisements while in other writ petitions No.114/16 & No.2551/24, some of petitioners belonging to legal fraternity and other professions are State Subjects of Azad Jammu & Kashmir and they have filed writ petitions for protection of fundamental rights of State Subjects mentioned in Article 4 of the Azad Jammu & Kashmir Interim Constitution, 1974, hence, it cannot be said

that they have filed the writ petitions with *mala-fide* intention and *ulterior-motive* for which no any material has been placed on record by the respondents that the petitions have been filed the same as proxy-game, as such, the objection raised by the other side has no substance, which is hereby repelled.

21. The point is yet to be determined that whether the notifications pertaining to quota system in civil services of Azad Jammu & Kashmir are holding in the field or not? During the course of arguments, the learned A.G. produced certified copies of notifications pertaining to quota system through which it transpires that Govt. in the light of Council Resolution No.48/71 fixed quota of different units in civil services of Azad Jammu & Kashmir vide order dated 12.03.1972 and afterward, through notification dated 28.10.1996, the aforesaid order was

repudiated through which the quota of District Poonch (Rawalakot) and District Mirpur was bifurcated on newly established Districts Pallandri/Sudhnoti and Bhimber and in continuation of the above notifications, 06% quota out of 25% of refugees settled in Pakistan was fixed for refugees of 1989 vide notification dated 24.01.2001 and on establishment of new District Neelum, the quota was divided on two units District Muzaffarabad and Neelum as 16.70% and 3.30% respectively vide notification dated 04.05.2005 while vide notification dated 16.10.2009, due to establishment of two new units i.e. Hattian Bala and Haveli (Kahuta), the quota of the said Districts was fixed as 04.55% & 02.33% respectively and vide notification dated 04.02.2013, the Govt. in the light of recommendations of Cabinet Committee approved the implementation of

quota for civil services in all administrative units wherein para-6 it has been agreed that all the appointments will be made on open merit after passing three years period so that an opportunity may be given to the eligible and competent candidates in civil services on the basis of open merit and in continuation of that notification dated 08.04.2016 was issued whereby State Subjects who have been displaced due to construction of Mangla Dam or any other national cause from their ordinary place of abode and are permanently settled in Pakistan shall have the right of service and admission in professional colleges/Universities of Azad Jammu & Kashmir & Pakistan against the quota reserved for Refugees settled in Pakistan. Vide notification dated 15.10.2018, the grace period as per para-6 of notification dated 04.01.2013 in the light Cabinet decision was

further extended up to 30<sup>th</sup> June, 2020. Vide notification dated 12.11.2021, in the light of the Cabinet decision, 03 years extension in grace period w.e.f. 01.07.2020 pertaining to implementation of open merit for Government employment was extended.

22. A contemplate perusal of scheme of the above-referred notifications depicts that in para-6 of notification dated 04.01.2013, it was affirmed that possible steps will be taken by the Government to make appointments to all posts on open merit and no any cut-off date has been mentioned in the said para to which it can be assumed that after passing three years grace period, quota system would become ineffective and open merit will prevail rather only it was suggested that Govt. will take all necessary steps for making appointments in civil services of Azad Jammu & Kashmir on open merit and afterward,



subsequent notifications were issued for extension of grace period without taking into account the plain reading of para-6 of notification, which are suggestive in nature, hence, the notifications issued regarding observance of quota system are holding in the field. In this regard, the arguments advanced by Ch. Shoukat Aziz, Advocate, as Amicus Curie are in right direction that operation of the notifications regarding observance of quota system are still intact and holding the field because only suggestions have been made in para-6 of that notification for taking possible steps for making appointment in civil services of Azad Jammu & Kashmir on open merit, hence, it can safely be concluded that notifications regarding implementation of quota system in civil services of Azad Jammu & Kashmir are still holding in the field.

23. It has to be seen that whether in view of Article 51 of the Azad Jammu & Kashmir Interim Constitution, 1974, the impugned notifications are protected or not? To attend this proposition, I would like to reproduce Article 51 of the Constitution, Ibid, which reads as under:-

***“51. Continuance of existing laws:-***

*(1) Subject to the provisions of the Constitution, all laws which, immediately before the commencement of the Constitution, were in force in Azad Jammu & Kashmir shall continue in force until altered, repealed or amended by an Act of the appropriate authority.”*

24. A plain reading of the above Article makes it crystal clear that all laws which immediately before the commencement of the Constitution were in force in Azad Jammu & Kashmir shall continue enforce until altered, repealed or amended by an Act of the appropriate authority meaning thereby that Govt. in the light of Council Resolution

No.48/71 fixed unit-wise quota in civil services of Azad Jammu & Kashmir vide order dated 12.03.1972, which was protected by the Constitution and when the same was cancelled through notification dated 28.10.1996 and that very notification along-with subsequent notifications regarding quota system does not come under the umbrella of Article 51 of the Constitution, Ibid. However, if for the sake of arguments, it is assumed that the aforesaid notifications have Constitutional protection even then it has to be adjudged that the protected laws qualify the test of the Constitution, nonetheless, all such laws have to qualify another test, namely their conformity to the Holy Quran and *Sunnah*.

25. Now, the proposition is as to whether the notifications regarding quota system and other enabling laws promulgated

time to time are (a) *ultra-vires* of the Interim Constitution, Ibid, (b) discriminatory, (c) violation of the fundamental rights as enshrined in the Interim Constitution and (d) against the injunctions of Islam or not? For resolving this proposition, it would be more advantageous to reproduce Article 4 of the Constitution, *supra*, which follows as under:-

**“4. Fundamental Rights.-** (1)

*Any law or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Article shall, to the extent of such inconsistency, be void.*

(2) *No law shall be made which takes away or abridges the rights so conferred and any law made in contravention of this sub-Article shall, to the extent of such contravention, be void.*

(3) *The provisions of this Article shall not apply to any law relating to the members of the defence services or of the forces charged with the maintenance of public order for the purpose of ensuring proper discharge of their duties or the maintenance of discipline among them.”*

Fundamental rights No.8, 15, 17 are usefully reproduced as under:-

**“8. Freedom of trade, business or profession.-**

*Every State subject possession such qualifications, if any, as may be prescribed by law in relation to his profession or occupation shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:*

- (b) the regulation of any trade or profession by a licensing system; or*
- (b) the regulation of trade, commerce or industry in the interest of free competition therein; or*
- (c) the carrying on, by Government, or by a corporation controlled by Government of any trade business industry or service, to the exclusion, complete or partial, of other persons.”*

**“15. Equality of State Subjects.-**

*(1) All State Subjects are equal before law and are entitled to equal protection of law.*

*(2) There shall be no discrimination against any State Subject on the basis of sex.*

*(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.”*

**“17. Safeguard against discrimination in services.-** No State subject otherwise qualified for appointment in the service of Azad Jammu & Kashmir shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, residence, sex or place of birth.

*Provided that in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.*

*Provided further that under representation of nay class or area in the service of State may be redressed in such manner as may be determined by an Act of Assembly.”*

26. The provisions of Article 4 of the Constitution defined regarding fundamental rights are *self-explanatory* and it may be observed that Constitutional provisions, *inter alia*, enshrined in fundamental rights, which enjoin that subject to such qualifications, if any, as may be prescribed by law that every State Subject shall have the right to enter

upon any lawful profession or occupation, and conduct any lawful trade or business. The above-mentioned provisions of Constitution, Ibid, guarantee that every State Subject shall have the right to compete and participate for appointment to a post in any civil service of Azad Jammu & Kashmir subject to such qualification, if any, prescribed by law on the basis of open competition, as such, no State Subject otherwise qualified for appointment in the services of the Azad Jammu & Kashmir shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, residence, sex or place of birth. Thus, in such like state of affairs, all notifications issued by the Govt. from time to time for determination and enforcement of quota system are repugnant to fundamental rights No.8 & 17 of Constitution, supra, while

any provision in any law, rule or notification abridging this right cannot be allowed to stand. Similar proposition has been resolved by the Hon'ble Supreme Court in a case reported as *Kanwal Shahzaddi vs. Muhammad Naeem & others* [2024 SCR 348] wherein following dicta has been laid down:-

*“It is clear from juxtaposed reading Right No.15 and 17 that there shall be no gender based discrimination. Right No.15 ensures equal treatment under law however, Right No.15(3) provides that nothing in this article shall prohibit the State from making special provisions for the protection and welfare of women and children. This means that the Constitution has given the State are remedial power to protect women and children and provide affirmative action notwithstanding the fact that everyone is to be treated equally under the law. Therefore, the Constitution has itself recognized and created a classification which needs special protection. Right No.17 provides that no citizen shall be discriminated against in respect of any appointment he is otherwise qualified for only on the ground of race, religion, caste, sex or place of birth. Right No.17, provides for a*



*safeguard against discrimination in service. The safeguard ensures that the State will not commit gender-based discrimination. In our case, the concerned authority while issuing advertisement of the post as well as the learned High Court while issuing the writ without appreciating the relevant departmental service rules and the spirit of right No.15, set aside the appointment of the appellant.”*

27. It is not out of place to mention here that legislature, executive and judiciary are three vital organs of the State and all the three organs have been constitutionally mandated to act within their spheres demarcated under the Constitution. The Legislature is constitutionally entrusted with the powers to legislate. A legislation can be invalidated by the Court when the same is found inconsistent with the Constitution or where there is violation of fundamental rights and if the Act the Legislature is within the competence of the Assembly and it violates no express condition or restriction imposed by

the Constitution, it will not be for the Court inquire any further but if the Act violates any Constitutional restriction or limits, it is invalid and the Court, being the custodian and protector of the Constitution, is under an obligation to strike it down. It is relevant to narrate that the Courts cannot turn a blind eye to continuous violation of law, even when faced with technicalities it is a fundamental principle of justice that judiciary must remain vigilant in addressing persistent breaches of law irrespective of procedural nuances. On this proposition, it would be more advantageous to reproduce the relevant portion of case reported as *Binyamin vs. Parveen Akhtar & 17 others* [2024 SCR 368] in which it has been observed that:-

*“The Courts cannot turn a blind eye to continuous violations of the law, even when faced with technicalities. It is a fundamental principle of justice that the judiciary must remain vigilant in addressing*

*persistent breaches of the law, irrespective of the procedural nuances. This approach underscores the judiciary's responsibility to serve a bulwark against sustained transgressions, reinforcing public trust and confidence in the legal process. Striking a balance between adherence to legal procedures and addressing substantive violations is crucial for maintaining the efficacy and credibility of the judicial system. The Courts must remain resolute in their pursuit of justice ensuring the continuous violations are not overlooked due to procedural technicalities. This commitment underscores the judiciary's role as a guardian of the law, upholding the principles of fairness and justice even in the face of persistent legal challenges."*

28. Yet viewing from another angle, it is provided in fundamental right No.17 of Article 4 of Constitution that under representation of any class or area in the service of State may be redressed in such manner as may be determined by an Act of Assembly and under Article 31 of the Constitution legislative powers subject to sub-Article (3), the

Assembly shall have the power to make laws while in clause (c) it is provided that the Assembly shall have the power to make laws for all persons in the service of Azad Jammu & Kashmir wherever they may be. As stated earlier, all subsequent notifications issued by the Government for determination or enforcement of quota have no Constitutional protection, hence, the same appears to have been issued contrary to Constitutional command.

29. In preamble of Constitution, it has been incorporated that the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and *Sunnah*, which is further strengthened in sub-Article (6) of Article 31 that no law shall be repugnant to the teachings and requirements of Islam as

set out in the Holy Quran and *Sunnah* and all existing laws shall be brought in conformity with the Holy Quran and *Sunnah*. On identical proposition, a Shariat petition titled *Nusrat Baig Mirza vs. Government of Pakistan and another* was filed before the Federal Shariat Court of Pakistan wherein *vires* of Rule 14 of Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 was challenged and this legal proposition has been resolved in supra case reported as [PLD 1992 Federal Shariat Court 412] in the following manner:-

*“20. Political power is held in trust (amanah) from the Almighty Allah and “those from amongst you” who have been entrusted with authority (اولى الامر منكم) must exercise their authority or power (a sacred trust) as manifested in His various Commandments and Ordinances.*

*21. It appears from the study of the Honly Qur'an and Sunnah of the Holy Prophet (p.b.u.h.) that Islam abhors against discrimination or preference between man and min, except for their piety, ability*

*and capability, mentally as well as physically.*

22. The Holy Qur'an has fixed a parameter of the selection of eligible person for getting appointments. The Holy Qur'an says:-

"ان خير من استاجرت القوى الامين-

*(Truly the best of men for thee to employ is the man who is strong and trustworthy). (Al-Qasas28:36)*

23. Imam Ibn Talmiyyah in his well-known work (السياسته الشرعيه) (Urdu Tr.) Karachi, pp.83-84 has stated that:--

(آيت بالا کے اندر امانت کی ادائیگی اور حق داروں کے حقوق ان تک پہنچانے کا حکم کیا گیا ہے تو اداء امانت اور اداء امانت میں عدل و انصاف یہی دو چیزیں سیاست عادلہ اور ولایت صالحہ حکومت نافعہ کا اصل مقصد ہے۔"

24. The Holy Qur'an commands us to render back the trusts to those whom they are due. It further commands that when you judge between man and man it is to be judged with justice. There is a consensus among the commentators of the Holy Qur'an that the word (امانت) (trust) "used in Verse 58 of Surah Al-Nisa is not to be given a restricted meaning and any sort of trust comes under its purview. Although the said verse was revealed in connection with giving back the keys of Ka'ba to Bani Talha but for the generality of the word (يامركم) in the verse, this

*commandment applies to all the trusts (امانت) and all persons for giving them to whom they are due.”*

Finally, the afore-referred case was concluded in para 37 in the following manner:-

*“37. For the aforesaid reasons, Rule 14 of the Pakistan civil Servants (Appointment, Promotion and Transfer) Rules, 1973 and the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 in so far as they pertain to quota system, and the Establishment Division Office Memorandum No.8/9/72-TRV, dated 31<sup>st</sup> August, 1973 are declared repugnant to the Injunctions of Islam and they shall cease to have effect on the expiry of six months from the date of this judgment unless amended and brought in conformity with the Injunctions of Islam as discussed above.”*

Identical proposition has been resolved by the Hon’ble Supreme Court of Pakistan in a case reported as *Mushtaq Ahmad Mohal and others vs. The Honourable Lahore High Court, Lahore and others* [1997 SCMR 1043] wherein while

placing reliance on the afore-referred case law decided by the Federal Shariat Court, the following principle has been laid down:-

*“31. The case in hand stands on much weaker wicket inasmuch as the period of 20 years contained in first proviso to clause (1) of Article 27 of the Constitution has already expired and, therefore, there cannot be any justification to violate the express mandate of clause (1) of Article 27 of the Constitution that no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.”*

30. For resolving this crucial proposition, this Court vide order dated 03.04.2025 directed the learned Advocate General to bring on record what is the Govt. stance regarding the enforcement of quota system and in compliance thereof, he submitted written reply in which it has been admitted that quota system is against the



Constitutional command, hence, for proper appreciation of the matter, written reply submitted on behalf of the Govt. is hereby reproduced as under:-

*“Article 4 (17), (15) of Azad Jammu & Kashmir Interim Constitution 1974 based on Islam Concept of Social Justice Zonal or Quota System in matter of services are against the Constitution Article 4(17), (15). Freedom of Trade, business or profession guaranteed by Azad Jammu & Kashmir Interim Constitution, 1974.*

**2. Article 4 (17) Safeguard against discrimination in service:-**

*No State subject otherwise qualified for appointment in the service of Azad Jammu & Kashmir shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, residence, sex or place of birth.*

*Provided that in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.*

*Provided further that under representation of nay class or area in the service of State may be redressed in such manner as may*

be determined by an Act of Assembly.”

**15. Equality of State Subjects.-**

(1) All State Subjects are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination against any State Subject on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.”

Thus every citizen State Subject have a right to complete and participate for appointment in services on the basis of open competition which right he cannot exercise where the process of appointment is transparent, fair, just and free from any compliant.

3. Period mentioned in notification dated 04.01.2023 condition No.6 expired on 01.07.2023 because last extension vide notifications dated 12.11.2021 w.e.f. 01.07.2020 after 01.07.2023.

4. It is manifest of Holy Quran inter alia enjoins there is not difference between the individuals of mankind on the basis of race, colour and territory and that all the human beings are equal in the eyes of Allah. All human being are equal in eyes of Allah, as he created man from a quintessence of clay.

5. The fittest person who is strong and trustworthy is to be employed, the concept of quota system runs counter not only the

*fundamental right No.17 & 15 of Article 4 of Constitution but also to the commandment of Allah as ordained in the Holy Quran. The quota system contrary with Constitution.*

*It is, therefore, most humbly prayed that supra titled writ petitions of the petitioners may graciously be dismissed with costs.”*

31. By visualizing the contents of written reply submitted on behalf of the Govt. through the learned Advocate General in the captioned writ petitions, it seems that the Government is serious to bring some structural changes in law according to command of Constitution, which is appreciable gesture at the end of the Government.

32. Now, advertng to *Amajd Ali Khan & others’ case* (No.114/16), as detailed facts have been incorporated pre-paras, which need not to be reiterated here in black and white, however, mainly the petitioners sought annulment of all notifications issued by the

Government from time to time for determination and enforcement of quota to the extent of refugees settled in Pakistan and refugees of 1989. The Government is authorized to regulate the terms and conditions of persons in the service of the Azad Jammu & Kashmir under Article 49 of the Azad Jammu & Kashmir Interim Constitution, 1974. For carrying out the purpose of the aforesaid provision, the Azad Jammu & Kashmir Civil Servants Act, 1976, has been enacted by the Legislative Assembly. Under Section 23 of the said Act, the Government is empowered to make rules for carrying out the purpose of Act. The Government while exercising powers under Section 23 of the said Act, framed rules known as The Azad Jammu & Kashmir Civil Servants (Appointment and Conditions of Service) Rules 1977 wherein Rule 19 is very

clear on the subject-matter, hence, the same is hereby reproduced for ready reference in the following manner:-

*“19 (1) No person shall be appointed to a post unless he is a State Subject as defined in the Azad Jammu & Kashmir Interim Constitution Act, 1974, provided that this restriction may be relaxed by the Government in suitable cases.”*

33. A bare reading of the above rule elucidates that no any person can be appointed to a post unless he is a State Subject under the command of Constitution, supra, hence, it cannot be said that the refugees settled in Pakistan and refugees of 1989 have no legal right in civil services of Azad Jammu & Kashmir while their rights as State Subject holders have been protected and safeguarded by the Constitution. In this backdrop, the instant writ petition, having no constitutional backing, is hereby dismissed.

34. Now, I would like to conclude the real controversy raised in all writ petitions in the light of the above-referred Constitutional provisions and principle enunciated by the Hon'ble Supreme Court of Azad Jammu & Kashmir and Superior Courts of Pakistan. It is relevant mention here that the basic objective for induction in civil services is not to provide jobs rather the prime goal for creation of posts is to improve the functions of the Department and if more efficient and eligible persons are inducted on open merit in civil services of Azad Jammu & Kashmir, all the departments and educational institutions will increase their capabilities, ultimately, it would be in the interest of the *public-at-large*. Likewise, on the basis of quota system, most of the brilliant students are facing hardships in their educational institutions and thereafter, in their professional carrier and if they are allowed to

compete in open competition in all institutions of Azad Jammu & Kashmir and seats reserved in different institutions of Federal and Provinces of Pakistan, the outcome of the same would be that the cream of nation will come forward to serve in different walks of life efficiently and restore the goodwill of the State with their work and ability. However, keeping in view the hardships of disabled persons, the Government may determine quota in the light of relevant provisions of law in all civil services and educational institutions of Azad Jammu & Kashmir, which should be observed on open merit by providing equal opportunity to all State Subjects of Azad Jammu & Kashmir.

35. This Court under Article 44 of the Constitution has the jurisdiction to examine the validity of any law and in case any

law/Act of Assembly violates any provision of the Constitution including fundamental rights the same can be struck down by this Court in exercise of powers under Article 44 of the Constitution while the law can also be struck down if it provides unfettered powers/discretion to be exercised in a discriminatory manner.

35. The nutshell of the foregoing reasons is that leading writ petition No.2551/24 is accepted and all the notifications and other enabling provisions of law holding in the field for determination and enforcement of quota system in civil services pertaining to all gazetted, non-gazetted posts and educational institutions of the Azad Jammu & Kashmir are declared as unconstitutional and against the Injunctions of Islam, hence, the same are hereby *set-aside* with immediate effect and all the concerned authorities are directed to



make sure the recruitment of State Subject holders on all posts on open merit in civil services of Azad Jammu & Kashmir. They are further directed to make admission on open merit in all educational institutions of Azad Jammu & Kashmir including the seats reserved in different institutions of Federal as well as provinces of Pakistan. In writ petitions No.1900/24, 2881/24 & 206/25, the petitioners one way or the other sought implementation of para-6 of notification dated 04.01.2013 whereas in petition No.1878/22 the petitioner sought implementation of 6% quota reserved for refugees 1989, hence, in the light of the controversy resolved in petition No.2551/24, no any further deliberation is required in these petitions, which are hereby consigned to record accordingly. As in petition No.114/16, the

controversy has been resolved in para-33 of the judgment, hence, is dismissed.

Muzaffarabad:  
16.08.2025(J.ZEB)

**VACATION JUDGE**

Approved for reporting

**VACATION JUDGE**