

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.46/2022.

Date of Institution 25.01.2022.

Date of Decision 11.05.2022.

Aqib Ali Cleaner BPS-2 in the office of Chief Engineer
(Power) Mangla Mirpur, Azad Jammu & Kashmir.

....Petitioner

VERSUS

1. Chief Engineer (Power) Station Mangla Mirpur;
2. Additional Chief Engineer (Power) Station
Mangla Mirpur;
3. General Manager Coordinator WAPDA House
Lahore;
4. Assistant Director (Admin) Power Station
Mangla;
5. Director General (HR and Admin) WAPDA House
Lahore.

...Respondents

WRIT PETITION

Before:— Justice Mian Arif Hussain, J.

PRESENT:

Sh. Masood Iqbal, advocate for the petitioner.

*M/S Qazi Adnan Qayum & Mr. Javed Najum-us-Saqib,
advocates for the respondents.*

JUDGMENT:

Supra titled writ petition has been filed
under Article 44 of Azad Jammu & Kashmir Interim
Constitution 1974, whereby, the following relief has
been solicited by the petitioner:-

*“It is, therefore, very humbly prayed on behalf
of the petitioner, that by accepting the instant
writ petition the respondents may kindly be
restrained not to make the appointments except*

District Mirpur, in the light of order/policy dated 27.05.2021 (Annexure PC) and the advertisement (Annexure PB) may kindly be set aside. Further by prayed not to disturb the petitioner from his present place of posting i.e. Cleaner BPS-2 in the office of Chief Engineer (Power) Mangla Mirpur. Any other relief which the petitioner is entitled may also be granted in the interest of justice. ”

Aqib Ali, the petitioner herein while filing the writ petition in hand has claimed that the petitioner is a State subject of Azad Jammu & Kashmir and hails from District Mirpur and being son of permanent employee of WAPDA has been appointed as Cleaner BPS-2 in WAPDA on contingent basis vide order dated 29.03.2021, which has subsequently been extended vide office order dated 24.12.2021. It is claimed that for the purpose of regular appointment against different posts including the post of Cleaner BPS-2, the respondents issued a proclamation in “Daily Newspaper” whereby the policy for observance of unit wise quota and preference of the local inhabitants has flagrantly been violated. It is further claimed that through the said impugned advertisement candidates of District Mirpur and District Jehlum have jointly been provided the quota which is clear violation of order/policy dated 22.05.2021. It is averred that the

petitioner is an aggrieved person in the eye of law and there is no efficacious and alternate remedy for redressal of his grievance except to invoke the extraordinary jurisdiction of this Court, hence, by accepting the instant writ petition, the respondents may kindly be restrained not to make any appointment except from the people of District Mirpur in the light of aforesaid order/policy and the impugned advertisement may be set-aside, moreover, the respondents be ordered not to disturb the petitioner from his present place of posting.

On filing of the above titled writ petition, notices were issued to respondents for parawise comments. An application for ad-interim relief was also submitted which was entertained by this Court and the respondents were ordered to maintain status-quo subject to objections from the other side.

In their parawise comments, the respondents have categorically refuted the claim of the petitioner in toto with the assertion that the petitioner being contingent paid employee has got no locus standi to file the writ petition in hand and if the petitioner has any grievance, the proper fora for redressal of grievance is available to the petitioner. It is further

claimed that being employees of Pakistan WAPDA, the respondents have been performing their functions in respect of affairs of the Government of Pakistan and the organization of WAPDA has been constituted under the Water and Power Development Authority Act, 1958, hence, the instant writ petition being filed under Article 44 of Azad Jammu & Kashmir Interim Constitution 1974 is not maintainable rather the petitioner may file said writ petition under article 199 of Islamic Republic of Pakistan so, in the matter in hand, no writ can be commanded against the officials of Pakistan WAPDA, hence, the writ petition being devoid of force is liable to be dismissed.

Preliminary arguments heard.

Learned counsel for the petitioner contended that being 1st class state subject of the Azad Jammu & Kashmir and contingent employee of the WAPDA, the petitioner is legally entitled to file the writ petition for implementation of the quota policy determined by the respondents through an office order dated 27.05.2021. It is urged that in the said office order, it is provided that appointment against the posts in BPS 1-5 will be made on the local basis and the said office memorandum also narrates 20% quota of

different provinces, regions and units including Azad Jammu & Kashmir. It is claimed that through impugned advertisement for the post of cleaner occupied by the petitioner herein citizens of Pakistan having domicile of Mirpur and Jehlum have jointly been provided the opportunity to apply for the said post. It is argued that quota must be either for Mirpur or for Jehlum as no such provision of joint quota of two regions is provided in the said notification. It is argued that being local of District Mirpur, the petitioner is entitled to be considered against the post occupied by him therefore, the words “Jehlum” inserted in the advertisement must be deleted.

Regarding the jurisdiction of this Court, the learned counsel pressed into service that admittedly, the project against which the appointment is required to be made falls within the territory of Azad Jammu & Kashmir, hence, High Court of Azad Jammu & Kashmir is very much competent to issue a writ against the respondents. The learned counsel in support of his claim referred to and relied upon the following case law:-

1. 2017 SCR 850;

2. 2014 SCR 553;

3. PLJ 2011 SC 568.

Conversely, the learned counsel representing the respondents contended that on the one hand being a contingent paid employee petitioner has no locus standi to file the writ petition and on the other hand writ cannot be commanded in this matter as admittedly the officials of WAPDA have not been performing their functions in respect of affairs of the State of Azad Jammu & Kashmir, thus, no writ petition under Article 44 of Interim Constitution 1974 can be entertained, rather it falls under Article 199 of the Constitution of Islamic Republic of Pakistan, therefore, the instant writ petition is liable to be dismissed. It is further contended that the petitioner is not an aggrieved person as defined by the Interim Constitution, 1974 and the petitioner falls within the definition of "Workman" under the Industrial Relationship Act, 2017, hence, the petitioner for redressal of his grievance may approach to the "Reconciliation Commission" constituted under Section 51 of IRA 2017. It is urged that the petitioner, is estopped by his conduct to file the writ petition in hand as he has also applied for the vacancy in question. Lastly it is craved that due to the issuance

of status quo the matter of appointment has been suspended so, the writ petition in hand being not filed at the proper forum and without having any locus standi is liable to be dismissed in limine. In support of his claim the learned counsel referred to and relied upon the case law reported as 2014 SCR 564.

After having heard the arguments of learned counsel of both sides, I have also gone through the record available with the file.

The claim of the petitioner is that he is State Subject of Azad Jammu & Kashmir and is serving as cleaner in WAPDA and being son of regular employee of the WAPDA, is entitled to seek employment in the light of 20% quota reserved for the children of employees of WAPDA but while issuance of the advertisement regarding appointment against the vacancies of Cleaners official respondents have violated the office order dealing with the provisions of quota, therefore, official respondents be ordered to determine the quota of AJ&K and local citizens of Mirpur be given preference, resultantly, advertisement containing the joint quota of Mirpur and Jehlum be set-aside.

Admittedly, the petitioner is a contingent paid employee of WAPDA and while relying upon the office memorandum issued from the office of Director General (HR & Admin) on 27.05.2021, has challenged the validity of advertisement issued for appointment against the posts of different categories.

A perusal of the office order dated 27.05.2021, reveals that through the said office order for appointment against the posts in BPS 6 to 14 by implementing the 20% employees' quota as per decision of standing committee, unit wise quota has been allocated.

From the perusal of said office memorandum it stands clear that said memorandum deals with two propositions, one is that appointment against the posts in BPS 1 to 5, will be made on local basis and 2ndly, province and region wise quota for the children of employees against the posts of BPS-6 to 14 has been allocated.

In the matter in hand the petitioner seeks appointment against the post of Cleaner BPS-2, so, the question of children of employees quota in view of said office memorandum cannot be claimed admittedly, said memorandum deals with the posts of

scale 6 to 14, hence, for the purpose of determining region wise quota, petitioner cannot rely upon the said document, however, he can claim his appointment on local basis for BPS 1 to 5 but in view of location of the project it can safely be observed that the candidates of Jehlum and District Mirpur may equally be treated as local candidates.

It is an admitted position that respondents herein are Senior officials of Pakistan WAPDA who are performing their functions in respect of affairs of Government of Pakistan and admittedly said organization is constituted under Water & Power Development Authority Act, 1958, which is a creation of Constitution of Islamic Republic of Pakistan, meaning thereby, that respondents being officials of WAPDA have not been performing their function in respect of affairs of the State of Azad Jammu & Kashmir. So, to my mind Article 44 of Interim Constitution 1974 cannot invoke for issuance of writ in the matter in hand and the said point of view gets support from the case law reported as 2014 SCR 564. In the said case law, Hon'ble Chief Justice of Azad Jammu & Kashmir have observed as under:-

“---Section 42-B and 44---writ against Banks established by the Govt. of Pakistan---its maintainability in the presence of any binding decision of Supreme Court---under Section 42-B, any decision of the Supreme Court shall to the extent it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in AJ&K. There are number of judgments of this Court of binding nature declaring that Banks established under the authority of Govt. of Pakistan are neither acting in connection with the affairs of the State of Jammu & Kashmir nor same are the authorities under the control of AJ&K or the Council---held: no writ can be issued against their management under section 44 of the AJ&K Interim Constitution Act.”

From the said case law, it stands clear that against Authorities, Institutions, Organization or Departments which are established under the authority of Government of Pakistan and are not performing their functions in connection with the affairs of State of Jammu & Kashmir nor under the control of Azad Jammu & Kashmir Council, no writ can be issued under Article 44 of the Azad Jammu & Kashmir Interim Constitution.

So far as, the case law referred to and relied upon by the learned counsel for the petitioner is

concerned, the same do not attract in the matter in hand as prepositions discussed in the said case law are different from the proposition in hand.

So far as, the question of other remedy is concerned, admittedly the petitioner is contingent paid employee, if he feels persuaded that his grievance must be redressed then forum in terms of IRA 2017 or in the shape of writ under Article 199 Constitution of Pakistan may be available to him, moreover, it is on the record that the petitioner has also applied for the post under challenge, hence, by his conduct he may be estopped to file the writ petition in hand.

The crux of the above discussion is that the writ petition in hand being devoid of law and force is, hereby, dismissed in limine.

Mirpur.
11.05.2022.

-Sd-
JUDGE

Note:-Judgment is written and duly signed. The office is directed to intimate the parties or their counsel through notices.

-Sd-
JUGDE