

## **HIGH COURT OF AZAD JAMMU & KASHMIR**

Writ petition No.453/2024.  
Date of institution 30.03.2024.  
Date of decision 20.06.2024.

Dr. Javed Akhtar Rathore, Professor in Medicine, Near  
Neelum Walk Way Ward No.11, Lower Plate, Muzaffarabad.

Petitioner

VERSUS

1. Governing Body for Medical Colleges of Muzaffarabad, Poonch and Mirpur, through its Secretary/Secretary Health Department, having its Office at Block No.10, new Civil Secretariat, Muzaffarabad Azad Kashmir;
2. Chairman governing Body for Medical Colleges of Muzaffarabad, Poonch and Mirpur/Prime Minister, Govt. of Azad Jammu & Kashmir, through its Secretary, having office PM Secretariat, new Civil Secretariat, Muzaffarabad Azad Kashmir;
3. Selection and Recruitment Committee for the appointment of Principal Medical Colleges through its Chairman/Chief Secretary, Govt. of Azad Jammu & Kashmir, Muzaffarabad;
4. Azad Government of the State of Jammu & Kashmir through Secretary Health, having its Office at Block No.10, new Civil Secretariat, Muzaffarabad Azad Kashmir;
5. Professor Dr. Mumtaz Khan, MS, AIMS Muzaffarabad;
6. Professor Dr. Mohammad Ejaz Khan, Surgeon CMH, Muzaffarabad;
7. Professor Dr. Zardar Khan, Surgeon DHQ, Hospital Mirpur;
8. Professor Dr. Azhar Qayyum NUST Islamabad.

Respondents

### **WRIT PETITION**

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

**PRESENT:**

Asghar Ali Malik, Advocate for the Petitioner.

Syed Wasif Ali Gardezi, Legal Advisor for Health Department.

Mohammad Amir Sharif Qureshi, Advocate for Respondent No.5.

Ch. Shoukat Aziz, Advocate for Respondents.

**JUDGMENT:**

Through this constitutional petition filed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, the petitioner solicited the relief infra:-

“It is, therefore, prayed on behalf of the petitioner that by accepting the instant writ petition, respondent No.3 kindly be directed to consider the petitioner within prescribed age limits as per conditions laid down in advertisement, petitioner’s unmarked numbers be allocated on merit and thereafter, the respondents may kindly be directed to appoint the petitioner as Principal Poonch Medical College Rawalakot without any further delay as the candidates being shown on higher side of merit, are the civil servants and do not qualify for another contract appointment.

It is also further prayed that as an alternate, respondent No.3 may kindly be directed to hold fresh interviews after addressing the anomalies of categorizing the petitioner as “overage” and by securing legitimate marking of numbers by all member of Selection Board.”

2. The case of the petitioner is that respondent No.4 vide advertisement published in “Daily The News” dated 16.07.2022 called applications for the post of Principal Poonch Medical College Rawalakot to be vacant

on 2<sup>nd</sup> December, 2022 for which applications from qualified and experienced Medical Educational Professionals were invited and last date for submission of the applications was 31.07.2022 and as per eligibility criteria mentioned in advertisement, the applicants should not be more than 63 years. The petitioner's date of birth as per his CNIC is 01.01.1960, hence, at the time of submission of application, the petitioner's age was 62 ½ years. It has been stated that interview for the supra post was conducted on 15.01.2024 and seven participants including the petitioners participated in the interview, however, there were few civil servants still in active service have also been included in the merit list while they being the civil servant cannot opt for the contract appointment, therefore, their names required to be excluded from the merit list and only retired or non-civil servants are required to be considered for the questioned slot, however, the respondents with mala-fide intention, declared the petitioner as "overage" which is also contrary to the terms of advertisement. As per contents of petition, one of the Committee Member intentionally did not give the marks to the petitioner and even respondent No.3 did not add the academic numbers of the petitioner, hence, as per stance

of petitioner, conclusion drawn by respondent No.3 through interview is not transparent which amounts to illegal findings, hence, this petition.

3. In the comments filed on behalf of official respondents, it has been stated that petitioner participated in the selection process and placed at serial No.7 of the merit list, however, when he failed to get the required position, he filed the instant writ petition. It has been averred that at one hand the petitioner participated in the selection process to appoint him Principal Medical College Rawalakot but on the other hand, by filing the writ petition he has challenged the selection process with the prayer that while cancelling the previous selection process a fresh selection process may be conducted, hence, the petitioner has failed to point out any illegality or violation of any law in the selection process regarding the matter that he has been kicked out from the selection process on the basis of "overage". Finally, it has been stated that while accepting the comments, the writ petition may be dismissed with costs.

4. The learned counsel for petitioner while reiterating the grounds taken in the writ petition vehemently argued that as per conditions provided by the

respondents, the age of the candidates applied for the post of Principal should not be more than 63 years and the petitioner at that time was only 62 ½ years old but in the merit list, the petitioner was mentioned as overage. The learned counsel further argued that delay in conducting interview caused due to laziness and poor performance of the respondents, hence, the petitioner cannot be penalized due to act of the respondents. He forcefully contended that the conclusion drawn by the respondents is not supported by law rather it falls within the ambit of an act of colorable exercise of the powers, discrimination and arbitrariness and finally he requested for fresh interviews.

5. Conversely, the learned counsel for respondents contended that petitioner participated in the selection process and got 7<sup>th</sup> position and failed to get the required position. They further contended that the petitioner firstly admitted the selection process and when he failed to get the requisite position, he challenged the said process, hence, the petitioner has failed to point out any illegality or violation of any law in the selection process. Finally, they prayed that while accepting the comments, the writ petition may be dismissed with costs.

6. Heard, record perused. A perusal of merit list shows that the candidate who placed at serial No.1 of the merit list secured 69.75 marks, whereas, the petitioner, herein, being placed at serial No.7 obtained 39 marks, hence, Prof. Dr. Mumtaz Ahmed Khan being topper was recommended for the post of Principal Medical College Rawalakot, therefore, the stance of petitioner that the act of respondents is discriminatory, arbitrary and colorable exercise of the powers is without any legal backing which is hereby turned down. The respondents are duty bound to fill up the post as per meritorious position of the successful candidates. The candidate who obtained the highest marks seemingly is liable to be appointed against the advertised post, discrimination and arbitrariness is shown to have been made when appointment of other candidate was made by keeping aside the successful candidates. The petitioner firstly participated in the interview and when failed to get the requisite position, filed the instant petition with the prayer to hold the fresh interview. The candidate when joined and admitted the selection process, how can he/she calls in question the said process despite the fact that there is a lot of difference between the marks of recommended candidate and petitioner, herein, hence, the

principle of acquiesce and estoppel are also applied in the case in hand.

7. Secondly, the petitioner gave emphasis on the point that he was illegally declared as “overage” by the Selection Committee as at the time of filing of application he was only 26 ½ years old, hence, he was wrongly written and mentioned as “overaged” in the merit list. If it is admitted as true that at the time of filing application even at the time of interview, the petitioner was not overaged then too, he could not get the requisite meritorious position as he placed at serial No.7 of the merit list, whereas, the candidate recommended for the supra post obtained highest marks than the petitioner. There is a difference of approximately 30 marks between the marks of petitioner and recommended candidate. In the competitive examination, the difference of points also having much importance, then how can we fill up and cover such huge gape.

8. The petitioner also raised objections that civil servants cannot be appointed on contract basis, in this regard, Contract Policy dated 29.07.2006 of Azad Jammu & Kashmir Rule IX, is very clear and as per said policy, a confirmed/regular civil servant is eligible to apply for

appointment on contract basis against a post in connection with the affairs of the Government, in an administrative department, attached department/office/institution, autonomous body etc. set up by the Government. A civil servant must apply for contract appointment through proper channel, hence, this objection of the petitioner is also rejected and overruled.

The epitome of the above discussion is that the petitioner has failed to point out any illegality or irregularity in the selection process, hence, the petition at hand fails, which is hereby dismissed under the doctrine of in limine control.

Petition stands dismissed.

Muzaffarabad.

20.06.2024 (Saleem)

JUDGE

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

JUDGE

**(Approved for Reporting)**

**JUDGE**