

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.677/2024;

Date of Institution. 22.03.2024;

Date of Decision. 16.09.2024

Dr. Khalid Rafique Director General Information Technology
Board Azad Jammu and Kashmir.

.....Petitioner

Versus

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Services & General Administration Department, having his office at new Secretariat Muzaffarabad;
2. Services & General Administration Department through Secretary Services and General Administration Department, having his office at new Secretariat, Muzaffarabad;
3. Secretary Service & General Administration Department having his office at new Secretariat Muzaffarabad;
4. Department of Information Technology Azad Govt. of the State of Jammu and Kashmir through Secretary Information Technology having office at new Secretariat, Muzaffarabad;
5. Minister, Information Technology Azad Govt. of the State of Jammu and Kashmir having office at new Secretariat, Muzaffarabad;
6. Secretary Department of Information and Information Technology Azad Govt. of the State of Jammu and Kashmir having office at new Secretariat, Muzaffarabad;
7. Law, Justice, Parliamentary Affairs and Human Rights Department Azad Govt. of the State of Jammu and Kashmir through tis Secretary having its office at new Secretariat Muzaffarabad;
8. Secretary Law, Justice, Parliamentary Affairs and Human Rights Department Azad Govt. of the State of Jammu and Kashmir having office at new Secretariat Muzaffarabad;
9. Accountant General of Azad Jammu and Kashmir having office at Sathra Muzaffarabad.

.... Respondents

WRIT PETITION

Before:- Justice Sadaqat Hussain Raja , Chief Justice

PRESENT:

Syed Zulqarnain Raza Naqvi, Advocate for the petitioner.

Ch. Muhammad Manzoor, AAG for the Azad Govt.

Mr. Saqib Safeer, Legal Advisor of Services and General Administration Department.

ORDER:

The above titled writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution 1974, whereby following relief is solicited by the petitioner.

It is, therefore, very humbly prayed on behalf of the petitioner that an appropriate writ may kindly be issued in favour of petitioner against the respondents whereby the respondents may very graciously be directed to issue the formal notification of extension of contract of the petitioner as per summary approved by the worthy Prime Minister Azad Govt. of the State of Jammu and Kashmir dated 05.01.2023 without any procrastination. The letter dated 29.05.2023 may very graciously be quashed for being against the law and rules as well as Contract Policy 2006. The respondents may further be restrained from creating any hindrance in lawful performance of the duties of the petitioner from his present assignment by cancelling, amending or modifying the notification bearing No. SA/1231-39/2023 dated 20.04.2023 till the issuance of the formal notification of extension of petitioner on the summary dated 05.01.2023. Any other relief which this Hon'ble Court deems fit may also be

granted to the petitioner in the interest of justice.

Preliminary arguments heard. The AJK Information Technology was established in 2001 through an Act of the Assembly. Section 2 deals with definition of the Board whereas Section 4 deals with constitution of board. Section 04, Constitution of the Board is reproduced as under:

4. Constitution of the Board: (1) The Board shall consist of the following members namely.

(i)	The President	Chairman
(ii)	The Chief Secretary	Vice Chairman
(iii)	The Additional Chief Secretary (Dev)	Member
(iv)	The Secretary Finance	Member
(v)	The Secretary Services	Member
(vi)	The Director General	Member/Secretary
(vii)	Four Directors (nominated by the Govt.)	Members
(viii)	One IT Professional nominated by The Vice Chancellor of the Azad Jammu & Kashmir University	Member

In Section 6 powers of Board has been prescribed. The

Section 6 is also produced as under:

6. Powers of the Board (1) The Board may, subject to the approval of the Governments, makes rules and regulations, for carrying out the purpose of this Act.

Provided that the Board shall not propose draft of regulations affecting the constitution or power of any authority of the Board until such authority has been given an opportunity of expressing an opinion in writing upon the proposal.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may provide for;

(1) The terms and condition of the service of the employees of the Board disciplinary action

- against its officers and servants, matters relating to grant of leave and retirement of such employment;
- (ii) pension or provident fund or both for the benefit of the officers and other employees of the Board
 - (iii) the admission of IT institution to the privilege of recognition and the withdrawal of recognition;
 - (iv) a general scheme of studies, including the total number of subjects to be taught and the duration of course and
 - (v) all other matters required under any of the provisions of this Act to be prescribed by regulations.

It is pertinent to mention here that the appointment to the position of Director General is to be filled according to the Azad Jammu and Kashmir Information Technology Board Act, 2001 and Section 9 of the abovementioned deals with the appointment of Director General IT Board. For better appreciation, the Section 9 is reproduced as under:

- 09.** Director General (1) The Government shall appoint a Director General of the Board whose terms and conditions of service shall be such as may be prescribed by the Government.
- (2) The Director General shall be the executive head of the Board.
 - (3) The Director General shall perform such functions as may be assigned to him by the Board.

According to the Act, the Board is fully empowered to appoint Director General. The prescribed qualification for the Director General was Ph.D in Computer Science/IT with 5 years of

experience or MS/MCS/ MIT/MBA-IT/BS degree coupled with 10 years of experience in a similar role and position. In 2017, the scope of the AJK Information Technology Board was expended and qualification was also upgraded to include Ph.D in Engineering (specializing in ICT/IT-related disciplines such as Computer, Telecommunication, Electronics/Computer Sciences, or ICT related Engineering along with years of experience in similar role. The petitioner was appointed as Director General of AJK Information Technology Board on March 30, 2017 for a period of three years. The review of record reveals that the petitioner was appointed as Director General AJ&K Information Technology Board vide notification dated 30.03.2017 on the recommendations of Selection Board No. 1 for a period of three years on contract basis. The petitioner has attached another notification dated 21.05.2020 as annexure PB with the petition, wherein, the contract appointment of petitioner has been extended for further period of three years. For better appreciation, the notification dated 21.05.2020 is reproduced as under:

Azad Govt. of the State of Jammu and Kashmir
Service and General Administration Department

Muzaffarabad
21.05.2020

Notification

No. S&GAD/IT(1)/2020 (Gazetted-III): In continuation of notification No.S&GAD/IT(1)/2017 (Gezetterd-III), dated

30.03.2017, the President, Azad Jammu and Kashmir has been pleased to accord approval for extension in contract appointment of Mr. Khalid Rafique as Director General Information Technology BS-20 for a period of three years w.e.f 14.04.2020 by relaxing Para (1) of the Contract Policy, 2006, subject to the condition that the department shall ensure formation of services rules and appointment to the post on regular basis within the stipulated period.

(Khalique Ahmed Khan)
Section Officer (Gezatted-II)
Ph. 05822-921038

The petitioner has attached another notification dated 20.04.2023 as annexure PD/1 with the writ petition wherein the contract appointment of petitioner has been extended till the decision. The relevant portion of the notification is reproduced as under:

آزاد حکومت ریاست جموں و کشمیر مظفر آباد۔
سیکرٹریٹ انفارمیشن ٹیکنالوجی

مظفر آباد

نوٹیفکیشن

مورخہ 20 اپریل 2023

نمبرس 1231-39/2023 جناب صدر آزاد جموں و کشمیر نے ڈائریکٹر جنرل آئی ٹی بورڈ ڈاکٹر خالد رفیق جن کی مدت کنٹریکٹ ملازمت 14.04.2023 کو ختم ہو رہی ہے کو کنٹریکٹ پالیسی 2006ء کے تحت توسیع مدت کنٹریکٹ ملازمت سے متعلق فیصلہ تک بحیثیت ڈائریکٹر جنرل آئی ٹی بورڈ فرائض کی انجام دہی جاری رکھنے کی منظوری صادر فرمائی ہے۔

سیکشن آفیسر
اطلاعات و آئی ٹی۔

(Underline is mine)

The petitioner has accepted this notification whereby it has been categorically mentioned that this extension is for time being and till decision of the matter. Therefore, the petitioner is not an aggrieved person in the eye of law. The petitioner has

attached summary of the Prime Minister in which the petitioner sought extension in contract against the post of Director General AJ&K IT Board as annexure "PE". It is the claim of the petitioner that above mentioned summary is pending with the respondents but the official respondents did not notify the same. It is worthwhile to mention here that the contract policy enforced in Azad Jammu and Kashmir on 29th July, 2006 and according to condition (vi) (iii) of the policy, contract employee shall not claim extension in his contract appointment as matter of right. For better appreciation, the relevant condition is reproduced as under:

Contract Appointment Policy:

- (i)
- (ii)
- (iii)
- (iv)
- (v)
- (vi) (i).....
- (ii)
- (iii) Contract employee shall not claim extension in his contract employment as a matter or right.

It may be added here that the extension in contract appointment is the sole prerogative of the Government meaning the petitioner cannot claim extension as a matter of right, hence, he is not entitled to equitable relief through writ jurisdiction. It is pertinent to mention here that Board is a necessary party and the

petitioner has also not arrayed the Board as party. Law is well settled that no writ can be issued in absence of a necessary party. So, without impleading necessary party the writ petition is also not maintainable.

For the forgoing reasons, the writ petition is not maintainable, it is therefore, dismissed in limine.

Muzaffarabad,

16.09.2024

Chief Justice

Approved for reporting.

Chief Justice