

HIGH COURT OF AZAD JAMMU AND KASHMIR

*Writ Petition No.05/2020;*  
*Date of Institution 09.01.2020;*  
*Date of Decision 31.03.2022.*

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Faisal Saghir Sudozai S/o Saghir Ahmed  
Zahid R/o Bassari Dhak Tehsil Baloch District  
Sudhnoti.

*Petitioner*

*VERSUS*

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, AJ&K, Muzaffarabad;
2. Secretary Education (Colleges) Azad Jammu & Kashmir Muzaffarabad;
3. Chairman Public Service Commission Muzaffarabad;
4. Secretary Public Service Commission, Muzaffarabad;
5. Director General Education (Colleges/Male) Muzaffarabad;

*Respondents*

WRIT PETITION UNDER ARTICLE 44 OF  
AJ&K, INTERIM CONSTITUTION 1974

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

PRESENT:

Mr. Asim Arshad, Advocate for the petitioner.  
A.A.G. for the official respondents.

JUDGMENT:

Through this writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, following relief has been sought by the petitioner:-

*“Under the circumstances, it is humbly prayed that by accepting the instant writ petition, the impugned notification dated 13.12.2019 may kindly be set-aside by issuing direction to respondents to make fresh appointments against the posts mentioned in the notification dated 13.12.2019 on the strength of test and interview dated 28.08.2019 and merit list thereafter. ”*

2. The main trust of the petitioner is that Public Service Commission advertised certain posts including the post of Lecturer English BPS-17 allocated for District Sudhnoti on 04.04.2019 and in response thereof, the petitioner applied and participated in test and interview and secured second position. It has been stated that the petitioner is at top of waiting merit list to be

considered against the available posts in near future while respondents have issued notification dated 13.12.2019 whereby ad-hoc appointments have been made by ignoring the earlier merit position of the petitioner, which is illegal, capricious and against the norms of justice. It has been stated that the petitioner has no alternate and efficacious remedy except to invoke the jurisdiction of this Court, hence, this writ petition.

3. The learned counsel for the petitioner, more or less, reiterated the grounds as incorporated in writ petition, which have sufficiently been mentioned in pre-paras, hence, there is no need to narrate here in black and white.

4. The learned A.A.G. strongly opposed the arguments advanced by the learned counsel for the petitioner and argued that no post is available in the Department to appoint the petitioner, hence, writ petition has been filed frivolous ground, which may be dismissed at preliminary stage.

5. Heard. Record perused. A perusal of record shows that the petitioner sought annulment of impugned notification dated 13.12.2019 through which appointments pertaining to 25 posts of ad-hoc lecturers of different disciplines were extended for a period of six months as per available record appended along-with the writ petition by the petitioner out of which 12 appointments pertaining to Lecturers English BPS-17 were made but the petitioner had not arrayed that ad-hoc appointees as party in the memo of writ petition, hence, the writ petition is not maintainable due to non-joinder of necessary party.

6. Even otherwise, the petitioner has no case at all on merits because through impugned notification dated 13.12.2019, ad-hoc appointments were further extended for a period of six month as such appointments were made against the lien posts, hence, it cannot be said these posts were vacant at the time of

advertisement or wrongly withheld by the official respondents but nothing has been brought on record in this regard, hence, the same cannot be abrogated without any cogent reasons. For proper appreciation of the matter, the rule of law laid down by the apex Court in a case titled *Sarfraz Ahmed Khan vs. Azad Government and others* [2012 PLC (C.S.) 755] is applicable in the case in hand in which relevant part reads as under:-

*“The petitioners have specifically alleged that the posts have been withheld by the department. They failed to bring on the record any proof to substantiate their claim. If the party discharges the burden, then it shifts on the other party. The petitioners failed to substantiate their claim from the record that the posts have been withheld by the department and from the perusal of the record produced by the Education Department, we are satisfied that at the time of relevant advertisements no posts were withheld by the department.”*

*“We want to make it clear that any post which was not available at the time of advertisement or was subsequently created in new budget or is available due to retirement of any person or any other reason becomes in existence before the test and interview is conducted by the Public Service Commission, it cannot be*

*said that the post was available at the time of advertisement and the department has withheld the same.”*

7. It is relevant to mention here that the petitioner stated to have applied for the post in question against the advertisement dated 04.04.2019 rather after perusal of *annexure “PB”*, it appears that last date for invitation of application was fixed as 04.04.2019. The petitioner claimed to have appeared in test/interview and secured second position in waiting merit list but it is very surprising to visualize the record that the petitioner neither any iota of proof pertaining to appearance in test/interview conducted by Public Service Commission has been brought on record nor merit list/waiting merit list has been annexed to which it can be ascertained that indeed the petitioner got obtained second position in overall merit or waiting merit list for which the record has completely closed its eyes, however, only single document at page 24 of the paper book has been appended,

which is unattested photostat copy and same seems to be a self-made list, which is not admissible under law. If for the sake of arguments, the same is admitted as corrected even then the petitioner is falling at serial No.22 of the said list.

8. It is pertinent to mention here that if the petitioner falls at serial No.1 instead of serial No.2 of the waiting merit list, under the relevant provisions of law he cannot be allowed to be considered against the post in question. For proper appreciation of the matter, Rule 13 of The AJ&K Public Service Commission (Procedure) Rules, 1994 is reproduced as under:-

*“13 (1) A person appointed on the recommendation of Commission fails to join the service or is declared medically unfit, a candidate next in the merit from the waiting list shall be commended, on the request of the department concerned, and for this purpose the Commission shall prepare a waiting list.*

*(2) The waiting list prepared under sub-rule (1) shall remain valid for 180 days from the date of selection of candidate.*

*(3) The waiting list shall not be valid in case of fresh vacancies referred to Commission just after*

*test and interview of the previous vacancy.”*

9. Apparently, the writ petition fails from its pleadings because grounds of writ petition and documents appended thereof have no nexus with each other. It is not expected that extra-ordinary jurisdiction of this Court in a routine matter can be exercised, which can only be invoked in extra-ordinary situation as such remedy lies only for aggrieved person who comes before the Court with clean hands. My this view finds support from a case reported as *Raja Iqbal Rashid Minhas Vs. AJ&K Council & 3 others* [2001 SCR 530] wherein it has been held that:-

*“It may be stated generally that an aggrieved party is one in a writ of prohibition whose rights are threatened, in writ of mandamus whose rights are being denied and in writ of certiorari whose rights have been affected by a decision. The word “right” is not used here in strict juristic sense. It is sufficient if the person alleging to be an aggrieved has a personal interest in the performance of a legal duty which if not performed would result in the loss of*



*some personal advantage. A party who stands to lose or gain an advantage by observance or non-observance of law is an aggrieved party. A person aggrieved must be a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully refused him something or wrongfully affected his title to something. The petitioner being not falling in any of the categories, mentioned above, had no competence to lodge either the writ petition or an appeal in this Court against the impugned judgment of the High Court.*

*(Underlining is mine)*

10. In view of present settled by the Hon'ble Supreme Court, the petitioner has to substantiate his legal grievance and stand at his own legs to show his *locus-standi* where he stands, hence, in the given circumstances, the petitioner, is neither an aggrieved party within the meaning of Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 nor has *locus-standi* to invoke the extra-ordinary jurisdiction of this Court by-way writ petition.

11. Law is quite clear that writ lies where any violation of rules and departure of law has been made but no such violation appears to have been found or pointed out by the learned counsel for the petitioner during the course of arguments to which it can be said that any violation on the part of respondents has been made, hence, the writ petition has been filed on conjunctures, surmises and false hopes of the petitioner, which cannot be issued in vacuum.

12. The logical inference of the foregoing deliberation is that the instant writ petition, having no statutory backing, is hereby dismissed in *limine* with no order as to costs.

Circuit Rawalakot.  
31.03.2022(ZEB)

-Sd-  
**JUDGE**

APPROVED FOR REPORTING

-Sd-  
**JUDGE**