

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 1172/2022.
Date of Institution 21.03.2022.
Date of decision. 26.07.2023.

1. Fiaz Ahmed S/o Mumtaz Ahmed Qureshi R/o Constituency No.LA 28-Muzaffarabad 5 Tehsil and District Muzaffarabad Azad Jammu and Kashmir.
2. Danish Awan S/o Muhammad Ayub R/o Union Council Muzaffarabad Constituency No.2 Lachrat Tehsil and District Muzaffarabad Azad Kashmir.
3. Abdul Latif S/o Saifa R/o Union Council Muzaffarabad Constituency No.2 Lachrat Tehsil and District Muzaffarabad Azad Jammu and Kashmir.
4. Danyal Tahir S/o Tahir Mehmood R/o Constituency No.LA 01 Mirpur-I District Mirpur Azad Jammu and Kashmir.
5. Saba Saeed S/o Muhammad Saeed R/o Constituency No.LA 25 Muzaffarabad 2 Tehsil and District Muzaffarabad Azad Jammu and Kashmir.

....Petitioners

Versus

1. Azad Govt. through Secretary Elementary & Secondary Education of the State of Azad Jammu and Kashmir, having his office at new Secretariat Chatter Muzaffarabad.
2. Department of Education through Secretary Elementary and Secondary Education of the State of Azad Jammu and Kashmir, having his office at new Secretariat Chatter, Muzaffarabad.
3. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education male Muzaffarabad Division, having his office at new District Complex, Muzaffarabad.
4. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education male Mirpur Division, having his office at Headquarter Mirpur.
5. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education female Muzaffarabad Division, having his office at new District Complex Muzaffarabad.
6. Director Public Instructions Elementary & Secondary Education male Muzaffarabad AJ&K, having his office at new District Complex Muzaffarabad.
7. Director Public Instructions Elementary and Secondary Education female Muzaffarabad AJ&K, having his office at new District Complex, Muzaffarabad.

8. Divisional Director Elementary & Secondary Education female Muzaffarabad Division, having his office at new District Complex, Muzaffarabad.
9. Divisional Director Elementary & Secondary Education male Muzaffarabad Division, having his office at New District Complex Muzaffarabad.
10. Divisional Director Elementary & Secondary Education male Mirpur Division, having his office at headquarter Mirpur.
11. Kashmir Education Assessment Center (KEACE) through Coordinator (KEACE)/ Focal person having his office at Muzaffarabad.

...Respondents

=====

Writ Petition No. 2451/2022.
Date of Institution 17.06.2022.

1. Ghulam Mukhtar S/o Muhammad Ismail Chaudhary R/o Thandikasi Moharra Sharif Teshil Fatehpur Thakyalala Dist. Kotli.
2. Iqra Mushtaq D/o Mushtaq Ahmed Seikh R/o U/C Komi Kot Muzaffarabad Tehsil and Dist. Muzaffarabad.
3. Syed Nisharat Hussain Shah S/o Syed Ayub Hussain Shah R/o U/C Chatter Kalas Muzaffarabad.
4. Saqib Maqsood S/o Raja Muhammad Maqsood Khan R/o U/C Chatter Kalas Muzaffarabad.
5. Muhammad Yaseen S/o Raja Shahpal Khan R/o Tehsil Sehnsa District Kotli.
6. Mamoonna Azad S/o Muhammad Azad Khan, constituency No.2, Lachrat, Muzaffarabad.
7. Asif Islam S/o Abdul Salam R/o U/C Municipal Corporation LA.3 Mirpur Azad Kashmir.

....Petitioners

Versus

1. Azad Govt. through Secretary Elementary & Secondary Education of the State of Azad Jammu and Kashmir, having his office at new Secretariat Chatter Muzaffarabad.
2. Department of Education through Secretary Elementary and Secondary Education of the State of Azad Jammu and Kashmir, having his office at new Secretariat Chatter, Muzaffarabad.

3. Minister of Elementary and Secondary Education of the State of Azad Jammu & Kashmir, having office at new Secretariat Chatter Muzaffarabad.
4. Cabinet of the Govt. of Azad Jammu & Kashmir through Chairman Cabinet (Prime Minister of AJ&K) having his office at Prime Minister Secretariat Chatter Muzaffarabad.
5. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education male Muzaffarabad Division, having his office at new District Complex, Muzaffarabad.
6. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education male Mirpur Division, having his office at Headquarter Mirpur.
7. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education female Muzaffarabad Division, having his office at new District Complex Muzaffarabad.
8. Divisional Director Elementary & Secondary Education female Muzaffarabad Division, having his office at new Dist. Complex, Muzaffarabad.
9. Divisional Director Elementary & Secondary Education male Muzaffarabad Division, having his office at new Dist. Complex Muzaffarabad.
10. Divisional Director Elementary & Secondary Education male Mirpur Division, having his office at headquarter Mirpur.
11. District Education Officer Male Kotli, having its office at Headquarter Kotli.
12. Kashmir Education Assessment Center (KEACE) through Coordinator (KEACE)/ Focal Person having its office at Muzaffarabad.

...Respondents

=====

Writ Petition No. 2783/2022.
Date of Institution 18.07.2022.

1. Rizwan ur Rasheed S/o Abdur Rasheed Sadeed R/o Bandi Tehsil Athmuqam Dist. Neelum Valley AJ&K.
2. Zarqa Shabir D/o Muhammad Shabir R/o U/C Gorah Shamali (Garrala) Constituency No.5 Pallandari.
3. Tahir Qayyum S/o Muhammad Qayyum R/o U/C Khammba Dist. Bhimber.
4. Nazima Aansad D/o Muhammad Aansad R/o Makhyal Dheerkot Dist. Bagh.
5. Shahid Akram S/o Muhammad Akram R/o U/C Phagwati Dist. Poonch.

6. Abdul Majeed Azam S/o Muhammad Azam R/o U/C Phagwati Dist. Poonch.
7. Qazi Adnan Ahmed S/o Shams ur Rehman R/o Langarpura Dist. Muzaffarabad.
8. Tahir Rasheed S/o Abdul Rasheed R/o Chatter Domail Dist. Muzaffarabad.
9. Mehwish Kabir Abbasi D/o Muhammad Kabeer Abbasi R/o Panjkot Tehsil Patikah Dist. Muzaffarabad.
10. Asad Bashir S/o Muhammad Basheer Khan R/o Goraha Ismiali Dist. Sudhnoti.

....*Petitioners*

Versus

1. Azad Govt. through Secretary Elementary & Secondary Education of the State of Azad Jammu and Kashmir, having his office at new Secretariat Chatter Muzaffarabad.
2. Department of Education through Secretary Elementary and Secondary Education of the State of Azad Jammu and Kashmir, having his office at new Secretariat Chatter, Muzaffarabad.
3. Minister of Elementary and Secondary Education of the State of Azad Jammu & Kashmir, having office at new Secretariat Chatter Muzaffarabad.
4. Cabinet of the Govt. of Azad Jammu & Kashmir through Chairman Cabinet (Prime Minister of AJ&K) having his office at Prime Minister Secretariat Chatter Muzaffarabad.
5. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education male Muzaffarabad Division, having his office at new District Complex, Muzaffarabad.
6. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education female Muzaffarabad Division, having his office at new District Complex, Muzaffarabad.
7. Selection Committee through Divisional Director Elementary & Secondary Education female Mirpur Division.
8. Selection Committee through Divisional Director Elementary & Secondary Education male Mirpur Division.
9. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education male Poonch Division, having his office at headquarter Rawalakot.
10. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education female Poonch Division, having his office at headquarter Rawalakot.

...*Respondents*

=====

Writ Petition No. 1951/2023.
Date of Institution 22.05.2023.

Nida Khan D/o Raja Azhar Mahmood Khan R/o *Kot-trehala* U/C
Kacheli Tehsil and District Muzaffarabad.

....*Petitioner*

Versus

1. Azad Govt. through Secretary Elementary & Secondary Education of the State of Azad Jammu and Kashmir, having his office at new civil Secretariat Chatter Muzaffarabad.
2. Department of Education through Secretary Elementary and Secondary Education of the State of Azad Jammu and Kashmir, having his office at new civil Secretariat Chatter, Muzaffarabad.
3. Selection Committee through Chairman Selection Committee Divisional Director Elementary & Secondary Education female Muzaffarabad Division, having his office at new District Complex, Muzaffarabad.
4. Divisional Director Elementary & Secondary Education female Muzaffarabad Division, having his office at new District Complex Muzaffarabad.
5. District Education Officer (female) Muzaffarabad having his office at Muzaffarabad.
6. Kashmir Education Assessment Center (KEACE) through Coordinator (KEACE)/Focal Person having its office at Muzaffarabad.

...*Respondents*

WRIT PETITIONS

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

PRESENT:

Saqib Ahmed Abbasi, Muhammad Yaqoob Mughal and Raja Azhar Mahmood, Advocates for the petitioners.

A.A.G for Azad Govt.

Faheem Ahmed Awan, Legal Advisor for Education Department.

Judgment:-

NATURE OF THE LIS

1. Four constitutional petitions addressed under Article 44 of the Interim Constitution, 1974 having identical proposition after consolidation have been taken up for adjudication.

FACTUAL MATRIX:

2. The respondent AJK Govt. chalked out a uniform policy known as *AJK Primary and Junior Teachers Recruitment Policy* vide notification dated 01.03.2017, wherein complete mechanism regarding recruitment of Primary and Junior Teachers is provided in vivid terms. It has been provided in the aforesaid policy that merit determined by the selection authority/NTS shall remain valid for the period of 01 year.

3. In writ petition No.1172/2022 following relief has been solicited by the petitioners:-

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

- i. The hon’ble Court may very kindly be set-aside the impugned letters dated 16.03.2022 and letter dated 08.03.2022, being contrary to law, facts, natural justice, against the judgments of the Apex Court and against the fundamental rights of the petitioners in the interest of justice.
- ii. Directed the official respondents to extend the validity period of merit lists of Primary/Junior Teachers/Elementary Teachers of all categories on the basis of above reasons for 5 months which period has been lost due to ban which imposed upon the appointments of NTS Candidates by the officials.

- iii. Directed the respondents to provide the opportunity to NTS waiting candidates for the appointments of petitioners till last day of expiry of the merit lists and till on the further extension period of merit lists and till on the further extension period of merit lists of Elementary Teachers of all categories in the interest of justice.”

4. In the aforesaid writ petition, the claim of the petitioners is that they appeared in test conducted through NTS and after interview against the posts of Primary/Junior and all categories of teachers, the Selection Committee prepared final merit lists of all categories with different dates, wherein the petitioners obtained top position in waiting merit list, but the official respondents before expiry of the validity of the merit list want to halt the process of appointments of the waiting list candidates of Elementary Teachers of all categories vide impugned letters, thus, the impugned letters dated 16.03.2022 and letter dated 08.03.2022 issued by the official respondents are liable to be set-aside. It has been averred by the petitioners that Election Commission of AJ&K due to general election of Assembly of AJ&K imposed ban on appointment and transfer due to which a period of about 160 days was squandered and appointments of the waiting candidates could not be made out of 365 days, validity period. The petitioners contended that they are on merit in their respective union councils/ constituencies for appointments against their respective posts they claimed for. Moreover, due to Covid-19 pandemic situation in year 2021, Schools, Colleges and offices remained closed and due to which

appointments/promotions could not be made in time and the maximum period of merit of NTS was also affected, thus, the impugned letters dated 16.03.2022 and letter dated 08.03.2022 are liable to be set-aside.

5. In writ petition No.2451/2022, the petitioners prayed as under:-

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

- i. Directed the official respondents to extend the validity period of merit lists of Primary/Juniors Teachers/Elementary Teachers of all categories on the basis of above reasons for 5 months which period has been lost due to ban which imposed upon the appointments of NTS Candidates by the officials and the appointment the petitioners against the vacant posts as per merit list after providing the extension in merit to meet the ends of justice.
- ii. Directed the respondents to restrain to fresh advertisement of the posts of Elementary Teachers primary/ juniors of all categories, filling the said vacant posts, shifting, transferring from one place of another place or promotion against the vacant posts of the Elementary teachers of all categories in all over Azad Jammu and Kashmir except the appointments of the petitioners as per merit lists in the interest of justice.”

6. The petitioners contended that in pursuance of AJ&K Primary and Junior Teachers Recruitment Policy, 2017, the respondents vide its proclamation in year 2020 invited application for test through National Testing Service (NTS) against number of posts of Primary Teachers & Junior Teachers for all categories and

the petitioners having fulfilled the required qualification as per rules applied against the posts of Primary and Junior Teachers, Qaria, Arabic etc. and after conducting NTS test, the candidates who qualified their test were subsequently called for interview and after interview prepared final merit list. After test and interview, petitioners obtained positions among top of the candidates as per merit attached as Annexure PB/1. It has been further claimed by the petitioners that Election Commission of AJ&K due to general election of Assembly of AJ&K imposed ban on appointment and transfer due to which a period of about 160 days was lost and appointments of the waiting candidates could not be made out of 365 days, validity period. The petitioners contended that they are on merit in their respective union councils/ constituencies for appointments against their respective claimant posts. Moreover, due to Covid-19 pandemic situation in year 2021, Schools, Colleges and offices remained closed and due to which appointments/promotions could not be made in time and the maximum period of merit of NTS was also effected, thus, the appointments of the petitioners have not been made by the official respondents.

7. In writ petition No.2783/2022, following relief has been solicited by the petitioners:-

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

- i. Directed the official respondents to extend the validity period of merit lists of Primary/ Juniors Teachers/Elementary Teachers of all categories on the basis of above reasons for 5 months which period has been lost due to ban which imposed upon the appointments of NTS Candidates by the officials and the appointment the petitioners against the vacant posts which has been vacant during the period of said 5 months as per merit list after providing the extension in merit to meet the ends of justice.
- ii. Directed the respondents to restrain to fresh advertisement of the posts of Elementary Teachers primary/ juniors of all categories, filling the said vacant posts, shifting, transferring from one place of another place or promotion against the vacant posts of the Elementary teachers of all categories in all over Azad Jammu and Kashmir except the appointments of the petitioners as per merit lists in the interest of justice.”

8. The petitioner-Nida Khan in writ petition No.1951/2023

solicited the infra relief:-

“It is therefore, very humbly prayed that in the light of above facts and circumstances the time of validity of merit list may kindly be extended. The respondents may kindly be directed to issue appointment order of petitioner against any available vacant post in union council Kacheeli on the basis of merit position, suitability, qualification of petitioner. Any other relief which this Court deems fit may also be granted in favour of petitioner in the interest of justice.”

9. Official respondents/Elementary and Secondary Education filed written statement in reply of writ petition No.1172/2022, wherein the claim of the petitioners has been negated and contended that after ending the period of ban of appointments and transfer, the vacant posts were filled in

accordance with law and according to merit position by the official respondents. It has been prayed that the writ petitions have been filed without any substance, hence, the same may be dismissed.

ENSUING PROCEEDINGS:-

10. In reply of writ No.1951/2023, written statement has been filed by Elementary & Secondary Education department, wherein they contended that the petitioner Nida Khan filed instant writ petition after the period of two years, hence, the same is not maintainable, moreover, she does not come in the merit position, thus, she is not entitled for appointment.

11. This court during proceedings of the titled cases, summoned the detailed report of vacant posts of Primary as well as Junior Teachers (Elementary Teachers) etc. from the Education Department from all divisions of Azad Jammu and Kashmir. The respondents/officials submitted details of vacant as well as filled posts.

12. The learned counsel for the parties argued the case at some length. I have heard the learned counsel for the parties and gone through the record of the case with due care.

DETERMINATION BY THE COURT:-

13. Loath petitioners who were in a fix on account of hibernation qua selection process ultimately opted to approach this Court by way of filing constitutional petitions instead of remaining

acquiescent, thus the matter was taken adjunctively. Equity holds the hands of vigilant and adroit preferably and least care the abstracted, acquiescent and lax one.

14. Be that as it may expiry period of merit and waiting list was 1 year and as per law during one year all the newly created post were to be filled up by the said merit/waiting list but as admitted by the official respondents that due to issuance of status-quo order in a similar case they stayed their hands from making any progress in this regard and so many posts of primary teachers which were likely to become vacant, resultant of promotions of primary teachers could not be vacated. Doctrine of reasonable expectations and administrative justice is fully attracted. Pause accrued in selection process on account of stoppage of promotions of primary and junior teachers in next higher grades could not be read against the petitioners.

15. Every administrative order/instrument and decision has to appear before the judgment seat of reason as embedded in the **Section 24-A of the General Clauses Act, 1897.** Reason plays role of oxygen for an order/instrument in order to qualify the test of bona fide requirement qua issuance of such instrument. Official respondent under bona fide mistakes that during subsistence of stay order they had stayed their hands from making any promotion of primary teachers. Petitioners cannot be penalized in such like situation or for that matter cannot be left un-remedied. Petitioners

qualified the test interview acquired the right qua consideration for appointment against the vacant posts during the 01 year, thus, they deserve aid of this Court. *(Underlining is ours)*

16. The chronology of the lis divulges that gauge of prescribe/regulated timeline i.e. (01 year) remained unattended and non-observance of the same kept a window open for the petitioners to ask for indulgence of this Court in exercise of extraordinary powers conferred under Article 44 of the Interim Constitution, 1974.

Expression unius est exclusion alterius

Act which is directed to be done in a particular manner it must be done in that manner or not at all as command in the negative necessarily includes.

17. Petitioners who qualified the requisite criteria and kept up the ball legitimately aspired for their meritorious position to bear fruit within prescribed time line of one year.

18. General law has to give way to the special law. Special law provided one (01) year timeline qua recognizing the right of candidates who figure in Merit/Waiting list.

Generalia Specialibus non derogant. This maxim of law denotes that special rule overrides general rule.

19. Laws are made not to make them merely on the statute books which are framed to act upon them which is in consonance with the Holy Quran as enshrined in Sura Baqrah.

20. It is not only duty of Courts to provide justice to the people of Pakistan but it is the duty of every organ and functionary to provide justice by discharging his/its duties in accordance with law without fear, favour and nepotism through speaking order.¹

21. Apathy displayed in the matter attracted the conscious of Court. For all angles and in terms of any bench mark the petitioners have made out a case for direction.

22. In the wake of supra discussion, a bon droit the respondents are directed to appoint the petitioners (as per order of merit from the wait list) within 02 months. Furthermore, irrespective of fact whether the candidates on wait list from differently abled segment have approached this Court or not their grievance shall be redressed likewise, rest of the available posts be filled in through denovo process strictly in accordance with law, after properly calculating, computing and adhering to the prescribed quota.

Mirpur Circuit.

26.07.2023.

JUDGE

Approved for reporting

JUDGE

¹. 2006 YLR 2271 , PLD 2005 Lah. 381, 2005 YLR 177.