

**HIGH COURT OF AZAD JAMMU & KASHMIR**

Writ Petition No.469-A/2014

Date of Institution 08.03.2014.

Date of Decision 26.08.2022.

Ghazala Farid D/o Muhammad Farid Minhas R/o Bani Minhasan Tehsil & District Bagh Azad Kashmir.

..Petitioner.

**VERSUS**

1. Azad Govt. of the State of Jammu and Kashmir through its Chief Secretary Muzaffarabad.
2. Education Department through Secretary Education Schools having his office at New Secretariat, Chatter Domel Muzaffarabad.
3. Divisional Director Schools (Female) having her office at District Complex Muzaffarabad.
4. Director Public Instructions Schools (Female) having her office at District Complex Muzaffarabad.
5. District Education Officer (Female) District Bagh.
6. Deputy District Education Officer (Female) District Headquarter Bagh.
7. Selection committee through its Chairman for Junior Science Teacher Constituency No.2, Bagh.
8. Selection committee for Junior Science Teacher Constituency No.2, Bagh.
9. Ishrat Fatima W/o Hasan Azam Khan presently posted as Junior Science Teacher at Middle School Kotara Mast Khan.
10. Alia Mushtaq D/o Mushtaq Ahmed presently posted as Junior Science Teacher at Girls High School Jhoola Paniali Tehsil & District Bagh.
11. Qudsia Sarwer D/o Muhammad Sarwer Khan presently posted as Junior Science Teacher at Government Girls Middle School Kotari Qundeel Tehsil & District Bagh.
12. Sajida Riaz D/o Muhammad Riaz Khan presently posted as Junior Teacher Girls High School Jhoola Paniali Tehsil & District Bagh.
13. Samrina Saeed Khan W/o Muhammad Saeed Kiani presently posted as Junior Science Teacher at Government Girls Middle School Kankair Kothian Tehsil & District Bagh.

14. Isma Arshad D/o Arshad Hussain Khan presently posted as Junior Science Teacher at Government Girls Middle School Dhaki Khas Tehsil & District Bagh.
15. Roqiyya Syed D/o Syed Ahmed Shah presently posted as Junior Science Teacher at Govt. Girls High School Dhal Qazian Tehsil & District Bagh.
16. Sobia Begum D/o Zia-ul-Rehman presently posted as Junior Science Teacher at Government Girls Middle School Chirhan Tehsil & District Bagh.
17. District Accounts Officer District Bagh.

..Respondents.

### **WRIT PETITION**

Before:-**Justice Muhammad Habib Zia, J.**

#### **PRESENT:**

Raja Muhammad Altaf Khan, Advocate for Petitioner.

Sardar M.R. Khan, Advocate, for Respondents No.9 to 12.

Sardar Shahid Hameed Khan, Advocate, for Respondent No.16.

Nemo for remaining respondents.

#### **JUDGMENT:**

The captioned writ petition has been addressed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, whereby, following prayer is made by petitioner:-

*"It is therefore, very humbly prayed that while allowing the petition appropriate writ may kindly be issued in the following manners.*

- i. To declare the act of the official respondents for preparation of the merit list for the post of Junior Science Teacher for constituency No.2, District Bagh being violative of lawful authority, consequently quashed the same.*

- ii. *To set-aside the appointment orders of private respondents No.9 to 16, dated 11.09.2013 [Annexure D to D/7]. And declare the same as null and void and no legal effect.*
- iii. *To declare eight appointment orders against the five advertised posts as illegal and without any lawful authority and without any lawful justification.*
- iv. *To direct the official respondents jointly and severally to prepare a fresh merit list after due process of law and appoint the petitioner as Junior Science Teacher.*
- v. *To inquire the private respondents that under what authority of law they are holding the posts of Junior Science Teacher and consequently by cancelling the same declared as vacant.”*

2. The precise facts forming background of the instant writ petition are that petitioner is first class State Subject of Azad Jammu & Kashmir, hails from Bani, Minhasan Constituency No.2, District Bagh, who is qualified as M.Sc. B.Ed. It is stated that official respondents through Daily Ausaf dated 26.06.2012, inter-alia, advertised 05 post of Junior Science Teachers. The petitioner being eligible applied for the same and after conducting test and interview was placed at serial No.13 of the merit list. The claim of petitioner is that official respondents appointed private respondents No.9 to 16, however, only 05 posts were advertised, hence, the

petitioner constrained to file the instant constitutional petition.

3. The writ petition has been resisted by private respondents through written statement, whereby, the contents of writ petition have been controverted. It is further maintained that petitioner participated in selection process, when she failed to achieve the desired result, she challenged the selection process. As per law, only an aggrieved person can file the constitutional writ petition, hence, submitted for dismissal of writ petition

4. Both the parties submitted written arguments.

5. I have perused the contents of writ petition and examined the written arguments submitted by the learned counsel for the parties.

6. A contemplate perusal of file reveals that official respondents, inter-alia, through Daily Ausaf dated 26.06.2012, published 05 posts of Junior Science Teachers. The petitioner being eligible applied for the same. After due process petitioner was placed at serial No.13 of the merit list, however, private respondents No.9 to 11 have been appointed through even dated order 11.09.2013. The petitioner claimed that only 05 posts were advertised, however, against the aforesaid advertisement 08 private respondents have been appointed, which is against the law. A

perusal of merit list reveals that that petitioner obtained 13<sup>th</sup> position and failed to obtain merit position. After failure to obtain prescribed merit, petitioner has challenged selection process, through the instant writ petition filed on 08.03.2014. According to my considered view, as petitioner could not obtain merit position, therefore, she is stopped by her conduct from filing writ petition. An identical point came under consideration before the Apex Court in case titled Tabassum Arif Vs. Azad Govt. & others [2013 SCR 134], wherein at page 138 of the report, it was opined as follows:-

*“There is another aspect of the case that the petitioner in response to aforesaid advertisement applied for the aforesaid post. When he was not called for interview on the ground that he does not fulfill the qualification for the said post, he filed writ petition. The petitioner is stopped by his conduct from filing writ petition. If a person participates in the proceedings and fails to achieve the desired results, thereafter he cannot turn round and challenge the process.”*

7. A perusal of file also reveals that appointment orders of private respondents were issued on 11.09.2013, however, against the aforesaid orders, the instant writ petition has been filed on 08.03.2014, which is attracted by laches extended over 06 months. The principle of laches was considered by the Apex Court in case titled Azad Government of the State of Jammu & Kashmir & others V. Haji Summandar

Khan & others (1995 SCR 259), wherein, at page 267 of the report, it was opined as under:-

*“The next point which needs resolution is as to whether in the instant case the explanation by the petitioners-respondents that they filed the writ petitions after delay because they were waiting for the outcome of the writ petitions filed by other land owners referred to above is a valid explanation. We have given our due consideration to the matter and we have come to the conclusion that the petitioners-respondents should have known that even if the relevant law was held by the High Court ultra vires of the Constitution they could not get any relief as they were not party to the proceedings. Thus even if the explanation is accepted as true. We are unable to subscribe to the view taken in the authorities relied upon by the learned counsel for the respondents. If we accept the explanation that laches in filing writ petition can be condoned on the ground that the concerned party was waiting for the decision of another identical case then there would be no end to the litigation. Because other persons who were adversely affected by the offending provision of the Ordinance in the State may seek remedy by filing writ petitions and plead that they were waiting for the judgment of this Court on the point. Obviously this would frustrate the very purpose of bar of laches in cases of writ jurisdiction. However, even otherwise, the writ petitions filed by the respondents must fail because as has been observed in the earlier part of the*

*judgment the present writ petitions were filed by the respondents after the expiry of 6 to 9 months from the date of the delivery of the judgment by the High Court in the two writ petitions referred to above. The learned counsel for the petitioners respondents maintained that after the judgment of the High Court in the writ petition filed by the other land owners they issued a notice to the Government to pay them the amount of compensation at the rate of Rs.40,000/- per kanal within a period of 15 days to one month but they did not oblige. Even if we subtract the period of one month from the period reckoned from the date of the judgment of the High Court in the said writ petitions even then the writ petitions are belated by 5 to 8 months. There is no explanation whatsoever for the aforesaid delay, and thus, the writ petitions would still be hit by laches.”*

The similar view was expressed by the Lahore High Court, in case titled Shams Din Vs. Aman Ullah and 3 others [PLD 1987 Lahore 471]. At pages 472 and 473 of the precedent case, it was observed as follows:-

*“Learned counsel for the petitioner has appended an application under section 5 of the Limitation Act for the condonation of delay in filing the present writ petition. Learned counsel submitted that no order was passed in the review petition, but the judgment was reserved on 08.07.1985. However, from a perusal of the application, it*

*is evident that the learned Member (Consolidation) Board of Revenue dismissed the review petition on 14.07.1985 after hearing the learned counsel for the petitioner. I am not convinced with the explanation provided by the petitioner for the inordinate delay in filing the petition before this Court. In the meantime valuable rights have accrued in favour of the respondents by operation of law. The petitioner was not vigilant in pursuing his own remedies provided to him under the law. He has failed to give any plausible and reasonable explanation in filing the writ petition so late. It is next contended vehemently by learned counsel for the petitioner that under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, no period of limitation has been provided for filing the writ petitions. I do not agree with the contention of the learned counsel. Although no period of limitation is provided under the Constitutional provision, the fact remains that the constitutional petition had to be filed within a reasonable period of time after obtaining the certified copies of the documents. At any rate, after obtaining the certified copies of various documents in a particular case, an aggrieved person has to challenge the impugned orders not later than three months and if a Constitutional petition is moved after the expiry of three months, the period thereafter*



*has to be adequately and sufficiently explained by the petitioner. In this case I am satisfied that the petitioner was negligent in the prosecution of his matter before the Consolidation authorities.”*

The petitioner failed to explain the aforesaid inordinate delay, therefore, writ petition merits dismissal even from this angle.

8. So for as the appointments of private respondents are concerned. The petitioner claimed that only 05 posts were advertised against which 08 candidates have been appointed. In this regard, advertisement dated 26.06.2012, is much clear, wherein, applications were invited against existing/vacant posts as well as against expected posts which will become vacant till next 06 months, therefore, no illegality has been committed by respondents regarding appointments even from this angle.

9. The upshot of above discussion is that finding no substance in the instant writ petition the same is hereby dismissed.

Muzaffarabad.  
26.08.2022(I)

-Sd-  
JUDGE

Note: Judgment is written and duly signed, the office is directed to apprise the learned counsel for parties accordingly.

-Sd-  
JUDGE