

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.515/2020.
Date of institution 18.03.2020.
Date of decision 18.04.2022.

Khawaja Nazir Ahmed retired Assistant Conservator Forests B-17 District Bagh, presently R/o Imamia Colony, Bypass Road, Kehna Mohri, P.O/Tehsil and District Bagh, Azad Kashmir.

Petitioner

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Forests, Wildlife and Fisheries having his office at New Secretariat, Muzaffarabad.
2. Minister Forests Wildlife and Fisheries Azad Govt. of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
3. Selection Board No.3 through its Chairman i.e. Secretary Forests, Wildlife and Fisheries Azad Jammu & Kashmir, having his office at New Secretariat, Muzaffarabad.
4. Finance Department through Secretary Finance Azad Govt. of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
5. Chief Conservator Forests (Principal) Azad Govt. of the State of Jammu and Kashmir, having his office at Bank Road, Muzaffarabad.
6. Accountant General Azad Jammu & Kashmir, having his office at Sathra, Muzaffarabad.

Respondents

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

Before:- **Justice Sardar Liaqat Hussain, J.**

PRESENT:

Mr. Muhammad Rafique Khan Minhas, Advocate for Petitioner.

Ch. Aqif-ud-Din, Legal Advisor Forests Department.

Raja Muhammad Nawaz Khan, Legal Advisor Finance Department.

JUDGMENT:

The captioned writ petition has been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974 whereby following relief has been prayed for:-

“It is therefore, very humbly prayed on behalf of the petitioner that by accepting the instant writ petition, the respondents may kindly be directed to grant the time scale incentive with effect from the date of entitlement of the petitioner, alternatively with effect from 01.06.2019 in light of the notification dated 20.09.2019 to secure the ends of justice as well as to provide a constitutional safeguard to the accrued fundamentally guaranteed rights of the petitioner.”

2. Precise facts of the case are that the petitioner is 1st Class State Subject of Azad Jammu & Kashmir. It has been stated that the petitioner has been serving as permanent employee of Forests Department against different positions and after attaining the age of superannuation stood retired as Range Officer, B-16 vide order dated 28.08.2019 w.e.f. 30.11.2019. It has been stated that petitioner served in the Department as Range Officer B-16 for more than 13 years having spotless service in the same scale. He applied for his time scale which was not granted to him during his service. However, after his retirement, the respondents issued the order of officiating promotion of the petitioner against the

post of Assistant Conservator Forests B-17 vide order dated 10.12.2019. It has been pleaded that Finance Department issued notification dated 03.06.2016 for provision of time scale incentive in favour of the civil servants of Azad Jammu & Kashmir having ten years service in the same scale with no promotion prospects. The Secretariat, Forests issued notification dated 03.06.2017, whereby time scale was approved in favour of 16 officers of the Forest Rangers, wherein, the name of the petitioner is entered at serial No.4 but this notification could not be implemented. It has been alleged that the petitioner moved an application before the department/authority for grant of time scale incentive on 11.01.2018, however, needful could not be done. It has been claimed that according to the notification dated 03.06.2016, the petitioner is entitled to time scale incentive because his claim is supported by letters dated 07.10.2019 & 10.12.2019. The petitioner has alleged that despite issuance of retirement order dated 28.08.2019 the respondents have not released his pension up till now and have issued notification dated 10.12.2019 for promotion of the petitioner, just to deprive him from time scale incentive from the date, he became eligible. The petitioner has alleged that the

impugned notification is against the law and right of the petitioner, therefore, the same be modified and the petitioner be granted time scale from 01.06.2019.

3. Writ petition has been resisted by the respondents by filing written statement, wherein, it has been stated that it is correct that the petitioner moved application for time scale incentive but due to lack of vacancies his case could not be processed and during this period he stood retired from service on 30.11.2019 and after his retirement through notification dated 10.12.2019 he was promoted in grade B-17. It has been stated that according to time scale policy, the petitioner was entitled to time scale and in pursuance of the Govt. policy the proceedings were started but could not be completed during his service and he stood promoted to the next scale as Assistant Conservator after his retirement vide notification dated 10.12.2019, therefore, he cannot claim time scale incentive.

4. The learned counsel for the petitioner reiterated the grounds of writ petition and argued that petitioner served in the Forests Department for more than 39 years against different positions and after attaining the age of superannuation, stood retired from service as Range

Officer B-16 vide order dated 28.08.2019. The learned counsel submitted that petitioner was promoted to B-16 vide order dated 23.09.2005 and under the Govt. policy promulgated on 03.06.2016, he was entitled to obtain time scale after completion of ten years service which stood accrued in his favour on 24.09.2015, however, as the above policy was not in force at that time and after promulgation of said policy the case of the petitioner along-with other officers was considered by the authority and the officers having ten years service in their credit were granted time scale incentive vide notification dated 13.06.2017. The learned counsel pressed into service the point that despite issuance of notification dated 13.06.2017 the matter remained being prolonged and delayed by the respondents on one pretext or the other, hence, the petitioner was deprived of his accrued right of time scale incentive. He added that in order to justify deprivation of the petitioner from time scale incentive the respondents issued notification dated 10.12.2019 whereby he has been promoted to the post of Assistant Conservator Forests after his retirement. The learned counsel submitted that due to delay & procrastination committed by the respondents the petitioner has suffered a huge monetary loss as his time scale was approved

w.e.f. 01.07.2016 vide notification dated 13.06.2017, therefore, by accepting the instant writ petition the respondents be directed to grant the requisite time scale according to the notification dated 13.06.2017.

5. Conversely, the learned Legal Advisor for Forests Department argued that it is correct that the petitioner moved application for time scale incentive but due to lack of vacancies his case could not be processed and during this period he stood retired from service on 30.11.2019. He argued that after his retirement, through notification dated 10.12.2019 he was promoted in grade B-17, hence, after having been promoted to the next higher scale, the petitioner cannot claim time scale incentive, therefore, the writ petition may be dismissed.

6. Having taken into consideration the arguments of the parties, I have delved deep into the record available on the file and have observed that the petitioner was promoted as Range Officer B-16 on 23.09.2005. It appears from the record that the Azad Jammu & Kashmir Govt. framed and promulgated time scale incentive policy vide notification dated 03.06.2016 whereby the civil servants, having ten years service in the

same scale were granted next higher scale w.e.f. 01.07.2016.

7. The file of the case contains script dated 13.06.2017 whereby sixteen officers of the Forests Department having more than ten years in B-16 were granted B-17 w.e.f. 01.07.2016. In the said notification the name of the petitioner is listed at serial No.4. According to annexure "PD" page 20, the above notification could not be implemented on the pretext that through the said policy only those employees could be granted time scale incentive who did not have opportunity of further promotion. In this regard, this Court would like to observe that the notification dated 03.06.2016 was issued only for the purpose to provide monetary benefits to the employees having no promotion prospects but it did not mean that if a person qualifies his service for time scale but he is not granted the same on the ground that there is an opportunity of his promotion though after a period of five years.

8. In the instant case, time scale incentive was granted in favour of the petitioner and other officers w.e.f. 01.07.2016, however, the notification could not be implemented till his retirement vide order dated

28.08.2019. The contention of the learned counsel for the petitioner that notification dated 10.12.2019 has been issued in order to deprive the petitioner from time scale incentive w.e.f. the date of his entitlement seems to be genuine one.

9. It also appears from the file that the petitioner filed his first application for time scale incentive on 11.01.2018 and the file is silent as to what proceedings were carried out in pursuance of the said application. While perusing the file and the contents of the prayer clause of the petition in hand, as well, this Court has observed that the petitioner has claimed time scale incentive from 01.06.2019 whereas he was entitled to the same w.e.f. 01.07.2016, which may be a clerical mistake, however, in such state of affairs, this Court would not like to fix the date of grant of the time scale incentive to the petitioner. However, it can safely be held that the petitioner is entitled to time scale incentive from the date of completion of ten years service in B-16, as the other officers of Govt. of Azad Jammu & Kashmir were benefitted through notification dated 03.06.2016.

10. As far the question of the implementation of the notification dated 13.06.2017 is concerned, I would like

to observe that the delay on the part of the authority cannot burden the petitioner to depriving him from his accrued right. This view of the Court is fortified by the case reported as 2003 PLC (C.S) 1537 Supreme Court of Azad Jammu & Kashmir. In the referred case, at page 1546 of the report the Hon'ble apex Court has observed as under:-

“17. The Government is competent to change its policy and even to prescribe different qualification than that which was initially fixed for a particular post. However, if any right on the basis of the policy of the Government has vested in due course of time to any citizen, he cannot be deprived of the same later on. The appellants were inducted in service in the light of the policy which was adopted by the Government at the relevant time. Under that policy the competent officials of the Education Department inducted many untrained persons including the appellants in the service of Education Department. We, therefore, maintain the judgment of the High Court whereby the protection has been given to those who have completed PTC. However, we extend this benefit even to the present appellants who were deputed for departmental training at late stage and on account of this reasons they could not acquire PTC qualification before the order of the High Court or got compartments in few subject which they cleared subsequently after passing of the order by the High Court. In our view a valuable right has vested in favour of the appellants from which they cannot be deprived of by the Government.”

11. The instant case, when adjudged in light of the above dictum of the Hon'ble apex Court in contemplation with the facts and circumstances of the case, this Court has reached the considered conclusion that the petitioner was entitled to time scale incentive right from the date, he qualified for the purpose having completed ten years service in the same scale among other employees of the State, therefore, it can safely be concluded that the petitioner cannot be penalized for the delay, mal-function or non-function of the authority /respondents.

12. As far the question of availability of the vacancies for time scale incentive is concerned. It is astonishing that the respondents are un-aware of the fact or want to misguide the Court by stating that case of the petitioner could not be processed due to lack of vacancies. In this regard it may be observed that time scale incentive is meant to extend monetary benefit to the employees of the State having ten years service in the same scale with no promotion prospects and no vacant post or vacancy is required for grant of time scale incentive, hence, this

argument of the learned counsel for the respondents being misconceived stands repelled.

13. In view of above, the instant writ petition is accepted and the petitioner is declared entitled to time scale incentive in accordance with the notification dated 13.06.2017.

The petition stands accepted in the manner indicated above.

-Sd-

Muzaffarabad:
18.04.2022.

JUDGE