

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.1777/2021.
Date of institution 27.05.2021.
Date of decision 10.05.2022.

Mohammad Sajjad s/o Abdul Latif r/o Jabrian Tehsil &
District Muzaffarabad.

Petitioner

VERSUS

1. Secretary Higher Education Azad Govt. of the State of Jammu & Kashmir having his office at new Secretariat Muzaffarabad;
2. Director Public Instruction (DPI) Colleges Azad Govt. of the State of Jammu & Kashmir having his office at old Secretariat Muzaffarabad;
3. Public Service Commission through Secretary Public Service Commission having his office at Jalalabad Muzaffarabad;
4. Sikandar Hayat Khan Ad-hoc Lecturer Political Science Degree College Athmuqam District Neelum;
5. Abdul Hameed Prizada Ad-hoc Lecturer Political Science Inter College Sharda.

Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Mushtaq Ahmed Janjua, advocate for the Petitioner.
Syed Atif Mushtaq Gillani, Legal Advisor for the Respondents.

JUDGMENT:

The supra titled writ petition has been addressed under Article 44 of Azad Jammu & Kashmir Interim Constitution 1974, whereby, the petitioner has

sought direction against the respondent, Public Service Commission, not to advertise the post of Lecturer Political Science and further direction has been sought against the respondents to withdraw the requisition sent to Azad Jammu & Kashmir Public Service Commission for the supra post and also appoint the petitioner as Lecturer Political Science against the quota of Muzaffarabad.

2. Precise facts of the case in hand are that Azad Jammu & Kashmir Public Service Commission advertised 13 posts of Lecturer Political Science B-17 through advertisement No.02/19 of different quotas and the petitioner applied against the quota of Muzaffarabad and after qualifying the written test was placed at serial No.1 of the waiting list. As per stance of the petitioner, at the time of advertisement 10 posts of Lecturer Political Science were vacant whereupon ad-hoc appointments were made, hence, through this writ petition a direction has been sought to appoint the petitioner against the posts withheld by the department.

3. Preadmission notices were issued to the respondents for filing objections who filed the same, wherein, it has been alleged that the candidate placed at serial No.1 of the merit list has been appointed with the recommendations of the commission and at the time of

requisition only 13 posts of Lecturer Political Science were available which were sent to Azad Jammu & Kashmir Public Service Commission for advertisement and thereafter till 31.12.2019, further 10 posts were available which had also been sent to Azad Jammu & Kashmir Public Service Commission for appointment on permanent basis, so, there is not even a single post withheld by the department. It has further been alleged that regarding the same matter, the petitioner had already filed a writ petition No.572/2020 on 16.09.2020 which was dismissed by this Court on 05.10.2020. So, on the same matter and same cause of action, writ petition is not maintainable. It has been averred that the petition has been filed after prescribed period of limitation as the handout was issued on 15.10.2019, whereas, the writ petition has been filed after passing 1 ½ years.

4. In compliance of the order dated 07.04.2020, both the parties have filed their written arguments, whereby, the mostly grounds taken in the pleadings have been reiterated and in the written arguments filed on behalf of the respondents it has been stated that the writ petition which has earlier been dismissed by this Court has not been challenged by the petitioner at higher forum, so,

the judgment of this Court has attained finality, hence, the principle of res-judicata fully attracts in the case in hand.

5. I have gone through the written arguments as well as record appended with the writ petition.

6. The petitioner in order to prove his claim regarding withheld posts mainly relied upon the notification dated 13.12.2019 (Annexure PC). A perusal of said notification shows that the service of different ad-hoc appointees has been extended for further six months but it relates to those ad-hoc appointees who have been adjusted against the lien, therefore, the stance of the petitioner that the respondents at the time of advertisement had withheld the posts in view of supra notification is misconceived and misconstrued. It was enjoined upon the petitioner to prove his claim relating to the withheld posts by producing a document which may show that the posts pertaining to the quota of district Muzaffarabad were mala-fidely withheld by the department at the time of requisition. Merely mentioning in the writ petition that the posts were mala-fidely withheld by the department is not sufficient. Except the supra notification, the petitioner has failed to produce any single document which may support his claim regarding the withheld posts. I have gone through the judgment of this Court dated 05.10.2020, whereby, the petitioner has

also sought the same relief against the respondents to issue his permanent appointment order as Lecturer Political Science against the withheld posts and that writ petition was dismissed on the ground that the petitioner has failed to point out any post withheld by the department, meaning thereby that the petitioner has filed the instant writ petition on the same matter and same cause of action. In my opinion, the petitioner has failed to make out his case for admission, so, the further proceedings in the instant case would be a futile exercise.

7. Leaving aside the factual matrix, we take up the preliminary objection raised by the respondents Nos. 1 & 2, in their written reply by alleging that the petition in hand is hit by doctrine of laches.

8. Be that as it may, it is reflecting from the record that handout pertaining to the slot of political science was issued on 15.10.2019 while the instant petition was filed on 01.06.2021 round about after two years, that too the previous writ petition filed by the petitioner on the same subject matter was dismissed by this Court in limine vide decision dated 05.10.2020, hence, doctrine of Res-Judicata is also attracted. Attested copy of the previously filed writ petition and decision dated 05.10.2020 is available on record of the case, juxtapose perusal of the pleadings and

prayer clauses of both the writ petitions are almost same. It is a feeble state of affairs which shows Tricky behavior of the petitioner who suppressed the material facts from the Court. Remedy of writ is equitable relief and equity demand that he who seeks equity must come with clean hands.

09. Directorate of Colleges have issued a certificate on 01.01.2020 which is appended with the parawise comments and speaks as infra:-

”اس امر کی تصدیق دیجاتی ہے کہ محکمہ ہائر ایجوکیشن سے مستقل بنیادوں پر دستیاب 31.12.2019 تک کی اسامیوں کو ریکورڈیشن کر دیا گیا ہے اور مستقل بنیادوں پر کوئی اسامی withheld نہ رکھی گئی۔“

It is celebrated principle of law that presumption of correctness is attached to the official record unless contrary proved. The doctrine of res-judicata is built upon the consideration of public policy that there must be an end to the litigation and finality be given to the adjudication at some stage. Ready reference in this regard is [2013 SCR 172 (D)]. At this juncture, first of all I have to focus upon conduct of the petitioner as it is a litmus test which can decide the fate of the constitutional petition addressed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974.

10. I am fortified to follow the dicta of the Apex Court laid down in the case titled “Muhammad Binyamin

Vs. Azad Govt. & others” [2016 SCR 1045], relevant portion of the above pronouncement is reproduced as under:-

“Writ---

---Subsequent writ petition without disclosing the earlier one—A party seeking relief by way of writ petition must come with clean hands---It is well established principle of law that a party who comes to the Court while suppressing facts is not entitled to any relief. As the appellant filed the subsequent writ petitions without disclosing the earlier one, therefore, the learned High Court has rightly dismissed the same.”

Thus, on the above multiple reasons the writ petition in hand is meritless and not maintainable, hence, dismissed and consigned to record. Miscellaneous application if any be dealt with accordingly.

Muzaffarabad.

10.05.2022 (Saleem)

-Sd-

JUDGE

Note:- Judgement is written and duly signed. The office is directed to announce the judgment in presence of the parties or their counsel accordingly

-Sd-

JUDGE