

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

(1) Writ Petition No.866/A/2020.  
Date of institution 07.07.2020.  
Date of decision 14.05.2025.

Muhammad Altaf, son of Muhammad Maskeen, Driver B-4 in the office of Director Trade & Labour Dept. of Azad Jammu and Kashmir.

*...Petitioner*

Versus

1. Secretary Industry, Labour and Mineral Resources Department, Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
2. Director Industries Azad Government of the State of Jammu and Kashmir, having his office at Lower Chatter Muzaffarabad.
3. Joint Director Industries and Trade Mirpur, Azad Jammu and Kashmir, new Industry Area Mirpur.
4. Deputy Director Industries Mirpur, District Mirpur, Azad Jammu and Kashmir, new Industry Area, Mirpur.
5. District Accounts Officer District Mirpur, Azad Jammu and Kashmir.
6. Selection Committee of Industry for Grade 1-11 through its Chairman.

*....Respondents*

=====

(2) Writ Petition No.2193/2023.  
Date of institution 13.06.2023.

Abdul Waheed S/o Mir Zaman, Naib Qasid B-01 in Industry Labour and Mineral Resources Muzaffarabad, Azad Jammu and Kashmir.

*....Petitioner*

Versus

1. Secretary Industry, Labour and Mineral Resources Department, Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
2. Director Industries Azad Govt. of the State of Jammu and Kashmir, having his office at Lower Chatter Muzaffarabad.
3. Joint Director Industries and Trade Mirpur, Azad Jammu and Kashmir.
4. Deputy Director Industries Mirpur, District Mirpur, Azad Jammu and Kashmir.
5. District Account Officer District Mirpur, Azad Jammu and Kashmir.

6. Muhammad Altaf S/o Muhammad Maskeen, Driver B-04 in the office Director Trade and Labour Department Muzaffarabad, Azad Jammu and Kashmir.

.....Respondents

### WRIT PETITIONS

**Before:- JUSTICE SYED SHAHID BAHAR, J.**

**In the presence of:**

Ch. Shoukat Aziz, Mrs. Noshaba Iqbal, Advocates and Anees-ul-Arifeen Abbasi, Advocate for the petitioners in writ No.866/A/2020 and writ No.2193/2023.  
Miss Farhanda Ibrar, Advocate/Legal Advisor for Industry, Labour and Mineral Resources department.

**Judgment:**

**1. FACTS IN BREVITY**

1. The constitutional petition No.866/A/2020 has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974 by the petitioner Muhammad Altaf, who is presently serving as Driver B-4 in the office of Director Trade & Labour Department of Azad Jammu and Kashmir, claiming that he deserves to be benefited from policy notification dated 29.09.1999 (having force of statutory rules) for consideration against the post of Junior Clerk BPS-11 under 20% quota reserved for the employees performing their respective jobs in grade I to IV. It is useful to reproduce the prayer clause made by the petitioner as infra:-

“It is therefore, humbly prayed by accepting this writ petition and declared the petitioner is entitled for appointment in the reserved 20% quota of the employee of grade B-1 to B-4, the non-petitioners may kindly be directed to fill up the post of Junior Clerk which become vacant in the office of Deputy Director Industry Mirpur according to the spirit of policy notification dated 29.09.1999 and issued seniority list amongst the

employees of Grade B-1 to B-4 in the department then issue appointment order in favour of the petitioner.”

2. While in connected petition No.2193/2023 filed by one Abdul Waheed (temporarily performing duties of Junior Clerk) the petitioner solicited relief for considering him against 20% reserved quota of employees of grades B-1 to B-4 qua permanence against the post of Junior Clerk.

3. Both the connected petitions have been consolidated and admitted for regular hearing. Written statement has been filed on behalf of respondents wherein the claim of the petitioners has been negated in detail.

4. Today, the case was taken up for final arguments. Arguments heard and record perused. Proposition involved in the instant writ petition is quite simple and narrow.

## **II. STANCE OF THE PETITIONERS**

5. Learned counsel for the petitioners reiterated the grounds already taken in their pleadings; vehemently contended that the Government policy notification qua reserving 20% quota for the employees of grade B-1 to B-4 is yet in field having force of statutory rules. Neither the aforesaid policy notification has been rescinded or reversed by the relevant quarter nor anybody challenged the said notification, therefore, same is liable to be implemented and adhered to in its pros and cons.

III. **NARRATIVE OF THE RESPONDENTS**

6. While on the other hand, learned Legal Advisor for Industries, labour and Mineral Resources Department, staunchly opposed the prayer made by the petitioner and contended that as the post of driver is not specifically included in the policy notification, therefore, no relief can be asked for let alone given to the driver regarding a Junior Clerk position. However, the counsel for the respondents contended that in writ petition No.2193/2023, the case of the petitioner for permanence against the post of Junior Clerk will be considered by the relevant selection committee in accordance with law. She added that proposed rules are in the pipeline, which are yet to be finalized by the relevant quarter, wherein certain modifications have been proposed in the present policy notification/ rules by enhancing the qualification for the promotion under 20% quota reserved for employees of grade B-1 to B-4.

7. The claim of the petitioner Muhammad Altaf in writ petition No.866/A/2020 is very simple. He is claiming right of consideration against the post of Junior Clerk under 20% quota reserved for grade B-1 to B-4 employees as well as adherence of the policy notification to the extent of Drivers as well. As per stance of the learned counsel for the petitioner Ch. Shoukat Aziz, Advocate, up till now, 20% quota of grade B-1 to B-4 has never been implemented or adhered to by the departmental quarter, which is sheer

discrimination and *malafide* on the part of the official quarter as well as administrative injustice.

#### IV. VERDICT

8. It is unequivocally reflecting from the policy notification that same is yet in field, neither cancelled nor challenged by anyone. Until and unless the aforesaid notification is not amended, rescinded or revoked by the competent authority same is liable to be implemented and adhered to. Stance of the official quarter qua amending the proposed rules wherein qualification for the post of Junior Clerk from the quota of employees having grade I to IV is proposed to be enhanced bears no weight, thus, at the outset, discarded. Proposed rules cannot place any embargo until and unless, the rules are not modified or amended in accordance with law. Furthermore, his accrued rights under any piece of legislation/policy notification even otherwise cannot be obviated by way of amendment.<sup>1</sup>

#### DOCTRINE OF CLASSIFICATION

9. Law and equity recognize equality among equals. But vice versa there is no greater inequality than the equal treatment of unequals.<sup>2</sup>

10. Class legislation or for that matter policy making in a sense to declass a certain group or set of people similarly situated hit

---

<sup>1</sup>. Kaneez Fatima v. Islamic Republic of Pakistan [PLD 2023 Lahore 324]

<sup>2</sup>. Franfurter in Dannis (1950) 339 US 160.

the guarantee of equal treatment, whereas reasonable classification among same class who are not on equal footing with reference to any claim is not covered under the doctrine of equality.

(Emphasis supplied)

11. Albeit under the doctrine of equality, in view of oscillating or wavering needs of dissimilar set of persons, which may have little in common can be treated differently on logical perspicuity, however for such classification to meet the standards of fairness, the self-actualization of two vital constituents must be fulfilled, first the classification must be founded on an intelligible differentia<sup>3</sup> which may judiciously distinguish persons or thing that are grouped together from the others left out of the group, the second, the differentia must have a logical and sensible nexus with the object sought to be achieved.<sup>4</sup>

(Emphasis supplied)

12. It reveals from the policy notification that after enumerating some posts like *Qasid* and *Naib Qasid* and through term (وغیره) /extra the broader room has been provided for all other categories of employees in the class of grade 1 to 4, thus drivers (subject to having requisite qualification and experience provided in the rules) are deemed included in the category of the employees of grade 1 to 4.

---

<sup>3</sup>."Intelligible differentia" means differentiating between two sets of people or objects by distinguishing persons or things from the other persons or things, who have been left out. See Prof. Dr. Sheikh Asrar Ahmad v. Govt. of Punjab (2025 PLC (C.S) 182).

<sup>4</sup>. Gul Zarif Khan vs. Govt. of KPK 2025 PLC (C.S) 533 and Pakcom Limited vs. Federation of Pakistan PLD 2011 SC 44.

To declass the drivers from the said category by the pretext that as word 'driver' has not been specifically inserted in the policy notification, hence they cannot be given benefits of the said policy notification is self-assuming discriminatory and arbitrary, besides extra legem act<sup>5</sup> which cannot be endorsed. Discrimination is fraud upon the Constitution.

13. It is also useful to reproduce the meaning of word extra (وغیرہ) as infra:-

Extra; outside, beyond. Very more than usual. More like this.<sup>6</sup>  
Additional, Extraordinary.<sup>7</sup>

8

زائد معمول سے بڑھ کر + توقع یا ضرورت سے زائد + معمول سے زائد - اضافی طور پر - مزید - ذیلی - اضافی - مزید شے -

In قومی انگریزی اُردو لغت / National English Urdu Dictionary the

word extra (وغیرہ) has been defined as infra:

**Extra**

9

زائد - اضافی - سوا - فالتو - از حد - مستزاد - فاضل معمول توقع یا ضرورت سے زیادہ - معمول سے بڑا یا بہتر (اسم) شے زائد - معمولی درجے سے بڑھ کر - خلاف معمول - غیر معمولی طور پر -

14. Thus, word extra (وغیرہ) covers all the employees in grade 1 to 4 irrespective of the nature of job assigned to them.

15. An intelligible differentia, as a premise, insinuates an act of exodus or taking refuge that is capable of making sense, extending beyond logic and reasoning.

<sup>5</sup>. Beyond the protection of the law.

<sup>6</sup>. Oxford Advanced Learners Dictionary.

<sup>7</sup> Chambers 20<sup>th</sup> century dictionary.

<sup>8</sup>. Oxford Urdu English Dictionary. Powered by Oxford Corpus.

<sup>9</sup>. Urdu English Dictionary

16. So far as the stance of the departmental quarter that post of Driver is not specifically included and inserted in the policy notification, so, they could not be benefited from the said policy notification, it is also discarded. It is specifically mentioned in the policy notification that نائب قاصدين، قاصدين، دفتری وغیرہ are liable to be considered against the post of Junior Clerk from the employees from grade B-1 to B-4. Simple construction of word “etc./ (وغیرہ)” is that all other employees working in the department (might be driver as well) are liable to be considered against the post of Junior Clerk as the plain language is well-speaking in this regard, and as per the doctrine of textualism, the primary source of meaning of any legal instrument is its plain language.<sup>10</sup>

17. Crux of the above is that petition No.866/A/2020 is **accepted** and respondents are directed to adhere to 20% quota reserved for the employees of grade B-1 to B-4 and consider the case of the petitioner for promotion against the available post of Junior Clerk, **within 02 months**. While, the connected writ petition No.2193/2023 filed by Abdul Waheed petitioner is also **accepted** and official respondents are directed to take up the case of the petitioner for permanence against the post of Junior Clerk subject to qualification and requisite criteria of the said post. Compliance report be submitted to Registrar of this Court.

---

<sup>10</sup>. Justice Antonin Scalia was prominent and influential advocate of ‘textualism’ in the United States. His writings and judicial opinions significantly shaped the understanding and application of this doctrine.



Both the writ petitions stands disposed of in the above indicated manner.

*Files be consigned to record.*

Muzaffarabad,  
14.05.2025.

***JUDGE***

**Approved for reporting**

***JUDGE***