

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

Writ Petition No 372/2023.  
Date of institution 24.01.2023.  
Date of decision 30.09.2024.

1. Muhammad Awais Hashmi, Senior Clerk, Government Girls Degree College Afzalpur, District Mirpur, Azad Jammu & Kashmir.
2. Sagheer Ahmed, Senior Clerk, Directorate Education Colleges Muzaffarabad, Azad Jammu & Kashmir.
3. Muhammad Mushtaq, Senior Clerk, Government Postgraduate College Bhimber, Azad Jammu & Kashmir.
4. Riaz Ashraf, Senior Clerk, Government Girls Degree College Chak Sawari, District Mirpur, Azad Jammu & Kashmir.
5. Haleema Wannu, Senior Clerk, Government Girls Postgraduate College Muzaffarabad, Azad Jammu & Kashmir.
6. Muhammad Khursheed, Senior Clerk, Government Girls Degree College Chaksawari, District Mirpur, Azad Jammu & Kashmir.
7. Ijaz Hussain, Senior Clerk, Government Boys Degree College Islamagarh, District Mirpur, Azad Jammu and Kashmir.
8. Muhammad Nazam Khan, Senior Clerk, Government Boys Postgraduate College Mirpur, Azad Jammu and Kashmir.
9. Muhammad Nadeem, Senior Clerk, Government Boys Degree College Mirpur, Azad Jammu and Kashmir.
10. Shazat Abbasi, Senior Clerk, Government Boys Degree College Gharri Dupatta, District Muzaffarabad, Azad Jammu and Kashmir.
11. Attiq-ur-Rehman, Senior Clerk, Government Girls Inter College Komikot, District Muzaffarabad, Azad Jammu & Kashmir.
12. Raja Muhammad Khursheed Khan, Junior Clerk, Directorate Education Colleges Muzaffarabad, Azad Jammu and Kashmir.
13. Waheed Aziz, Junior Clerk Government Colleges of Education Afzalpur, District Mirpur, Azad Jammu & Kashmir.
14. Imran Manzoor, Junior Clerk, Government Girls Degree College Chaksawari, District Mirpur, Azad Jammu and Kashmir.

...Petitioners

Versus

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Services and General Administration having his office at New Secretariat Muzaffarabad.
2. Cabinet of Azad Jammu and Kashmir, through Secretary Cabinet Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
3. Secretary Services and General Administration, Azad Government of the State of Jammu & Kashmir having his office at New Secretariat Muzaffarabad.

4. Secretary Higher Education, Azad Govt. of the State of Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
5. Rules framing Committee through its Chairman Additional Chief Secretary (General) Azad Government of the State of Jammu and Kashmir having his office at New Secretariat Muzaffarabad.
6. Finance Department of Azad Jammu and Kashmir through its Secretary, having his office at New Secretariat, Muzaffarabad.
7. Director Public Instructions, (Colleges) Azad Government of the State of Jammu and Kashmir having his office at old Secretariat Muzaffarabad.
8. Muhammad Ibrar Sheikh, Junior Clerk, Directorate Colleges Muzaffarabad.
9. Rashid Mehmood, Junior Clerk, Government Girls College Barnala.
10. Rizwan Ahmed, Junior Clerk, Government Girls Degree College Kahuta.
11. Raja Afzaal Mumtaz Khan, Junior Clerk, Degree College Danna.
12. Jahangir Nazeer, Junior Clerk, Government Girls Degree College Hattian Dupatta.
13. Muhammad Yousaf, Junior Clerk, Directorate College Muzaffarabad.
14. Raja Anwar Khan, Junior Clerk, Government Girls College Chikar.
15. Aneeq Abbasi, Junior Clerk Directorate, Colleges Muzaffarabad.
16. Abid Hussain Mughal, Junior Clerk, Government Boys Degree College Chinari.
17. Muhammad Shafique, Junior Clerk, Government College of Education Afzalpur.
18. Raja Nasar Ullah Khan, Junior Clerk, Government Girls postgraduate College Mirpur.
19. Waseem Awan Alvi, Junior Clerk, Directorate Colleges Muzaffarabad.
20. Imran Khan, Junior Clerk, Directorate Colleges Muzaffarabad.
21. Rashid Sardar, Junior Clerk, Government Boys Degree College Dhitkot.
22. Faisal Iqbal, Junior Clerk, Government Model Science College Muzaffarabad.
23. Syed Awais Gillani, Junior Clerk, Government Boys Degree College, Chikar.
24. Sardar Sajid Hussain, Junior Clerk, Government Postgraduate College Muzaffarabad.
25. Nabeel Qureshi, Junior Clerk, Government Girls Degree College Leepa.
26. Syed Mujahid ul Hassan Gillani, Junior Clerk, Directorate of College, Muzaffarabad Division, Muzaffarabad.
27. Syed Saqlain Manzoor, Junior Clerk, Boys Inter College Balsari.
28. Syed Saddam Gillani, Junior Clerk, Government Boys Postgraduate College Kharik.

29. Raheel Raza, Junior Clerk, Government College of Education Afzalpur.
30. Sadia Abbasi, Junior Clerk, Government College of Education Bagh.
31. Rizwana Fatima, Junior Clerk, Government Girls Postgraduate College Bagh.
32. Muhammad Rafi, Junior Clerk, Boys Inter College Malot.
33. Dawood Ahmed Abbasi, Junior Clerk, Government Degree College, Leepa.
34. Javed Iqbal, Junior Clerk, Boys Degree College Afzalpur.

.....Respondents

WRIT PETITION

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

PRESENT:

Raja Shujat Ali Khan, Advocate for the petitioners.  
 Sardar Sohaib Tanveer, Legal Advisor for Education Department.  
 Raja Zulqarnain Abid, Advocate for private respondents No.8 to 34.  
 Legal Advisor for Finance Department.

**Judgment:**

Through the titled writ petition filed under Article 44 of Azad Jammu and Kashmir Interim Constitution, 1974, following relief has been solicited by the petitioners:-

- I. That the concerned quarter may be directed to bring an amendment in new amended rules, vide notification dated 23.07.2020, to abolish the qualification of the bachelor degree for promotion in higher grade in light of the decision of stake holders headed by the then Chief Executive of Azad Jammu & Kashmir dated 29.01.2022, during meeting dated 28.01.2021.
- II. That the respondents may be restrained to fill the vacant posts of Senior Clerks and Head Clerks in Higher Education Department Azad Jammu and Kashmir, in the garb of the qualification of the Bachelor degree prescribed in new amended rules, because the process for bringing an amendment regarding the qualification of the bachelor degree for abolishing same is under process before the concerned quarter in the interest of justice."

2. Facts of the instant petition as per petitioners are that they are permanent employees of the Education Department of Azad Jammu and Kashmir and presently are serving as Senior Clerk and Junior Clerks in the different institutions of Higher Education of Azad Jammu and Kashmir. Petitioners contended that their qualification is Intermediate. Petitioners averred that Govt. of Azad Jammu and Kashmir brought amendments in the Azad Jammu and Kashmir Directorate of Colleges Service Rules through different notifications, lastly an amendment has been made by the Govt. in AJ&K Directorate of Colleges Service Rules, through notification dated 23.07.2020 and according to the said new amended rules the post of Junior Clerk was up-graded from scale BPS-07 to BPS-14 and the post of Head Clerk was upgraded from BPS-14 to BPS-16 and qualification for appointment against the said posts was enhanced as Bachelor degree from any recognized University. Petitioners alleged that due to the promulgation/framing of the amended rules vide notification dated 23.07.2020, the right of the promotion of the petitioners being lack of qualification as prescribed in the aforesaid rules, have been affected badly. The petitioners alongwith others employees approached the concerned quarter to abolish the condition of the qualification of Bachelor Degree for the promotion in higher grade regarding the post of Clerical Staff introduced into the new amended rules, but the concerned quarter failed to do needful. Thereafter all Pakistan Clerk Association (APCA), Azad Jammu and Kashmir approached the Chief Executive of Azad Government of the State of

Jammu and Kashmir for redressal of their grievance. A meeting was held on 28.01.2021, presided by the then Chief Executive of Azad Jammu and Kashmir in Prime Minister House Muzaffarabad which was attended by the Finance Minister, Additional Chief Secretary (General) and Secretary Services and General Administration Department of Azad Jammu and Kashmir. The said committee after considering the charter of demand of the APCA decided that the condition of the qualification of the bachelor degree introduced in the new amended rules for the induction of the Clerk Staff in the service may be abolished, in this regard the process may be initiated to amend the aforesaid rules on 29.01.2021, headed by then Chief Executive of Azad Jammu and Kashmir. Petitioners contended that process of amendment in the rules was initiated by the concerned quarter but due to issuance of status-quo order in the writ petitions No.1230/2021 and 1986/2021, all the process was stopped, however, the aforesaid writ petitions later on were dismissed through consolidated judgment dated 15.12.2022 by this Court. Petitioners claiming that a lot of posts of Senior Clerks as well as Head Clerks are vacant in different institutions of the Higher Education Department of Azad Jammu and Kashmir, at the moment, the respondents are going to initiate the process of the promotion of the junior and Senior Clerks to higher scale in pursuance of the new amended rules vide notification dated 23.07.2020, whereas, the process is underway before the concerned quarter to amend the rules regarding the qualification of the Bachelor Degree, thus, they prayed that the

respondents may be directed to restrain to initiate the process of the promotion of the clerical staff against the vacant posts of Higher Education Department of AJ&K.

3. After admission of the writ petition, written statement offered on behalf of respondents No.4, 6 and 7 wherein the claim of the petitioners has been negated. Respondents contended that the matter relates to the terms and conditions of services and for the purpose proper forum is service tribunal. Respondents contended that the impugned rules were issued on 23.07.2020 by the Government, and since then the department is implementing upon the said rules, thus, after lapsing period of almost 3 years, the petitioners are claiming to amend the said rules through this petition, which is also hit the principle of laches. Respondents contended that number of vacancies of Senior Clerks as well as Head Clerks are vacant, which has to be filled in as per approved rules in accordance with law; and matter is pending due to instant litigation.

4. Separate written statement has been filed on behalf of private respondents No.8 to 34, wherein the claim of the petitioners has also been negated by the said respondents and contended that petitioners have no locus standi to file the instant writ petition. They further contended that the petitioners got status quo order dated 26.01.2023 from this Court, by concealing the real facts of the case and stopped the selection process with regard to promotion of the private respondents. They vehemently contended that it is prerogative of the government to frame rules which cannot be made

on sweet will of any person or group of persons. They contended that Rules making powers vest in the Govt. and under Section 23 of Civil Servants Act, 1976, the Govt. is competent to enhance, alter or amend the prescribed qualification for a particular post. Respondents finally prayed that the instant writ petition may be dismissed with cost.

5. Pro and contra arguments have been heard. Record perused.

6. The claim of the petitioners is that the respondents may be directed to amend the Azad Jammu & Kashmir Directorate of Colleges Service Rules, 2020 (dated 23.07.2020) by abolishing/amending the qualification/condition of bachelor degree regarding promotion of Senior Clerks as well as Head Clerks, in the aforesaid rules. The petitioners took a stance that they are Intermediate, performing their duties as Junior Clerks in different institutions of Higher Education Department, and in presence of new rules, 2020, they do not fulfill the requisite criteria for promotion in next grade, therefore, the aforesaid rules laid a barrier in the way of their promotion, thus, a discriminatory treatment has been made against the petitioners, which is not maintainable.

7. Record reveals that instant petition has been filed on 24.01.2023, against the notification of impugned rules dated 23.07.2020, after about 2 years and six months, which is hopelessly barred by time and hit the principle of laches.

8. The record further reveals that in an identical matter recently, the Hon'ble Apex Court of Azad Jammu and Kashmir vide its judgment dated 10.06.2024 in a case titled "Secretary Higher Education and others vs. Javed Iqbal and others" resolved alike controversy and held as under:-

"In view of the upgradation of the posts, the Rules, 1989 were substituted to the extent of serial No.4, 5, 8, 9, 10, 15, & 17, vide notification dated 23.07.2020. Through the said amendment post of Head Clerk (B-16) is to be filled in by promotion on the basis of seniority cum-fitness from amongst the Senior Clerk BPS-14, working in the Functional Unit concerned and having qualification as per Col.7. i.e. Bachelor's Degree from any University recognized by HEC. It appears that through amendment 100% quota has been fixed for promotion and the qualification for the post has been substituted as Bachelor Degree. After the aforesaid amendment in the Rules, the respondents, herein, filed the writ petition before the High Court, wherein they prayed for issuance of direction to the official respondents, therein, for their regular promotion in the light of the seniority list and the Departmental Service rules, 1989 but have not uttered a single word regarding the substitution of the Rules, 1989, however, the official respondents, therein, filed comments, wherein it was averred that after upgradation of the posts of Head Clerk in BPS-16, the Rules, 1989 have been amended vide notification dated 23.07.2020 and according to the said Rules, dated 23.07.2020, the petitioner/ respondents, herein, are not eligible to be promoted due to lack of qualification. In our considered view, if the rules dated 23.07.2020, adversely affected any right of the respondents, then the proper forum to challenge the same was available to them. After the amendment incorporated on 27.07.2020, in the Rules of 1989, the amended rules are holding the field then how a direction can be issued for regular promotion of the petitioners/respondents, herein, on the basis of repealed rules. The learned High Court while handing down the impugned



judgment has failed to consider this important aspect of the matter.”

The Hon’ble Supreme Court of AJ&K, in last para of the aforementioned judgment also directed the appellants (Secretary Higher Education and others) to fill the posts in accordance with the Rules, dated 27.03.2020. It is necessary to reproduce the directive para of the said judgment passed by the Hon’ble Apex Court of AJ&K is as infra:-

“Before parting with the judgment, it may be observed here that the posts of Head Clerk (B-16) are lying vacant in the Department since April, 2017, and have not been filled in on regular basis as yet, which is a mal-administration on behalf of the authority, therefore, the appellants, herein, are directed to fill in the same on regular basis strictly in accordance with the Rules, dated 27.03.2020, within a period of 02 months, from the communication of this judgment. A compliance report be submitted with the Registrar of the Court.”

The Hon’ble Apex Court in the aforesaid judgment further observed that:-

“In the instant case, nothing is available on record to show that the enhancement in qualification introduced through Rules dated 23.07.2020, is ultra vires the Constitution or based on mala-fide then the powers duly conferred to the Government by law cannot be shattered. It is settled principle of law that a civil servant cannot claim a vested right for promotion to a particular post with the claim that the rules be framed in such a manner so that he may be promoted.”

9. Be that as the case may be, making of rules is purely within the domain of rules making authority and wisdom of the rules

making authority could not be challenged by any individual in a way to ask for framing of rules merely for his benefit and according to his sweet-will. Wisdom of the rules making authority cannot be challenged and questioned at random without alleging any illegality or for that matter any clash between the rules with the parent law or Act viz a viz infringement of any constitutionally fundamental guaranteed rights having direct nexus with the alleged grievance of the petitioner. It is also in the fitness of things to state that competent authority i.e. Govt. is empowered to fix/assess, alter or enhance qualification for any post according to exigencies of the department. Thus, in my estimation, no infringement of law has been pointed out by the petitioners in the impugned rules.

10. Remedy of writ is an extraordinary constitutional remedy which can only be availed by the aggrieved person keeping in view the parameter of the Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974.

11. As per celebrated principle, canons of judicial ethics, all the presumptions of legality are to be drawn in favour of the legislative instrument even than same is subordinate legislation. Rules are progeny of a statute which are made by the competent authority in exercise of its delegated legislation power under such act on the application thereof is empowered confined and limited to the law under which those are framed.

12. In such like eventuality when rules are excess of provisions of the Statute or was in opposition with parent law, then definitely it could be declared ultra vires and cannot be given effect. In this regard ready reference is **PLD 2013 FSC 18**.

13. It is settled principle of law that framing, altering or amending the rules is the prerogative of the government or concerning authority. The Apex Court in plethora of Judgments held that it is the prerogative of the government/concerned authority to frame or amend the rules. In case titled **“Qazi Ghulam Sarwar & 3 others Vs. Azad Govt. and 6 others”**, reported as **2016 SCR 1737**, the Hon’ble Supreme Court of Azad Jammu and Kashmir held as under:-

“The version of the petitioners is that Rules be amended and departmental promotion quota be provided. The Framing of Rules is a sole prerogative of the concerned authorities and no such direction can be issued that the Rules shall be framed according to the wishes of the Government Servants. This proposition has already been resolved by this Court in a case reported as *Syed Rasheed Hussain vs. Azad Govt. and 6 others [2014 SCR 883]*, wherein, it has been observed as under:-

*“...Even otherwise, Rules cannot be framed/amended at the sweet-will of a party and it is the sole prerogative of the Authority concerned to frame or amend the same....”*

14. This view finds further support from another case reported as **“Rizwan Muzaffar v. Azad Government & 8 others [2010 SCR 156]”**, wherein, the Hon’ble Apex Court of Azad Jammu & Kashmir, has observed as under:-

“---Rules cannot be framed for the benefit of a particular person --- It is ordered by the Prime Minister on application that “the request made in the application appears to be genuine, the rules shall be reconsidered by the Committee: --- Held: this practice is not appreciable.”

S. 23 --- Rules making powers vest in the Government --- The Government is competent to enhance, alter or amend the prescribed qualification for a particular post.”

In the aforesaid verdict, the Hon’ble Apex Court further held that:-

*“A person cannot claim a vested right for promotion to a particular post with the claim that the rules be framed in such manner so that he may be promoted. In the impugned rules the Govt. has fixed such qualification which is necessary for relevant field. No fundamental rights of the appellant have been infringed.”*

It has been further observed by the Hon’ble Apex court in the aforesaid dicta at page 171, which also speaks as under:

*“No one can claim a vested right in promotion or in the terms and conditions for the promotion to a higher post. The Government has the right to enhance the qualifications and the standards for recruitment and promotion in order to maintain efficiency in service. Except for the post which the civil servant happens to hold, he cannot claim vested right in other higher tiers in the hierarchy.”*

15. The Hon’ble Supreme Court of Azad Jammu & Kashmir in case titled “Sardar Muhammad Khalil & 101 others Vs. Azad Govt. and 65 others”, reported as [2019 SCR 571], laid down that:-

*---framing/amendment of rules---change/enhancement of qualification---the AJ&K Elementary and Secondary Education Department*

*Teaching Cadre Service Rules, 2016--- the power of the Govt. cannot shattered if same is not ultra vires the Constitution or based on mala fide---it appears from the record that the appellants' claim is based on such a right which may accrue to them in future, it is very astonishing, if their claim is accepted then consequently, the way of making amendments in the rules shall be closed which is against the scheme of law. It may be observed here that enhancement in the minimum qualification for promotions/appointments is the need of the hour and when nothing is available on record to show that enhancements introduced through Rules, 2016, are ultra vires the Constitution or based on mala fide then the powers duly conferred to the government by law cannot be shattered."*

16. The aforesaid view finds further support from the case titled "Zaffar Iqbal Khan & 52 others Vs. Azad Government & 5 others" reported as **[2018 SCR 1079]**, wherein August Supreme Court of AJ&K, has been laid down as under:-

*"it is settled principle of law that rules cannot be enacted, altered or amended on the sweet-will of any civil servant and to declare the same as illegal/ultra vires the Constitution, the aggrieved civil servant has to prove that the Rules are inconsistent with the provisions of the parent Act or the Constitution, whereas, no such eventuality is available in the case in hand; thus, keeping in view the circumstances of the case, law does not permit us to interfere with the powers legally exercised by the Government."*

17. Therefore, it can safely be held that the rules cannot be amended or framed at the sweet-will of any person or on the choice of any party.

18. The petitioners in the case in hand has failed to point out any illegality irregularity or perversity on the part of the respondents, hence, in this eventuality, no direction can be issued.

19. Rules making qua regulating the service matters of employees as per spirit of the parent statute is prerogative of the competent authority, thus, rules cannot be chalked out, framed and altered as per wish of the employees, unless any scheme of rules is in opposition with the statute or for that matter constitutionally guaranteed rights. In this sense no aid can be provided to petitioners in extra-ordinary jurisdiction, that too AJK Service Tribunal is a tribunal of exclusive jurisdiction. Any civil servant feeling himself aggrieved from any final order or for that matter rules invoke the appellate jurisdiction of service tribunal.

20. The terms & conditions of the civil servants is governed by the Civil Servant Act, 1976 and the rules made there under; an amendment in any rule having the implication of effecting the terms & conditions of the civil servants definitely effect the interest of civil servant; but a rule having such an implication is not challengeable and cannot be struck down by the High Court.<sup>1</sup>

21. The constitutionally, legality and vires of law or rule can be competently adjudicated by the service tribunal as well, if it has an effect of adversely effecting the terms and conditions of a civil

---

<sup>1</sup>. Raja Shahjahan vs. Azad Govt. 1995 PC (CS) 562.

servant and the tribunal is competent to strike down such a law which effects the fundamental right of a civil servant.<sup>2</sup>

22. If a statutory rule or a notification adversely effects the terms and conditions of a civil servant the same can be treated as an order in terms of the section 4 of the Act.<sup>3</sup>

23. On one hand, petitioners are asking for framing fresh rules while on the other hand are seeking prohibition against existing rules.

24. **Any rule which is cloud upon the terms & conditions of a civil servant by effecting his service rights can safely be termed as an order in view of section 4(1) of the AJK Service Tribunal Act, 1975 and is challengeable before the Service Tribunal. All grounds of attack qua discrimination, violation of fundamental rights and mala-fide are available to the appellant (petitioners) to be raised before the tribunal of exclusive jurisdiction (vested with the power of a civil Court).**

(Underlining is mine)

25. Writ petition at hand is not competent.

26. In backdrop of the above discussion the instant writ petition fails, which is dismissed. Parties shall bear their own costs.

File be kept in archive.

Muzaffarabad,  
30.09.2024.

**JUDGE**

**Approved for reporting**

**JUDGE**

<sup>2</sup>. Ghaiasul Haq vs. Azad Govt. PLD 1980 SC AJK 5.

<sup>3</sup>. TA Sherwani vs. Govt. of Punjab 1991 SCMR 1041.