

**HIGH COURT OF AZAD JAMMU & KASHMIR**

*Writ Petition No.1942 of 2019.*

*Date of Institution. 03.12.2019.*

*Date of Decision. 04.02.2023.*

Muhammad Bashir Assistant Lineman Electricity Operation Division  
Garhi Dupatta District Muzaffarabad AJ&K.

*...Petitioner.*

**VERSUS**

1. Chief Engineer Electricity Department Muzaffarabad AJ&K having office at PM House Road near Alam-Dar Chock Muzaffarabad.
2. Superintendent Engineer Electricity Circle Muzaffarabad AJ&K.
3. Sub Divisional Officer Electricity Department Muzaffarabad AJ&K.
4. Accountant General of AJ&K Muzaffarabad.

*... Respondents.*

**WRIT PETITION**

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

**PRESENT:**

*Muhammad Hanif Nawaz, Advocate, for the petitioner.*

*Abid Qayyum Mughal, Legal Advisor, for the official respondents/  
Electricity Department.*

**JUDGMENT:**

Petitioner in the petition in hand, seeks a direction against the respondents to adjust the him on permanent basis as Assistant Lineman BS-5 or Quli BS-1 by relaxing the age of the petitioner i.e. 49 years besides solicits another direction that respondent No.2 may kindly be directed to release salary of the petitioner since 01.01.2011 hitherto.

**SAGA OF THE LIS:-**

2. Petitioner, a 1<sup>st</sup> Class State Subject of AJ&K, hails from District Muzaffarabad AJ&K. He, being a temporary employee of

AJ&K Government's Electricity Department, has been as an Assistant Lineman BS-5 on work charge basis since 02.01.1991 and at the minute, he is performing his duty at Ghari Dupatta Sub Divisional Office. On 28.10.2011, one Mr. Muhammad Sharif, an employee of AJ&K Government's Electricity Department, retired on attaining the age of superannuation. Against the said slot, Muhammad Naeem was appointed as Assistant Lineman whereas the petitioner was posted on vacant post of Muhammad Naeem as Quli. The petitioner leaves no stone unturned to carry out his duty with all sincerity, even relevant authorities are satisfied with his performance, however, the respondents neither paid salary of the petitioner nor appointed him on permanent basis, whereas hundred work charge servants who were junior to the petitioner were confirmed as permanent on the basis of favouritism and nepotism. Petitioner contends that he is performing his duty since 1991, so, he is entitled to be appointed on permanent basis besides drawing salary including allowances etc, hence, the instant writ petition.

3. Arguments on behalf of learned counsel' for the parties heard. Learned counsel' for the parties reiterated the grounds taken in their rival versions, so, no need is required to reproduce the same in arguments.

4. A perusal of the file reveals that petitioner has been appointed as work charge Lineman BS-5 vide order dated 02.01.1991 on temporary basis. The petitioner remained performing his duties up-till-now with his full devotion. It reveals that a post of Assistant

Lineman BS-5 fell vacant due to retirement of Muhammad Sharif where-against one Muhammad Nadeem was appointed and the petitioner was ignored. The petitioner is of the version that the respondents have confirmed hundreds of junior work charge employees on permanent basis but discrimination has been made by the respondents in the case of the petitioner despite the fact that petitioner is continuously serving in the Electricity Department and he moved various applications to the concerned authorities for issuing his permanent appointment order but the petitioner has been discriminated on the part of the respondents, whereas, for the time being, hundreds of work charge employees have been confirmed. This version of the petitioner has not been negated by the respondents during arguments, which means that respondents are admitting the version of the petitioner that in past hundred of work charge employees in the department have been confirmed and the petitioner has been discriminated in this regard. The petitioner is discharging his duties since the year 1991 in the department continuously and he has lost his one eye during his duty. These circumstances show that respondents have confirmed various employees serving in the department on permanent basis and the petitioner has not been treated on equal footing, whereas the petitioner is entitled to be dealt with the same treatment.

**Justitia est constans et perpetua Voluntas Jus Suum Cuique Tribuend:-**

The above maxim of law denotes that Justice is a steady and unceasing disposition to render to every person his dues.

5. As adumbrated the petitioner rendered his services in the department for round about 02 decades and lost his one eye, resultantly, fallen in disability. Even otherwise, he deserves to be accommodated against the quota reserved for differently abled persons.

6. It is unhealthy state of affairs on the part of the people who are at the helm of affairs who have shut their eyes from miseries of the poor people like the petitioner.

7. Promotion of social Justice is one of the principle of polices incorporated in the Interim Constitution in the parlance of Doctrine of administrative justice principle of polices and preamble clause qua providing concept of better Govt. is to be read in combine manner and in aid of the Constitutionally fundamental guaranteed right No.1 and 15.

8. Firstly, all we have to deal with the Constitutionally Fundamental right No.1 enshrined in the Interim Constitution, 1974. It is useful to reproduce the verbatim of right No.1.

**Security of person. No person shall be deprived of life or liberty save in accordance with law.**

9. In neighboring country India the corresponding right has been incorporated in the Constitution of India as right No.21 in infra manner.

**Protection of lie and personal liberty:-**

No person shall be deprived of his life or personal liberty except according to procedure established by law. While in

the Constitution of Pakistan, 1973, the aforesaid right is existing as under:-

*9. Security of person. No person shall be deprived of life or liberty save in accordance with law”.*

10. At the outset, it is worth mentioning that the supra right mutates mutandis is existing almost in the written Constitutions of civilized countries.

11. The word life has been defined in Black Law Dictionary 11<sup>th</sup> edition as infra, **Life.**

*“The period within which a plant or animal exists as vibrant, growing or even subsisting organism before it dies- a period that mere objects never have 2. The state of being alive as a human: an individual persons existence”.*

12. By the term life as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits mutilation of the body by the imputation of an arm or leg, or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world. 1

**In AIR 1981 SC 746 at page 753 Justice Bhagwati Spoke on the subject in infra manner:-**

*“We think that right to life includes the right to live with dignity and all that goest*

*alongwith it namely the bare necessities of life, such as adequate nutriment C clothing and shelter over the head an facilities for reading writing and expressing oneself in deserve forms, freely moving about and mixing and commingle with fellow human beings”.*

**Munn vs. Illinois 94 US 113- Khark singh Vs. State of UP AIR 1963 SC and AIR 1986 SC 180.**

13 Be that as it may right to livelihood is included in the right to life, meaning thereby that security of person employed in Article 4 appears with much vigor and stronger manner. It is worth-while to throw light upon the word “Security” and term “Security of person” given the Interim Constitution (here in after shall be called Constitution). The term security has been defined in Black Law Dictionary as under:-

*“Security” Freedom from danger or risk; safety while the word person has been defined in the Black Law dictionary as follows:-*

*“Person” A human being- also termed a natural person.”*

14. In the eyes of Constitution, every person is persona dignior: meaning thereby that worthy or respectable person. We have to go by the proposition involved in the lis by following the Lex Terrae (law of the land). The word life has been defined in the Black Law Dictionary as under:-

**“Life:-** *The period within which a plant or animal exists as a vibrant growing or even*

*subsisting organism before it dies the state of being alive as a human.*

15. In the famous case from Pakistan jurisdiction titled “Ms. Shela Zia & others V. WAPDA” PLD 1994 SC 693 is a landmark judgment on the subject. In the aforesaid judgment, the Hon’ble Apex Court of Pakistan amicably dealt with the matter in following manner:-

*“Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word ‘life’ is very significant as it covers all facts of human existence. The word ‘life’ has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purpose of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right to easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbourhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and*

*also because such sufferance is silent and fatal an most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward and this has happened so in the present case.”*

16. When the petitioner joined the job round about 02 decades back he was physically fit, during performance of his assigned official liabilities he lost his one eye and become prey of partial disability but the official quarters instead of redressing his grievance terminated his temporary service. Doctrine of legitimate Expectations is fully attracted in the instant matter. This is exceptional case of extraordinary situation. Administrative injustice is oozing from the record, thus arms of this Court are large enough to reach such like injustices.

17. Before parting with the judgment in hand, we are inclined to direct the AJ&K Govt. to take necessary measures qua policy making for the employees of Govt. including temporary employees who face disability whether complete or partial during rendering services in the relevant office pertaining to the work/job assigned to them in a manner to address and redress their grievance.

In view of the above discussed circumstances, the instant writ petition is accepted and respondents are directed to adjust the petitioner on permanent basis as Assistant Lineman BS-05 and to pay



his salary for the period he has worked for, within 02 months after receiving this judgment. A copy of this judgment shall be sent to the Department concerned for compliance of para No.17.

Muzaffarabad,  
Feb 04, 2023. (RA)

**JUDGE**