

HIGH COURT AZAD JAMMU AND KASHMIR

Writ Petition No.143/2023;

Date of institution 05.01.2023

Date of decision 04.09.2023

Muhammad Iqbal S/o Ghulam Nabi R/o Ambore Tehsil and District Muzaffarabad, Azad Jammu and Kashmir.

....Petitioner.

VERSUS.

1. Azad Govt. of the State of Jammu and Kashmir through Chief Secretary Office situated at new Secretariat Muzaffarabad.
2. Department of Services & General Administration Azad Govt. of the State of Jammu and Kashmir through its Secretary, office situated at new Secretariat Muzaffarabad.
3. Department of Law, Justice and Parliamentary Affairs Azad Govt. of the State of Jammu and Kashmir through its Secretary, office situated at new Secretariat Muzaffarabad.
4. (Chairman Rules Committee) Additional Chief Secretary (General) Azad Govt. of the state of Jammu and Kashmir, office situated at new Secretariat Muzaffarabad.
5. Department of Services and General Administration Azad Govt. of the State of Jammu and Kashmir through its Government of the State of Jammu and Kashmir through its Secretary, office situated at new Secretariat Muzaffarabad.
6. Secretariat of Physical Planning and Housing Azad Govt. of the State of Jammu and Kashmir through its Secretary, office situated at New Secretariat Muzaffarabad.
7. Appellate Transport Authority/Senior Member Board of Revenue Azad Govt. of the State of Jammu and Kashmir.
8. Chairman Transport Authority Azad Jammu and Kashmir Muzaffarabad having its office at new Secretariat Lower Chatter Muzaffarabad Azad Jammu and Kashmir.
9. Controller Govt. Printing Press State of Azad Jammu and Kashmir, office situated nearby Neelum Bridge Muzaffarabad.
10. Accountant General Azad Govt. through District Accounts Officer District Rawalakot Azad Jammu and Kashmir.
11. Jameel Safdar, Retired Officer (BPS-18) illegally appointed as Secretary Azad Jammu and Kashmir Transport Authority

Muzaffarabad, Azad Jammu and Kashmir, office situated at old Secretariat Muzaffarabad.

...Respondents.

(2). ***Writ petition No.1857/2023.***
Date of institution 11.05.2023.

Muhammad Jameel Safdar, Secretary Azad Jammu and Kashmir, Transport Authority Muzaffarabad, office situated at Old Secretariat Muzaffarabad.

Petitioner.

VERSUS.

1. Department of Youth, Culture, Transport through Secretary Department office situated at Lower Chatter Muzaffarabad.
2. Chairman Transport Authority through Secretary Department of Youth, Culture and Transport, office situated at Lower Chatter Muzaffarabad.
3. Department of Services and General Administration through Secretary, Office situated at Lower Chatter Muzaffarabad.
4. Department of Law, Justice and Parliamentary Affairs through Secretary Law, office situated at Lower Chatter Muzaffarabad.
5. Azad Govt. of the State of Jammu and Kashmir, through Chief Secretary, office situated at Lower Chatter Muzaffarabad.
6. Appellate Transport Authority through Senior Member Board of Revenue office situated at Lower Chatter Muzaffarabad.

Respondents.

WRIT PETITIONS

Before;- Justice Sadaqat Hussain Raja, C.J

PRESENT:

Haroon Riaz Mughal, Advocate for the petitioner, Muhammad Iqbal.

Sardar Karm Dad Khan, Advocate for petitioner/respondent No.11, Jameel Safdar,

Ch. Muhammad Maznoor, Addl.A,G, for respondents.

Salma Tariq Khan, Legal Advisor for respondent No.2 (in writ petition No.1857) & for respondent No.8 (in writ petition No.143).

Ansar Khan Tahir, Legal Advisor for Law Department.

JUDGMENT:

As common questions of facts and law have been involved in both the writ petitions, therefore, these are heard together and disposed of through this single judgment.

In writ petition No.143/2023, filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, petitioner has implored the following relief;-

“It is, therefore, very humbly prayed that by accepting the instant writ petition, the respondents may kindly be directed in the following manners;-

- i) That the impugned notification dated 19.08.2022 (annexure PC) may kindly be declared illegal, unlawful null and void, in the interest of justice, without adopting due course of law.*
- ii) That the respondents may kindly be directed to enforce the rules on the subject and appoint the eligible person as per the rules of the post of Secretary Transport Authority BPS-18.*
- iii) That Criminal proceeding may very kindly be directed to initiate against the private respondent and the respondents involved in violation of the provision of constitution, as well as the judgments of the Apex Court of the*

State Territory and rules on the subject, who with the active play of fraud and fabrication issued the impugned notification and private respondents may kindly be directed to deposit all the amounts which he has received in the shape of Salary, TA/DA, allowances whatsoever from the State exchequer forthwith.”

Precise facts of the case are that petitioner is 1st class State Subject of Azad Jammu and Kashmir, hails from District Muzaffarabad. It is averred that according to Azad Jammu and Kashmir Transport Authority Services Rules, 2020, for appointment on the post of Secretary Transport Authority BPS-18, only two methods has been mentioned i.e firstly by promotion on the basis of seniority cum-fitness from amongst Assistant Secretary BPS-17/Secretary Regional Transport Authority (RTA) BPS-17 and Chief Motor Vehicle Examiner (CMVE) BPS-17 within the Department with 5 years' service as such and qualification as per Col.7 and secondly by transfer of a suitable Officer of BPS-18 from any Government Department. It is further averred that private respondent No.11 after attaining the age of superannuation has retired from service and now the official respondent illegally extended the employment of private respondent No.11 on contract through the impugned notification dated 19.08.2022. It is submitted that petitioner having locus standi for institution of instant writ petition has got

no other alternate and efficacious remedy except to approach the extraordinary Constitutional Jurisdiction of this Court, hence the captioned petition.

Writ petition has been admitted for regular hearing vide order dated 01.06.2023. Written statement has been filed on behalf of respondents No.1,2,4 & 5, wherein, it is averred that on the advice of Prime Minister (time), the appointment of private respondent No.11 was made on contract basis. It is further averred as per section 13 of Civil Servant Act, 1976 a person having age more than 63 years cannot be appointed or re-employed even on contract basis.

Written statement has also been filed by respondent No.08, wherein, it is submitted that the impugned notification dated 19.08.2022 has been issued by the Services Department, as such the same is not related to respondent No.08. Written statement has also been filed on behalf of private respondent No.11, wherein, it is averred that petitioner is not an aggrieved person to file writ petition. Petitioner does not fulfill the requirement of the writ of quo warranto. It is further averred that Government is entitled to re-employee the retired Officers as per Section 13 of the Civil Servant Act, 1976 read with contract Policy, 2006. It is prayed that the by accepting the written statement, writ petition may be dismissed.

In writ petition No.1857/2023, petitioner, Muhammad Jameel Safdar, has implored the following relief;-

“It is, therefore, very humbly prayed in light of above pleading an appropriate writ may kindly be issued in favour of petitioner in the following manners;-

(A) That as per interpretation of the section 13 of the Civil Servant Act, 1976 read with the contract policy 2006 as has been incorporated in the ground “C” of the writ petition is needed for the guidance of the State functionaries, moreover the petitioner prayed for issuance of the writ of mandamus/prohibition to the state functionaries not to recall, cancel rescind the appointment order of the humble petitioner dated 19 August, 2022 as Secretary Transport Authority without adopting the due course of law.

(B) The respondents may kindly be directed to act according to law and rules rather to please the ruling elite against the provision of the constitution.”

Precise facts of the writ petition are that the petitioner was employee of the Revenue Department and was retired as Deputy Commissioner vide order dated 19.12.2020. It is averred that Government vide notification dated 19th August, 2022 appointed the petitioner in the light of section 13 of Azad Jammu and Kashmir Civil Servant Act, 1976 in terms of re-employment against the post of Secretary Transport Authority. It is further averred that respondents without lawful authority are going to remove/terminate the service of petitioner, hence petitioner sought writ of Prohibition.

Writ petition has been admitted for regular hearing vide order dated 17.08.2023. Petitioner, Muhammad Iqbal in writ petition No.143/2023 has challenged the impugned notification dated 19.08.2022, as such both the writ petitions were clubbed together and parties were directed to file written statements in respective writ petitions. Thus, petitioner, Muhammad Iqbal filed written statement in writ petition No.1857/2023, wherein, it is averred that petitioner has got no locus standi to invoke the extra ordinary constitutional jurisdiction of this Court. It is further submitted that according to Azad Jammu and Kashmir Transport Authority Services Rules, 2020, for appointment on the post of Secretary Transport Authority BPS-18, only two methods has been mentioned i.e firstly by promotion on the basis of seniority cum-fitness from amongst Assistant Secretary BPS-17/Secretary Regional Transport Authority (RTA) BPS-17 and Chief Motor Vehicle Examiner (CMVE) BPS-17 within the Department with 5 years' service as such and qualification as per Col.7 and secondly by transfer of a suitable Officer of BPS-18 from any Government Department. It is further averred that petitioner after attaining the age of superannuation has retired from service and now his service has illegally been extended on contract through the impugned notification dated 19.08.2022. It is prayed that by

accepting the written statement, writ petition may be dismissed. Written statement has also been filed by respondent No.2, wherein, the claim of the petitioner has been refuted.

I have heard the learned counsel for the parties and gone through the available record with utmost care. The moot point in both the captioned petitions which is going to be resolved is that whether the appointment of respondent No.11/petitioner, Muhammad Jameel Safdar as Secretary Transport Authority BPS-18 has rightly been made or the same is contrary to Rules as well as violation of provisions of Constitution. In this regard, it is relevant to mention here that according to Azad Jammu and Kashmir Transport Authority Service Rules, 2020, the criteria for appointment on the post of Secretary Transport Authority BPS-18 has been given. For having true perception, the relevant portion of the said Rules, is usefully reproduced as under;-

**Azad Govt. of the State of Jammu and Kashmir Services and
General Administration Department**

**Azad Jammu and Kashmir Transport Authority Services
Rules, 2020**

S #	Name of the Secretariat Department	Attached Department / Functional Unit	Name of the post with basic pay scale	Appointing authority	Minimum qualification for appointment by	Promotion	Method of recruitment	Age for initial recruitment Min	Max	Exam/ training or other condition for confirmation
1	2	3	4	5	6	7	8	9	10	11
1	Sports Youth, Culture and Transport	Azad Kashmir & Transport Authority Administration	Chairman	Government	As per Col.8	-	Appointment on ex-officio basis as approved by the government	-	-	-
2	-do-	-do-	Secretary Transport	-do-	-	i. bachelor's degree from	i.By promotion	-	-	-

			Authority Bs-18			any university recognized by HEC. ii. Successful completion of Mandatory Training Course	on the basis of seniority cum-fitness from amongst Assistant Secretary Bs- 17/ Secretary Regional Transport (RTA) and Chief Motor Vehicle Examiner (CME) Bs-17 within the department with 5 years' service as per col. 7 or ii.By transfer of a suitable officer of Bs- 18 from any Govt. Department			
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Thus, in view above-mentioned Rules, the appointment on the post of Secretary Transport Authority BPS-18, shall be made as per column No.7 & 8, whereas record reveals that petitioner/respondent No.11, Muhammad Jameel Safdar after attaining the age of superannuation has retired from his service. Furthermore, method of re-employment of a retired civil servant has been mentioned in section 13 of Azad Jammu and Kashmir Civil Servant Act, 1976, which reads as under;-

13. *Employment after retirement.* (1) *A retired Civil Servant shall not be re-employed under the Government unless such re-employment is necessary in the public interest and is made except where the appointing authority is the Government with the prior approval of the Government;*

[Provided that no retired Civil Servant shall be re-employed or continued to be so employee after he has completed 63 years of his age].

Underline is mine

Thus, in view of above, a retired Civil Servant can be re-employed under the Government unless such re-employment is necessary in the public interest. The impugned notification reveals that it was not issued in the public interest rather it was issued in the personal interest of the petitioner, Muhammad Jameel Safdar. The position against which the petitioner was re-employed is not technical or professional and the petitioner does not hold any special education in the field. In my view re-employment in a routine matter is not warranted by law. The impugned notification does not disclose any reason for re-employment of the petitioner (Jamil Safdar) in writ petition No.1857/2023 in public interest. No doubt, the word public interest is not defined in Civil Servant Act, 1976, but this word can be used in ordinary dictionary meanings. The learned counsel for the petitioner/respondent No.11, failed to convince the Court on this point. Therefore, I am of the opinion that the impugned appointment notification dated 19.08.2022 has been made without lawful authority, as such the same is not sustainable.

Order of the Court:-

- (i) Writ petition no.143/2023 is accepted.*
- (ii) Writ petition No.1857/2023 is dismissed.*
- (iii) The appointment notification of the petitioner in writ petition No.1857/2023 dated 19.08.2022 is declared against Law and Rules and is set aside.*

- (iv) *While applying defecto doctrine, acts done and pay/privileges taken by petitioner/respondent No.11, Muhammad Jameel Safdar shall stands protected.*

Announced.

Muzaffarabad:
04.09.2023.

Chief Justice

Approved for Reporting

Chief Justice