

**HIGH COURT OF AZAD JUMMU AND KASHMIR**  
**MUZAFFARABAD**

Writ Petition No: 1523/2019  
Date of institution:19.09.2019  
Date of Decision: 14.02.2022

**\*\*\***

1. Muhammad Qasim Mechanic B-5, Public Health Engineering Building Division Haveli Kahutta Azad Kashmir,
2. Naveed ul Hassan Driver B-4, Public Health Engineering Building Division Haveli Kahutta Azad Kashmir.

Petitioner

**VERSUS**

1. Superintendent Engineer Public Health Engineering/Building (North) Poonch Division Rawalakot Azad Kashmir.
2. X.En Public Health Engineering/ Building Division Haveli Kahutta, Azad Kashmir.
3. Selection Committee through Chairman, Superintendent Engineer Public Health Engineering/Building (North) Poonch Division Rawalakot Azad Kashmir.
4. District Accounts Officer District Haveli Kahutta

5. Tahir Mehmood, Mehanic B-5, Public Health Engineering Division Haveli Kahutta,
6. Zia ul Hassan, Driver B-4, Public Health Engineering Division Haveli Kahutta,

Respondents

**WRIT PETITION UNDER ARTICLE 44 OF THE AZAD JAMMU & KASHMIR INTERIM CONSTITUTION, 1974.**

**Before: Justice Sardar Liaqat Hussain, J.**

**PRESENT:**

Ghazanfar Ali Rathore, Advocate for the petitioners.

Ch. Ghulam Nabi, Advocate, for respondent No.5.

Nemo for the other respondents.

**JUDGMENT:**

The captioned writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974 whereby the petitioner has implored the following relief:-

"It is therefore, very humbly prayed on behalf of the petitioner that by accepting the instant writ petition the respondents may kindly be restrained from cancelling, amending or modifying the appointment orders of the petitioner bearing No.2691-95

and 2696-2700 dated 24.07.2019 Annexure "PB/1" & PB/2 respectively.

That the merit list, working papers and appointment orders No.2706-10 and 2716-20 dated of respondents No.5 and 6 respectively may kindly be set aside in the interest of Justice.

It is further prayed that respondents may very kindly be directed to allow the petitioners to join their service according to the selection process and appointments orders dated 24.07.2019.

Any other relief which this Hon'ble Court deems fit may also be granted in favor of petitioner in the interest Justice."

2. Precise facts, leading to filing of the above writ petition, as per the claim of the petitioners that they are serving on temporary basis in Public Health Engineering Building Division as Mechanic B-5 and Driver B-4. It has been alleged that respondents advertised these posts for permanent induction and the petitioners being eligible applied against

the said posts. It has been stated that after test and interview petitioners were appointed vide order dated 24.07.2019. In compliance of the aforesaid order, the petitioners submitted their joining reports but the needful has not been done due to political influence. It has been craved that the respondents under the political intervention are going to cancel the appointment orders of the petitioners just to accommodate their favorites. It has been contended that respondents issued merit list in which petitioner No.1 shows at serial No.5 and one Tahir Mehmood was appointed as Mechanic B-5 and Zia-ul-Hassan was appointed as Driver b-4 which is illegal, arbitrary and without lawful authority, hence, this writ petition.

3. The petition has been contested by the respondents by filing written statement, separately.

4. In the written statement filed on behalf of the official respondents, while controverting the stance of the petitioners, it has been stated that the petitioners were appointed, purely on temporary basis and after test & interview, the suitable candidates have been appointed. The respondents have alleged that the appointment orders, presented by the petitioners were fake and have not been issued from the competent authority. The other facts and grounds of the petition have also been refuted.

5. The private respondents have also filed written statement, wherein, besides, defending their appointments orders, they have submitted that the petitioners miserably failed to attain merit positions and after participating in the selection process, they are not entitled to challenge the same, therefore, their writ

petition, being incompetent, be dismissed with costs.

6. Ghazanfar Ali Rathore, Advocate, the learned counsel for the petitioners submitted that the petitioners are employees of the PWD Public Health Department and are serving since long. He repeated the contents of the writ petition and submitted that the petitioners had contested the test & interview and attained merit positions but they could not be appointed under the passion of favoritism and pick & choose. The learned counsel craved that by accepting the instant writ petition, the respondents be directed to appoint the petitioners against the posts held by the private respondents. The learned counsel also contended that the merit lists prepared by the respondent-department have been prepared with mala-fide, in order to deprive the petitioners from their

livelihood, by listing them below in the merit lists.

7. Conversely, Ch. Ghulam Nabi, Advocate, the learned counsel for the private respondents supported and defended the impugned appointment orders and contended that the petitioners are temporary employees. They applied for the advertised posts, participated in the selection process and after failing in attaining merit positions, they have challenged the whole process, which is not admissible under law. The learned counsel submitted that the petitioners are stopped from filing the instant writ petition under the principle of acquiescence, therefore, the writ petition be dismissed with costs.

8. I have heard the learned counsel for the parties, perused the record and considered the controversy with utmost care.

9. The learned counsel for the petitioner has not been able to refer any provision or principle of law, which may entitle an employee, appointed on temporary/work-charge basis, can be adjusted/appointed permanently against a vacant post. For permanent appointment of an employee/civil servant, the law is well settled that the post is advertised and then equal opportunity is provided to all the eligible candidates and after the requisite test & interview, the appointment is made on the basis of merit. The relevant provision is reproduced, hereunder:-

"4. **Appointments:-** Appointments to a civil service of Azad Jammu & Kashmir or a civil post in connection with the affairs of the Government, shall be made in the prescribed manner by the Government, or by a person authorized by it in that behalf."

The manner of appointment has been prescribed in rule 17 of the Azad Jammu &

Kashmir Civil Servants Rules, 1977, which reads as under:-

“17. Method of initial appointment: Initial appointment to all posts in grade 1 and above except those filled under rule 16, shall be made on the basis of examination or test to be held by the appropriate Committee or the Board, as the case may be, after advertisement of the vacancies in newspapers, or in the manner to be determined by the Government.”

Further reliance can be placed upon the following case law:-

1. 2015 SCR 1362,
2. 1994 SCR 341,
3. 2011 SCR 528

10. In the instant case, the petitioners were holding their claimed posts on temporary basis and thereafter, the department advertised the vacant posts and conducted test & interview. It appears from the merit lists, annexed with the file that the petitioners are listed far below than the candidates, who have been appointed, therefore, this Court fails to

find out any reason or ground to abrogate the appointment orders of the private respondents.

11. This Court is also in agreement with the contention of the learned counsel for the respondents that after having participated in the selection process and failing to obtain desired results, the petitioners were not competent to file the instant writ petition. The proposition has been considered by the Hon'ble apex Court of Azad Jammu & Kashmir in case titled 'Azad Government and 3 others v. Mrs. Jamshed Naqvi and 2 others, reported as 2014 SCR 13, wherein, it has been observed as under:-

"12. All the aforesaid documents sufficiently prove that the respondent, herself was instrumental in moving the summaries for her contract appointment. Acquiescence and estoppels are two recognized modes on the basis of which equitable relief by way of writ cannot be

granted. In a case reported as 'Abdul Qadir v. Abdul Karim and 4 others, (2000 SCR 97), it was observed as under:-

".....We may add that acquiescence and estoppels are two recognized grounds in presence of which jurisdiction based on equity cannot be exercised in favor of a litigant. A common example may be found in the writ jurisdiction of the High Court which is equitable in nature and no relief is granted to a litigant if he himself is instrumental in the making of an order or if he acquiesces in it. He is not allowed to turn around and challenge it. Equitable jurisdiction cannot also be exercised in favor of a litigant with objectionable conduct. If any authority is needed on this point, we may refer to the judgment of this Court reported as 'Muhammad Sharif v. Muhammad Manzoor and others, (1993 SCR 92) and the case titled 'Ghulam Mustafa v. Azad Govt. and 2 others, (1996 SCR 7)." ."

In the same judgment, in the succeeding para, the Hon'ble apex Court has observed as under:

13. ....From the record it is amply proved that the respondent herself moved applications for contract appointment. After being unsuccessful in obtaining desired result, she filed writ petition. By her conduct she is stopped from filing the writ petition. The same was liable to be dismissed on the ground of estoppels and acquiescence."

12. Being part and parcel of the society, this Court is aware of the fact that in the State of Azad Jammu & Kashmir, mostly people depend on public services and it has been noticed that the departments induct adhoc/temporary employees for an indefinite period and in this period, the incumbents become overage, therefore, this Court would like to observe that the petitioners, having served for a pretty long period, deserve to be adjusted and department should consider their request even on humanitarian grounds, however, no

relief can be granted to them in the instant writ petition.

The gist of the above discussion is that finding no force in the instant writ petition, the same is hereby dismissed with the observations, made in the preceding paragraph.

-Sd-

**Muzaffarabad.**

14.02.2022

**JUDGE**