

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No124/2022;
Date of Institution 08.01.2022;
Date of Decision 06.03.2024.

1. Muhammad Rafique Constable No. 147;
2. Muhammad Shafique Constable No. 132;
3. Inam Ullah Constable No. 154;
4. Abdul Majeed Constable No. 144;
5. Majeed Ur Rehman Constable No. 152;
6. Arshad Shamshad Constable No. 118;
7. Zia Ud Din Constable No. 150;
8. Altaf Hussain Constable No. 18;
9. Nasir Hussain Constable No. 10;
10. Muhammad Naseem Constable No. 151
All presently posting serving in "District Police Neelum" District Neelum, Azad Jammu and Kashmir.

Petitioners

VERSUS

1. Inspector General of Police, Azad Jammu and Kashmir Police Department, having his office at New Secretariat Chatter Muzaffarabad;
2. Deputy Inspector General of Police, (Region) Muzaffarabad, Azad Jammu and Kashmir Police Department, having his office at new Secretariat Chatter Muzaffarabad;
3. Assistant Inspector General of police (Legal) having his office at new Secretariat Muzaffarabad;
4. Superintendent of police District Neelum, Azad Jammu and Kashmir;
5. Principal Police Training School

Shoukat Line Muzaffarabad;

Respondents

WRIT PETITION UNDER ARTICLE 44 OF
THE AJ&K INTERIM CONSTITUTION, 1974

Before:- Justice Sardar Muhammad Ejaz Khan, J.

PRESENT:

Mir Ghanzanfar Gul, Advocate for the
petitioners.

Raja Zulqarnain Legal Advisor Police
Department.

JUDGMENT:

Through this petition filed under
Section 44 of the Azad Jammu & Kashmir
Interim Constitution Act, 1974 following relief
is explored by the petitioners:-

*“In view of the above detailed
submissions and circumstances, it
is therefore very humbly prayed on
behalf of the petitioners that while
accepting the instant writ petition,
an appropriate writs may kindly be
issued in favour of petitioners
against the respondents as
following manners.*

- i) *To set aside/ cancel/quash are
the impugned order book No.71
dated 29.07.2021 from its date
of issuance being against the*

concerned polices rules and also against the fundamental rights of the petitioners. Furthermore declare the respondents No.6 to 25 junior to petitioners as they transposed/ shifted from rangers and reserve police to "District Police Neelum;

- ii) To set aside the latter No. 26475-78 issued by respondent No.1 dated 01.11.2021 (Annexure "PF") and letter issued by respondent No. 4 under No. 12036-46 dated 05.11.2021 regarding the lower school course, being ultra vires to the rights of petitioner and discriminatory in nature to the extent of District Neelum. If the Hon'ble Court comes to the conclusion that respondent No.8 to 25 rightly has been entered in the list "A1" and "B1" respectively then alternatively official respondents may kindly be directed to take the exam of petitioners for "B1" within two weeks and after enter the name of petitioners/ successful candidates in list "B1" prior to Respondent No. 6 to 25 and to allow the petitioners to participate in the lower school course at Police Training School Muzaffarabad;
- iii) Directed the official respondents to held/take the exam of petitioners for "B1" within one month accordingly;
- iv) Any other relief which this

Hon'ble Court deems fit may also be granted to the Petitioners in the interest of justice."

2. Synthesized facts forming the background, according to the version of the petitioners are that they are permanent employees of the Police Department and are serving in District Police Neelum having 16 years' service in their credit. It has been stated that they participated in the departmental examination for entering their names in list "A1" in accordance with the Police Rules, Chapter No. 13.5 and they qualified the same, upon which, the petitioners' names have been entered in the list "A1" vide order book No. 197 dated 07.07.2009 while 77 candidates have participated in the exams held in the year 2009 and all the candidates have passed the said examination for entering their names in list "A1" out of whom 26 candidates at the ratio of 20%

quota have been entered in the list "A1" whereas the petitioners along-with the others were kept in waiting list. It has been averred that instead of entering the names of the petitioners and the other successful candidates in the list "A1", the respondents have conducted the exams again in the year 2011 contrary to law just to accommodate their favourties, whereupon, the petitioners time and again moved applications before the relevant police authorities for redressal of their grievance but they have not been redressed and the petitioners feeling aggrieved from the act done by the respondents filed a writ petition before this Court, which was withdrawn by them on assurance and commitment of the official respondents that if the petitioners withdraw writ petition, their names will be entered in the list "A1" and thereafter in the list "B1" but

thereafter, the respondents refused to act upon the undertaking so agreed with the petitioners. It has been contended that the claim of the petitioners regarding entering their names in the list of "BI" exams has been admitted by PDSP Neelum through his legal opinion, which is on annexure "PC/1" whereby it has been opined that claim of the constables/petitioners is correct in the light of record, it is proper that examination of the constables may be taken as soon as possible and their names may be entered in list of "BI". It has been averred that official respondents are now going to hold the exams of Lower School Course of whole the force along-with the District Neelum, on 15.01.2022 at Police Training School, Muzaffarabad, against the rights of the petitioners because they have not been enlisted in list "BI". It has been contended that if the

respondents succeed to do so, the petitioners would suffer an irreparable loss while they violated the law and treated the petitioners in discriminatory manner and their rights have been infringed by the relevant authorities of police whereas they have equal rights under the relevant provisions of Constitution and Police Rules. In alternative, the petitioner sought relief that the official respondents may kindly be directed to take the exams of petitioners for “B1” within two weeks and after entering the name of petitioners/successful candidates in list “B1” prior to respondents No.6 to 24 and allow the petitioners to participate in the lower school course at Police Training School, Muzaffarabad.

3. Writ petition was admitted for regular hearing on 28.01.2022 and notices were issued to the respondents for filing written statement,

however, on application filed on behalf of respondents No.1 to 4, comments already submitted were treated as their written statement, wherein, they entirely refuted the claim of the petitioners and it has been craved for dismissal of writ petition.

4. Heard. Record perused.

5. From bare reading of record, it shows that during pendency of writ petition, an application has been filed on behalf of the petitioners for deleting the names of private respondents No.6 to 24 from the memo of writ petition, which was allowed and names of private respondents No.6 to 24 were struck off from body of writ petition meaning thereby that no remedy has been required by the petitioners against private respondents, whereby, 18 constables-private respondents were transferred from Reserve Police on the strength of District Neelum who were entered in nominal

roll “B” vide order dated 29.07.2021 (*annexure “PE”*) and now, the matter remains to the extent of letters dated 01.11.2021 & 05.11.2021 through which the constables falling in the list “B” were nominated for Lower School Course. So when the petitioners themselves got deleted the names of private respondents who were entered in list “B” on the strength of District Neelum, hence, how they can be considered to be nominated for Lower School Course prior to candidates falling in list “B” under the relevant provisions of law, as such, the aforesaid scripts in the given circumstances cannot be said to have been issued in derogation of law.

6. It is relevant to mention here that the claim of the petitioners to the extent that they were entered in list “A-1” is admitted by the respondents in written statement rather it is apparent on the face of record that the

petitioners qualified the required exams pertaining to promotion list "A1" in 2009 and thereafter, they were again called for the same in 2011 for which they time and again submitted their representations before the concerned authorities and for redressal of their grievance they filed writ petition before this Court, which was withdrawn by them on assurance of the authority that their grievance will be redressed but the needful appears to have not been done so far. As the procedure for regulating promotion amongst enrolled police personnel relevant lists have to be maintained in each District i.e. "A", "B", "C" & "D" under Rule 13.6, 13.7, 13.8 & 13.9 of Chapter XIII of Police Rules, 1934 while Rule 13.6 of Rules, Ibid, is not matter in issue in instant case whereas, under Rule 13.7 of the Police Rules, 1934, the following procedure has been defined:-

“13.7. List. B. Selection of candidates for admission to courses at the Police Training College:- List B (in Form 13.7) shall also be maintained by each Superintendent of Police and shall be divided into two parties:--

- (1) Selection grade constables considered suitable as candidates for the Lower School course at the Police Training College.
- (2) Constables (selection or time scale) considered suitable for drill and other special courses at the Police Training College.

Selection Shall be made from this list as vacancies occur for admission to the courses concerned at the Police Training College, provided that no constables shall be considered eligible for any such course until the entry of his name in list ‘B’ has been approved by the Deputy Inspector-General of the Range. Ordinary seniority in age shall be given prior consideration in making sub selections, irrespective of the date of admission to the list, and care must be taken that a constable borne on the list is not allowed to become overage for admission to the college before being selected. The restrictions on admission to the lower school course and Inspectors courses at the Police

Training College limit the conditions for admission to List B. No constable shall be admitted to that list whose age is such that he cannot in the normal case be sent to the Training College before he attains the age of 30 years. No constable, who has failed to qualify at the Training College, shall be readmitted to the list unless the Superintendent and the Principal of the College are in agreement that he is deserving of another chance of qualifying in the course; in the event of disagreement as to such a case the Deputy Inspector-General shall decide.”

7. Although Departmental Statutory Rules, quoted above, elucidate the matter that no constables shall be considered eligible for any such course until the entry of his name in list ‘B’ has been approved by the Deputy Inspector-General of the Range yet the fact remains that the petitioners are in litigation before Departmental authorities and before this Court more than a decade and most of them might have crossed the age as required for the purpose during the period when their matter

was *subjudice* before the concerned authorities. It is a settled principle of law that the employees who are transferred or absorbed from one unit to another will remain below to the employees already serving in the Department subject to condition that if the seniority lists of employees of both units have separately been prepared in their respective scales and if the police constables from Reserve Police already qualified the exams of list “B”, defiantly they will be placed at bottom of list “B” prepared for District Neelum. Thus, in such like state of affairs, it is in the interest of justice to grant alternative relief sought by the petitioners, which is almost admitted by respondent No.4 concerned authority of petitioners in para-14 of written statement in the following manner:-

”جملہ پیشینہ فہرست A.1 پر درج ہیں جنکی ایک درخواست محررہ 11.12.2021 موصول ہوئی جس پر مذکور یان کو 14.12.2021 کو طلب کیا جا کر 15.12.2021 کو سماعت کرتے ہوئے کو یقین دہانی کروائی تھی کہ مطابق قواعد مارچ 2022 میں پیشینہ فہرست B.1 کا امتحان لیتے ہوئے فہرست ترقی B.1 مرتب کی جا کر ان کو با ترتیب لوئر کلاس کورس کیلئے مامور کیا جائے گا۔“

8. Admittedly, the period as referred above for conducting exams of petitioners pertaining to “B.1” has expired, hence, keeping in view the further hardships of the petitioners, it is safely concluded that the requisite procedure for entering the names of the petitioners in list “B” shall be completed by the official respondents within short span of period without considering the age limit, which has already elapsed on the part of respondents, hence, they cannot be penalized for the fault of authority, if they otherwise fulfil the required qualification. My this view finds support from a case reported as *Rashid Ameer vs. Federation of Pakistan through Secretary, Ministry of Interior and 4 others* [2018 PLC (C.S.) 822], wherein, it has been observed that:-

“14. The petitioner cannot be deprived from his valuable right, which has accrued in his favour through office memorandum of Establishment Division dated 24.06.2010.

15. Moreover, clause 5 of the said office memorandum further

strengthen case of the petitioner that if the advertised posts are under the process of selection and interviews have not yet been taken, the said post will be re-advertised for additional application with clear rule position about age limit and age relaxations, therefore, it can safely be concluded that Islamabad Police being under the Administrative control of Ministry of Interior was under obligation to follow the law regarding age relaxation in stricto sensu and despite rule 3 of Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 1993 as well as office memorandum of Establishment Division dated 24.06.2010, respondent No.3 did not extend the benefit of relaxation in age to the petitioner, which is contrary to the law.

16. Keeping in view the background and law on the subject referred above, this Court is of the considered view that the process of recruitment of ASI, in which the petitioner was not granted relaxation in age by ignoring rule 3 of Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 1993 as well as office memorandum of Establishment Division dated 24.06.2010, Islamabad Police Department has deprived the petitioner to apply for the post of ASI in clear cut violation of the rules. Depriving the petitioner to apply for the post of ASI by ignoring the relevant rules is also violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 which guarantees equal protection of law.

17. For the foregoing reasons, instant writ petition is accepted and the petitioner is declared to be eligible to apply for the post of ASI on the basis of relaxation in age by 10 years as he is serving in Islamabad Police as constable since his appointment i.e. 10.07.2007, therefore, impugned order dated 27.04.2017 is hereby set aside and instant writ petition is allowed.

18. As per report/reply of Islamabad Police Department the recruitment process has been completed and selected candidates have joined their training on 25.11.2017, therefore, at this stage, if this Court set asides the entire recruitment process, it will affect the other selected candidates, who have already earned their legitimate right after due process of law and they should not be suffered for the wrong of respondent No.3, who did not bother to follow the rules, law and even 1 order of this Court. While relying upon the judgments PLD 2011 SC 365 1 (Shahid Orakzai v. Pakistan through Secretary Law, Ministry of Law, Islamabad) and PLD 2009 Lah. 494=2009 PTD 1298 (All Pakistan Textile Mills Association v. FOP), whereby the relief can be molded in the changed circumstances, respondents Nos.3 and 4 are directed to I reinstate recruitment process for the post of ASI (BPS-11) in Islamabad Police (CTF) only to the extent of petitioner, wherein the petitioner shall apply and participate in written test, physical test or any other test, which were taken by the Recruitment Committee in the cases of previously

selected candidates. This recruitment process shall be completed on merits within 30 days from the date of announcement of this judgment under intimation to this Court through learned Registrar. If the petitioner successfully completes all the stages of recruitment process, he shall be appointed and sent to training in Hangu Police College, where the already selected candidates are getting training.

19. Inspector General of Police Islamabad/respondent No.3 is directed to strictly follow office memorandum of Establishment Division dated 24.06.2010 regarding relaxation in age in future recruitment and if any advertisement regarding recruitment in Islamabad Police is made in violation of the said office memorandum as well as rule 3 of Initial Appointment to Civil Posts (Relaxation of Upper Age Limit) Rules, 1993, the same shall be illegal, hence, Secretary Establishment is directed to convey, the said office memorandum to the Secretary Ministry of Interior as well as Chief Commissioner, Islamabad and Inspector General of Police for ready reference and application of the rules regarding relaxation in age.”

9. By taking into account the above quoted case law, the instant writ petition is partly accepted and the official respondents are directed to conduct the exams of petitioners for entering their names in list “B” within two

months by relaxing age barrier and their names shall be inserted in list “B”, if they qualify the same and thereafter, they shall be nominated for Lower School Course at Police Training School Muzaffarabad as provided under law.

Muzaffarabad.
06.03.2024(J.ZEB)

JUDGE

Approved for reporting

JUDGE