

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 1553/2019;

Date of institution. 24.09.2019;

Date of hearing. 29.09.2022.

Date of decision. 03.10.2022.

1. Muhammad Rafique S/o Muhammad Khani Zaman Senior Auditor/Incharge Divisional Accountant R/o Nograan P/o Hattian Bala Tehsil & District Jhelum Valley;
2. Abdul Hameed Minhas S/o Atta Muhammad, Senior Auditor in the office of Accountant General of Azad Jammu and Kashmir, Muzaffarabad;
3. Khawaja Abdul Rashid S/o Khawaja Aziz R/o Ward No.10, Muzaffarabad;
4. Muhammad Azam Khan S/o Raja Faqeer Muhammad Khan R/o Muhajar Colony No.1 upper Chatter Muzaffarabad;
5. Muhammad Rafique S/o Nizam-ud-Din R/o Ambore Ward No.1, Muzaffarabad.

.....Petitioners

VERSUS

1. Azad Government of the State of Jammu & Kashmir through Secretary Finance Azad Jammu and Kashmir, Muzaffarabad;
2. Finance Department Azad Government of the State of Jammu & Kashmir through Secretary Finance, Azad Jammu and Kashmir, Muzaffarabad;
3. Secretary Finance Azad Government of the State of Jammu & Kashmir, Muzaffarabad;
4. Accountant General of Azad Jammu and Kashmir, Muzaffarabad;
5. Audit Department through Director General Audit, Azad Government of the State of Jammu & Kashmir, Muzaffarabad.

....Respondents

WRIT PETITION

Before: Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Chaudhary Shoukat Aziz, Advocate for the petitioners.

Mr. Farooq Hussain Kashmiri, Advocate for the respondents No. 4 and 5.

Pirzada Muhammad Sajjad, AAG for official respondents.

JUDGMENT:

The captioned writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby, a direction is sought to the respondents to extend the benefit of office memorandum dated 03.06.2016 for 01.07.2016 by amending notification dated 02.08.2019.

Precise facts petitioners were serving in the Accounts department against different posts mentioned in the title of writ petition and stood retired after attaining the age of superannuation through different orders in the year 2017-18. It was submitted that the petitioner were permanent officials of Azad Jammu and Kashmir Council at the time of retirement and were holding the posts of BPS-16 for more than 10 years as no avenue for further promotion was available. It was submitted that the Government of Azad Jammu and Kashmir vide office memorandum dated 03.06.2016 approved time scale policy and notified that all the civil servant of Azad Government of Jammu & Kashmir holding posts from B-5 to B-16, have 10 years continuous service to their credit to their respective pay scales shall be granted next pay scale with effect from 01.07.2016. It is contended that all the provincial governments also notified the same policy but employees of Azad Jammu and Kashmir Council could not get the benefits of said policy. It was contended that a process was initiated for adaptation of time scale policy for the employees of Azad Jammu and Kashmir Council but due to 13th Amendment, no specific order could be passed as after the 13th amendment the civil

servants serving in the Azad Jammu and Kashmir Council were shifted directly under the supervision of Azad Government. It was contended that after acknowledging the matter the government issued notification dated 02.08.2019 whereby, the employees of Azad Jammu and Kashmir Council transferred to Azad Jammu and Kashmir Government were granted time scale as per office memorandum dated 03.06.2016 however, by discriminatory treatment the notification dated 02.08.2019 was extended with effect from 04.06.2018, thus, the petitioners have been discriminated which is against the constitution and the principle of equality before law. The respondents contested the writ petition by filing written statement wherein the claim of the petitioners has been refuted and requested for dismissal of the writ petition.

The learned counsel for the petitioner has reiterated the ground already taken in the writ petition and submitted that federal, all the provincial governments as well as the Government of Azad Jammu and Kashmir adopted the time scale policy and extended the benefit of the same to the civil servants holding posts in B-5 to B-16 with effect from 01.07.2016 however, petitioners who were the employees of Azad Jammu and Kashmir Council at the time of issuance of office memorandum dated 03.06.2016 have been discriminated vide notification dated 02.08.2019 qua the employees of Azad Jammu and Kashmir Council transferred to Azad Jammu and Kashmir Government have been extended the benefit of time scale

policy with effect from 04.06.2018, hence such anomaly and flagrant discrimination should not be allowed and entails to be removed.

The learned counsel for the respondents vehemently submitted that at the time of issuance of office memorandum dated 03.06.2016 petitioners were not the employees of Azad Jammu and Kashmir Government rather were the employees of Azad Jammu and Kashmir Council, hence not entitled to get the benefits of said office memorandum.

I have heard the learned counsel for the parties and gone through the record of the case with due care and caution.

The sole claim of the petitioners is that they have been discriminated, so the only question which needs to be adverted to is, whether the petitioners have been met discriminatory treatment by the respondents by extending them time scale policy with effect from 04.06.2018. It is evident from the record and also an admitted position that petitioners were the permanent employees of Azad Jammu and Kashmir Council at the time of issuance of office memorandum dated 03.06.2016 and it is also not denied by the respondents that petitioners served for more than 10 years continuously in their respective pay scales. The record appended with the writ petition also reveals that federal government as well as the provisional governments also extended the benefit of time scale policy to their employees with effect from 01.07.2016. It also portrays that Azad Jammu and Kashmir Government make the office memorandum dated 03.06.2016 applicable to the employees of Azad

Jammu and Kashmir Council transferred to Azad Jammu and Kashmir Government with effect from 04.06.2018, however in the said notification no reason for not making the office memorandum dated 03.06.2016 applicable from 01.07.2016 has been mentioned which is a blatant discrimination with the employees of Azad Jammu and Kashmir Council transferred to Azad Jammu and Kashmir Government. The right against discrimination is a fundamental rights guaranteed by the constitution. As similarly situated persons should be treated alike and failure to follow such directions of supreme law renders any action or order as void, arbitrary and illegal. It has been constantly held by the superior Courts that though a reasonable classification of persons is permissible, who may be treated differently, provided there is legitimate base for such classification, but it must not be arbitrary and capricious but blatantly rest on reasonableness with a fair nexus and that must be judicious, in the visible way that equals should be treated alike. Reliance can be placed on 1991 SCMR 1041, PLD 2003 SC 955 and 2012 PLC (CS) 1052. The Supreme Court of Pakistan in 1991 SCMR 1041 after survey of entire case law on the subject formulated following principles with regard to the cases of reasonable classification:-

- i. That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that person similarly situated or similarly placed are to be treated alike;
- ii. That reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
- iii. That different laws can validly be enacted for different sexes, persons in different age groups, persons having

- different financial standings, and persons accused of heinous crimes;
- iv. That no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
 - v. That a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
 - vi. That equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;
 - vii. That in order to make a classification reasonable, it should be based –
 - a. On an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;
 - b. That the differentia must have rational nexus to the object sought to be achieved by such classification.”

As stated earlier, all the employees serving in B-1 to B-16 have got the benefits of time scale policy with effect from 01.07.2016 but petitioners who were the employees of Azad Jammu and Kashmir Council and in the light of 13th Amendment in the constitution transferred to Azad Jammu and Kashmir Government have been extended the benefit of office memorandum dated 03.06.2016 with effect from 04.06.2018 which is a flagrant discriminatory treatment and violation of fundamental right of equal treatment of law, hence sine any justification. Whenever, any discrimination or violation of any of the fundamental right of a State Subject or set of persons is noticed, the Courts are bound to take a step to remove such obstacle in the way of fundamental right by passing an appropriate order for providing Justice to petitioners.

The crux and epitome of the above discussion is, the instant writ petition is hereby accepted by declaring that notification dated 02.08.2019 shall be deemed modified in the manners that the office memorandum dated 03.06.2016 shall be applicable to the regular employees of departments, offices or institutions of Azad Jammu and Kashmir Council transferred to Azad Government of the State of Jammu & Kashmir as stipulated under Article 51-A of Azad Jammu and Kashmir Interim Constitution (13th Amendment), 2018 read with notification No.LD/Legis./134-155/2018 dated 04.06.2018 with effect from 01.07.2016.

Muzaffarabad.
03.10.2022.

-Sd-
JUSTICE

Approved for reporting.

-Sd-
JUSTICE