

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

Writ Petition No. 32/2021.  
Date of Institution 29.09.2021.  
Date of decision. 15.12.2022.

Muhammad Sajid S/o Faqir Ullah R/o Bheri, Tehsil Pattika, District  
Muzaffarabad, Azad Jammu and Kashmir.

....Petitioner

Versus

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Higher Education, having his office at new Secretariat Muzaffarabad.
2. Azad Jammu and Kashmir Public Service Commission through its Secretary having his office at Narrul Muzaffarabad, Azad Jammu and Kashmir.
3. Chairman Public Service Commission Azad Jammu and Kashmir, having his office at Narrul Muzaffarabad, Azad Jammu & Kashmir.
4. Director Public Instructions (Colleges) Higher Education, Azad Govt. of the State of Jammu and Kashmir, having his office at Old Secretariat Muzaffarabad.

...Respondents

WRIT PETITION

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

PRESENT:

Syed Sharafat Hussain Naqvi, Advocate for the petitioner.  
Syed Atif Mushtaq Gillani and Sardar Sohaib Tanvir, Legal  
Advisor for Higher Education Department.  
Ms. Aliya Abdul Rehman, Legal Advisor for Public Service  
Commission.  
Representative of Public Service Commission.

Judgment:-

Through titled writ petition filed under Article 44 of the  
Azad Jammu and Kashmir Interim Constitution, 1974, following  
relief has been solicited by the petitioners:-

“It is therefore most humbly prayed that by  
accepting the instant writ petition, the

respondents/Public Service Commission may very kindly be directed to send the recommendations for the appointment of the petitioner against any vacant posts of Lecturer Botany in the light of the waiting list (Lecturer Botany) dated 27.05.2021. It is further prayed the respondent No.1 may also be directed to issue the appointment order of the petitioner in light of the Government notification 18.01.2007 as per his merit position. Any other relief which the Hon'ble Court deems fit be granted in the interest of justice.”

Brief facts as per petition are that the petitioner is 1<sup>st</sup> Class State Subject of Azad Jammu & Kashmir and permanent resident of Tehsil Pattika, district Muzaffarabad, Azad Kashmir. The qualification of petitioner is MSC Botany & MA Education and he is also student of M.Phil Botany. The petitioner claiming that respondent No.2 advertised 01 post of Lecturer Botany BPS-17, which was reserved for district quota Muzaffarabad through advertisement No.1/2020, being an eligible candidate, he applied against the said post but selection process was not completed. The petitioner contended that respondent No.3, in the meantime, advertised 02 more seats of Lecturer Botany through advertisement No.01/2021, out of which 01 slot was allocated for district Bhimber and second one was reserved for refugees Jammu and Kashmir including refugees settled in Pakistan. Hence, the Public Service Commission conducted selection process on all the posts of Lecturer Botany. The petitioner participated in written test and obtained highest marks i.e. 75/100, so, call letter was issued to him for interview. He participated in interview and passed the same, but

unfortunately he could not be appointed due to non-availability of the second post of his unit; as against the one vacant post, topper candidate (Waqas Awan) was appointed on the recommendation of commission. It is claimed by the petitioner that according to notification 2007, a candidate who passed the exam of the Public Service Commission can be appointed against the post of another district. It is further claimed by the petitioner that Public Service Commission has made recommendations for the appointment of two Lecturers while two posts are still available for the appointment; one for refugees from Pakistan and the second one of the Kotli district, but no candidates could be succeeded in either of two units. It is vehemently contended that according to waiting list, the petitioner's name is currently placed at second number, thus, it was the duty of the Public Service Commission to send the recommendations of the petitioner to the concerned department regarding his appointment. Lastly, it prays that the respondents may be directed to appoint the petitioner in light of the Government notification dated 18.01.2007 as per his merit position.

Written statement has been submitted on behalf of official-respondents wherein the respondents contended that the petitioner is present at waiting list No.2. The respondent-Public Service Commission admitted that a post of Lecturer Botany for the quota of refugees from Pakistan is vacant due to non-availability of a candidate from the concerned unit, however, they submitted that if

the proposal has been initiated by the department then they can submit their recommendations; but no proposal/letter regarding adjustment of the petitioner has been sent from the concerned quarter.

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

The petitioner herein claiming that the respondent Public Service Commission may be directed to send the recommendations for the appointment of the petitioner against any vacant posts of Lecturer Botany in the light of the waiting list dated 27.05.2021 and further prayed that the respondents may be directed to adjust the petitioner against the aforesaid post in light of government notification dated 18.01.2007 as well as according to his merit position.

Admittedly post of Lecturer Botany BPS-17 was advertised for the quota of district Muzaffarabad by the Public Service Commission vide advertisement dated 01/2020, while subsequent advertisement was also issued by Public Service Commission vide advertisement bearing No.1/2021, wherein two more posts of Lecturer Botany were advertised, which were reserved for the quota of district Bhimber and refugees Jammu and Kashmir including Mangla Dam affectees, settled in Pakistan. The petitioner alongwith other candidates applied against the slot of Lecturer Botany (B-17), call letter was issued to him by Public

Service Commission department on 26.02.2021. He obtained 75 marks out of 100 in MCQs test. The petitioner herein after test and interview obtained his merit position No.2 and has retained his position as No.1 of waiting list, issued by respondent-Public Service Commission. The record reflects that the successful candidate Waqas Awan has been appointed as Lecturer Botany vide order dated 26.07.2021.

The petitioner herein took a stance that if a candidate from any other unit/quota is not available then a successful candidate from the other unit may be appointed against the available vacant post. In this regard, the petitioner herein in his write petition attached a government notification dated 18.01.2007 as Annexure "PC". It is appropriate to reproduce the said notification as under:-

”آزاد حکومت ریڈیو جموں و کشمیر مظفر آباد  
سرورسز اینڈ جنرل ایڈمنسٹریشن ڈیپارٹمنٹ  
☆☆☆

”مظفر آباد“

مورخہ 18 / جنوری 2007ء

**نوٹیفکیشن -**

نمبر انتظامیہ/اے 4-(87)/2005 و جناب صدر آزاد جموں و کشمیر نے اس امر کی منظوری صادر فرمائی ہے کہ کسی ضلع/یونٹ کے کوٹے سے کوئی امیدوار درجیب نہ ہو تو دوسرے ضلع/یونٹ کے ایسے امیدوار کا خالی آسامی پوزیشن شرط تقرر کیا جائے کہ آسامی درجیب ہونے پر ایسی تقرری متعلقہ ضلع/یونٹ کو محسوب ہوگی۔

دستخط

(غلام حسین قریشی)

سیکشن آفیسر سرورسز (قواعد)

نائب لاہجرت =

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سیکشن آفیسر سرورسز (قواعد)

The above reproduced notification clearly postulates that if a suitable candidate is not available for the post of one unit then the candidate of the other unit can be appointed on that slot and the said appointment will be made on condition that the post of this unit will be returned to the other unit when it becomes available.

It may be mentioned here that in case of failure of all the candidates from a particular district, the post has to be filled in on merit from any other district out of the successful candidate. A vacancy cannot be left vacant for an indefinite period. This view of the Court finds support from the case reported as **2001 SCR 282**.

#### **Squeezed Analysis**

The case of the petitioner in brevity reveals that he is claiming his right in light of notification dated 18.01.2007 which postulates that in case of non-availability of the candidate from any district/unit, the successful candidate from other unit could be appointed against the quota of such unit. The notification dated 18.01.2007 is very much in filed. It is reflecting from the record that the petitioner admittedly applied against the post of Lecturer Botany from District Muzaffarabad and stood successful but only one post was available for appointment, hence, he could not be appointed because he was at serial No.2 of merit list. It is also admitted position reflecting from the record that nobody came up on merit against the slot of Lecturer Botany falling in the quota of refugees settled in Pakistan. Although the name of the petitioner has figured

at serial No.2 of the merit list but as candidate coming at serial No.1 neither approached to Court of law for redressal of his grievance nor joined the instant proceedings. It is celebrated principle of law that law helps the vigilant and not the indolent. Claim of the petitioner is admitted from para No.3 of written statement by respondent-Public Service Commission, whereby they categorically admitted that slot of Lecturer Botany B-17 falling in the quota of refugees settled in Pakistan could not be filled in due to non-availability of the successful candidate from the same unit. Therefore, the petitioner has successfully made out a case for issuance of writ.

Petition in hand is accepted. The respondent-Education Department (Colleges) is directed to initiate the matter quo appointment of the petitioner and after obtaining recommendations from respondent-PSC, appoint the petitioner against the post of Lecturer Botany pertaining to the refugees settled in Pakistan within two months.

Petition stands accepted.

Muzaffarabad.  
15.12.2022.

**JUDGE**