

**HIGH COURT OF AZAD JAMMU & KASHMIR**

*Writ Petition No.264/2022.  
Date of institution 20.01.2022.  
Date of decision 03.03.2022.*

Muhammad Shabir Khan, Assistant Professor B-18 Shaheed Zulfiqar Ali Bhutto Cadet College Pallandari, Azad Jammu and Kashmir.

*....Petitioner*

**Vs.**

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Services and General Administration having his office at New Secretariat Muzaffarabad Azad Jammu and Kashmir.
2. Secretary Services and General Administration having his office at New Secretariat Muzaffarabad Azad Jammu and Kashmir.
3. Secretary Higher Education having his office at New Secretariat Muzaffarabad Azad Jammu and Kashmir.
4. Secretary Board of Governor through its Principal Shaheed Zulfiqar Ali Bhutto Cadet College Pallandari.
5. Board of Governors Cadet College Pallandari through its Chairman Prime Minister Azad Jammu and Kashmir having his office at New Secretariat Muzaffarabad.
6. Director Public Instructions Colleges, Azad Govt. of the State of Jammu & Kashmir, having his office at New District Complex Muzaffarabad.
7. Muhammad Khursheed Khan S/o Kala Khan Principal Shaheed Zulfiqar Ali Bhutto Cadet College Pallandari, Azad Jammu and Kashmir.

*.... Respondents*

**WRIT PETITION**

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

**PRESENT:**

Raja Zaigham Iftikhar, Advocate for the petitioner.  
Syed Atif Mushtaq Gillani, Advocate for official respondents.  
Sardar Muhammad Akhtar Khan, Advocate for respondent No.7.

**Judgment:**

The petition in hand has been filed by the petitioner- Muhammad Shabir Khan, Assistant Professor BPS-18, Shaheed Zulfiqar Ali Bhutto Cadet College Pallandari, under Article 44 of Interim Constitution, 1974 seeking issuance of writ of quo-warranto against answering respondents and sought relief in following terms:-

“It is, therefore, most humbly prayed on behalf of the petitioner an appropriate writ may kindly be issued in following manners:-

- (i) Asking the respondent under what authority of law they appointed the private respondent as a Principal (BPS-20) in Shaheed Zulfiqar Ali Bhutto Cadet College pallandari.
- (ii) Declaring the advertisement (Annexure “PB”) appointments orders of petitioners dated 06.03.2014 and 27.05.2019 (Annexure ‘PC”, “PC/1”) as illegal, against the rules and same may kindly be set aside.
- (iii) Directing the respondent to advertise the post of Principal (BPS-21) Shaheed Zulfiqar Ali Bhutto Cadet College Pallandari, Azad Jammu and Kashmir according to rules.
- (iv) Restraining the respondents not to extend the appointment of private respondent as Principal (BPS-20) Shaheed Zulfiqar Ali Bhutto Cadet College Palandari.
- (v) Any other relief which this Hon’ble Court deems fit may also be granted to the petitioner in the interest of justice.”

Necessary facts forming background of the instant writ petition are that the petitioner, who is 1<sup>st</sup> class state-subject and employee of Shaheed Zulfiqar Ali Butto Cadet College Palandari, is serving as an Assistant Professor BPS-18. As per claim made in the writ petition the answering respondents advertised the post of Principal (BPS-20) in Shaheed Zulfiqar Ali Bhutto Cadet College Palandari vide advertisement dated 12.01.2014. After completion of selection process, respondent No.7 was appointed as such vide notification dated 06.03.2014 and thereafter further extension was sanctioned in his favour against the aforesaid post on 27.05.2019 for 3 years, hence, petitioner herein has challenged both the impugned notifications by way of filing the instant writ petition.

I have heard the learned counsel for the parties at some length and have comparatively and minutely perused the record appended with the writ petition and para-wise comments.

Raja Zaigham Iftikhar, the learned counsel for the petitioner vehemently contended on behalf of the petitioner that both the impugned notifications are illegal, contra-jus and not sustainable in the eye of law. The learned counsel for the petitioner pressed the ground "A" (the main ground of Attack) and he staunchly reiterated that it is crystal clear from analysis of both advertisements and rules that same are completely in variance and a lot of differences appear from perusal of both. He further added that the qualification mentioned in the rules for the slot of Principal is totally different from qualification which is mentioned in the advertisement. He further argued that the private respondent No.7 did not fulfill requisite qualification which is prescribed in the rules, that too, his appointment against aforesaid post is outcome of political influence and favoritism as well as by way of colourable exercise of powers. The learned counsel staunchly contended that basic qualification for the post of Principal is M.A/M.Sc. at least 2<sup>nd</sup> division with 15 years of teaching and administrative experience in a recognized college preferably a Cadet College, whereas the private respondent No.7 did not possess the requisite qualification, hence, the appointment of respondent No.7 is violative of law and arbitrary, so respondent No.7 has got no legal right to occupy the post of Principal, that is why the petitioner has sought issuance of high prerogative command in shape of writ of quo-warranto against respondent No.7.

On the other hand, Sardar Muhammad Akhar Khan, the learned counsel for respondent No.7 staunchly contended and opposed the version adopted by the petitioner by raising preliminary objections regarding maintainability of the writ petition. He vehemently contended that the appointment of respondent No.7 was made on the recommendation of the Executive Committee headed by the Chief Secretary, but the petitioner has failed to array the recommendatory committee i.e. Executive Committee as a party in the writ petition by impleading the committee in the line of respondents. He further argued that writ petition on this solitary ground of non-joinder is liable to be dismissed, besides other grounds. The learned counsel for respondent No.7 staunchly argued that his appointment was made by the Selection Authority out of eight (8) short listed candidates, among them 4 others were retired brigadiers, therefore, the appointment of respondent No.7 is completely meritorious that too, respondent No.7 was the most qualified among other candidates who stood at the top of merit, besides he was only Ph.D scholar, having plethora of national and international publications on his credit and had the experience of teaching at the National Defence University (NDU) and National University of Science and Technology (NUST) as well as respondent No.7 has completed Ph.D in International Relations. The learned counsel for respondent No.7 further argued that the writ petition in hand is hit by the doctrine of laches as the same has been filed after an inordinate delay of eight (8) years coupled with mala-fide on the part of the petitioner, therefore, the writ petition is liable to be dismissed on this solitary score and in this regard he placed reliance and referred the reported judgment of the

Hon'ble Supreme Court titled "Syed Manzoor Hussain Gilani Vs. Sain Mullah, Advocate and 2 others" reported as PLD 1993 Supreme Court (AJ&K) 12, wherein it has been laid down that:-

*“----S. 44 ---- Writ of quo warranto--- Laches--- Mala fides --- Laches is not strictly applicable to a case of quo warranto but if mala fides is pleaded in defence it is a definitely relevant consideration--- Question of laches is relevant to test the bona fides of the relator--- Delay in a case of quo warranto is considered as an important piece of evidence in support of plea of mala fides of the relator and it is specially so when the relator was not an aspirant to the office which he intends to get vacated and in absence of bona fides writ of quo warranto must be refused on this sole ground--- Relator must show the invasion of his personal right where there is a plea of mala fides, despite the fact that writ of quo warranto may be sought even by a person who has no personal interest in the matter.”*

The learned counsel for respondent No.7 referred documents appended with the para-wise comments by posing that respondent No.7 is rendering his assigned liability in tremendous and marvelous manner, leaving no stone unturned in this regard. The learned counsel for respondent No.7 further argued that another writ petition filed by one Muhammad Shafat Advocate regarding the same subject matter was previously dismissed by this Court vide judgment dated 28.12.2018 by finding no substance in the said petition. Instant writ petition as per submission of respondents is not maintainable as the same is veiled with mala-fide of the petitioner who is an employee of same institution and brought the lis with jealousy and bad intention inspite of fact that he was not eligible for the slot at the eve of selection.

Mr. Syed Atif Mushtaq Gillani, the learned Legal Advisor for official respondents No.3 to 6 vehemently argued that matter in hand is about the terms and conditions of services, which is likely to be

adjudicated by service forum, i.e. Service Tribunal, therefore, the petition in hand is not maintainable. The learned counsel for official respondents further apprised the court that the appointment of respondent No.7 has been made on recommendation of the respective selection board/ competent authority. He further contended that respondent No.7 has been appointed against the post of Principal (B-20) by the competent authority purely on meritorious basis by taking into consideration his qualification/experience and the matter was efficiently being dealt by the competent authority. He further contended that petition in hand, has been filed at belated stage after expiry of round about 8 years which seems to be actuated by malice and laches simultaneously appearing in the case which is liable to be dismissed on this solitary score. He zealously contended that the appointment of respondent No.7 has been made by competent authority on the recommendation of respective Executive Committee after fulfilling all requirements, that too appointment is meritorious as per rules, hence, the impugned orders of appointment of respondent No.7 have been carried out on recommendations of the Executive Committee. It is relevant to reproduce the impugned notification dated 06.03.2014, which is as under:-

“Muzaffarabad”  
Dated:06.03.2014

**“NOTIFICATION:**

No.S&GAD/E-1(100)2005 (Gazetted-III): On the recommendations of the Executive Committee, the President, Azad Jammu & Kashmir has been pleased to approve contract appointment of Brig. (R) Muhammad Khurshid Khan S/o Kala Khan, District Sudhnoti, Azad Jammu and Kashmir as Principal (BPS-20) Shaheed Zulfiqar Ali Bhutto Cadet College Palandari, subject to following terms and conditions:

- i) The initial period of the contract appointment shall be five (5) years

- including initial one year of probationary period.
- ii) The extension will be made with the mutual consent of concerned quarters.
  - iii) This appointment shall be in Basic Pay Scale B-20.
  - iv) The perks and privileges shall be admissible under the prevailing rules of Cadet College.

Signature  
**(Khalique Ahmed Khan)**  
 Section Officer  
 (Gazetted-III)

Copy to:

- 1) Secretary to President, Azad Jammu and Kashmir.
- 2) Secretary to the Prime Minister, Azad Govt. of the State of Jammu and Kashmir.
- 3) PS to the Minister for Higher Education Department GoAJ&K.
- 4) PSO to the Chief Secretary.
- 5) PS to the Senior Member Board of Revenue.
- 6) PS to the Additional Chief Secretary (General).
- 7) PS to the Additional Chief Secretary (Dev.).
- 8) All Secretaries to the Government.
- 9) PS to the Secretary S&GAD.
- 10) PS to the Secretary Higher Education Department.
- 11) The Accountant General, Azad Jammu and Kashmir.
- 12) Brig. (R) Muhammad Khurshid Khan, Principal, Cadet College Palandari: for information & compliance.
- 13) The Controller, Govt. Printing Press: For publication in the official Gazette.
- 14) Master File.

Signature  
**Section Officer**  
 (Gazetted-III)

After perusing both the impugned notifications in my estimation, the proposition become narrow for the purpose of the adjudication of the lis as the instant writ petition has been filed on 20.01.2022, whereas notification of appointment was issued in year 2014 (some 8 years back) which was extended in year 2019 and the same has been challenged in year 2022, that too, the allegation of mala-fide has specifically been leveled by respondent No.7 in para-wise comments. Although sometimes mere laches is not sufficient for discarding the prayer of quo-warranto but simultaneously when writ petition itself is actuated with malafide or malice the question of laches merits

consideration and is liable to be taken into consideration coupled with mala-fide.

Although there is no probation or barrier in law as to who can file the writ of quo-warranto, however, as the power quo writ of quo-warranto is discretionary and nobody can claim that the court is bound to issue the writ.

Another aspect which emerges for consideration is that a fleeting look of the parent act and rules made therein transpires that under section 8(B) of Azad Jammu & Kashmir Governance Educational and Training Institutions Act, 1993, the Board of Governors is empowered to make recruitments and determine the terms and conditions of service of the Principal and other member of staff of the institution and all other officer and servant of the board. It is necessary to reproduce the relevant section of the aforementioned Act, which is as under:-

**“General powers of the Board.-** Subject to the other provisions of this Act, the Board shall have full powers to administer and manage an institution and in particular in respect of the following matters:-

(a) xx

(b) Recruitment and determination of the terms and conditions of service of the Principal and other members of the staff of the institution and of other officers and servants of the board;”

While under section 17 of the aforesaid Act powers, quo framing rules for achieving the purpose of the act have been envisaged and accordingly framed rules i.e. Cadet College Pallandari (General Conditions of Service) Rules, 1996, categorically lays down that mod of appointment provided in the rules for the regular posts are not applicable



Naseem Khan Vs. Brig. (R) Muhammad Akbar Khan, reported as 2003 SCR 142. Survey of the case law on the subject vertical and horizontal precedents postulate that the writ of quo-warranto is discretionary and no one claim it as a matter of right. It is consistently laid down in the judge-made law that the conduct of the relator and question of mala-fide coupled with laches are sufficient for dismissal of the writ petition. I am fortified to follow ratio-decidenti pronounced by the Hon'ble Supreme Court, particularly, PLD 1993 Supreme Court (AJ&K) 12 and 2016 SCR 960 case titled "Ahmed Nawaz Tanoli, Advocate Vs. Chairman Azad Jammu and Kashmir Council and others".

In the case titled "Ahmed Nawaz Tanoli Vs. Chairman Azad Jammu and Kashmir Council and others" reported in 2016 SCR 960, the Hon'ble Supreme Court of AJ&K has laid down a principle of law by ordaining that the writ petition can be dismissed on the sole ground of delay/ when the case hit by doctrine of laches. The Supreme Court of Pakistan has also taken same view in the case reported as 2005 SCMR 1229. It is worthwhile to reproduce the relevant portion of the dicta of the Apex Court of AJ&K in case titled "Ahmed Nawaz Tanoli, Advocate Vs. Chairman Azad Jammu and Kashmir Council and others" reported as 2016 SCR 960:-

”(ث) تاخیر۔۔۔

۔۔۔ عرضی اجراء پروانہ استفسار۔۔۔ تاخیر۔۔۔ وجہ استرداد عرضی۔۔۔ سائلان کا یہ استدلال کہ عرضی اجراء پروانہ استفسار کے لیے تاخیر کوئی وجہ استرداد نہ ہے، مسلمہ قانون اور اصول وضع کردہ عدالت ہا سے مطابقت نہ رکھتا ہے۔ اعلیٰ عدالتوں کے متعدد فیصلہ جات ہیں جنکی رو سے عرضی پروانہ استفسار میں تاخیر کو زیر غور لاتے ہوئے مسٹر دکیا گیا جن میں سے ایک مطبوعہ فیصلہ عنوانی ”محمد رفیق وغیرہ بنام محمد پرویز وغیرہ“ (2005 SCMR 1229) ہے۔ اس میں صرف تاخیر کی بناء پر عرضی اجراء یعنی پروانہ استفسار کو ناقابل پذیرائی قرار دیا گیا ہے۔“

Writ of quo-warranto cannot be issued in routine as in such like lis conduct of the petitioner is to be filtered in the lens of bona-fide

which is a fundamental element and litmus test for issuance of high prerogative writ, particularly in the shape of quo-warranto.

Therefore, in backdrop of the above discussion, I am fortified to follow the verdict of Hon'ble Supreme Court as the Executive Committee has not been arrayed in the writ petition who recommended the respondent No.7 for appointment and notification of appointment of respondent No.7 is based upon wisdom of the Executive Committee. In-ordinate and unexplained delay of 8 years is calling for attraction of doctrine of laches, malafide intention and attempt is also appearing from the record as the stance taken by respondent No.7 in his parawise comments by tendering the affidavit has not been rebutted by the petitioner by filing counter affidavit and even he did not utter a single word in defence of allegation of mala-fide. Be that as it may, petitioner himself is an employee of the institution, admittedly he was not eligible & qualified to be considered for the slot at the eve of advertisement. therefore, even otherwise, by this angle he cannot be termed as bona-fide relator as well. For above multiple reasons, the petition in hand is devoid of merits, which fail.

The upshot of above discussion is that instant petition is hereby dismissed in limine. No order as to costs.

Muzaffarabad,  
03.03.2022.

-Sd-  
**JUDGE**

**To be reported**

-Sd-  
**JUDGE**