

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.1793/2020.

Date of institution 16.12.2020.

Date of decision 28.04.2022.

1. Muhammad Yaseen Assistant Sub Inspector (ASI).
2. Muhammad Naseem Assistant Sub Inspector (ASI).
3. Muhammad Rafique Assistant Sub Inspector (ASI).
4. Muhammad Mumtaz Assistant Sub Inspector (ASI).
5. Muhammad Ismail Assistant Sub Inspector (ASI).
6. Nasir Ahmed Assistant Sub Inspector (ASI).
7. Muhammad Rafique Assistant Sub Inspector (ASI).
8. Imdad Ali Shah Assistant Sub Inspector (ASI).
9. Syed Riaz Hussain Shah Assistant Sub Inspector (ASI).
10. Zulfiqar Ali Assistant Sub Inspector (ASI).
11. Muhammad Sharif Assistant Sub Inspector (ASI).
12. Matloob Hussain Head Constable No.537.
13. Muhammad Naseer Kiani Head Constable No.209.
14. Muhammad Naseer Head Constable No.671.
15. Fazal Dad Head Constable No.439.
16. Naseer Ahmed Head Constable No.28.
17. Muhammad Naseer Head Constable No.53.
18. Arshad Ali Head Constable No.353.
19. Muhammad Jahangir Head Constable No.225.
20. Muhammad Ali Head Constable No.259.
21. Naseer Ahmed Head Constable No.206.
22. Munir Head Constable No.481.
23. Tahir Mehmood Head Constable No.310.
24. Muhammad Azeem Head Constable No.537.
25. Aziz Ur Rehman Head Constable No.564.
26. Muhammad Javed Head Constable No.72.
27. Muhammad Shabir Head Constable No.111.
28. Ansar Mehmood Head Constable No.328.
29. Muhammad Younas Head Constable No.443.
30. Muhammad Safer Head Constable No.353.
31. Muhammad Ashraf Head Constable No.531.
32. Amjad Hussain Shah Head Constable No.592.
33. Muhammad Khateeb Head Constable No.562.
34. Muhammad Rafique Head Constable No.435.
35. Muhammad Saddiq Head Constable No.582.
36. Muhammad Sadique Head Constable No.569.
37. Naseer Ahmed Head Constable No.51.
38. Saddiq Mehmood Head Constable Ehtesab Bureau.
39. Zameer Haidery Head Constable Ehtesab Bureau.
40. Babar Khan Selection Grade Constable No.499.
41. Ubaid Ullah Selection Grade Constable No.117.
42. Muhammad Rafaqat Selection Grade Constable No.216.
43. Zameer Hussain Selection Grade Constable No.677.
44. Shahid Azeem Selection Grade Constable No.89.
45. Wajid Sikandar Selection Grade Constable No.320.
46. Muhammad Mushtaq Selection Grade Constable No.67.

47. Muhammad Nawaz Selection Grade Constable No.304.
 48. Khalid Ashfaq Selection Grade Constable No.429.
 49. Saeed Ahmed Selection Grade Constable No.507.

All employees of Police Department and perform their duties in district Muzaffarabad, Neelum and Jehlum Valley, Azad Jammu & Kashmir.

....*Petitioners*

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Chief Secretary/Secretary Home, having his office at New Secretariat Muzaffarabad.
2. Home Department of Azad Govt. of the state of Jammu & Kashmir through Secretary Home, having his office at New Secretariat Muzaffarabad.
3. Service and General Administration Department Azad Govt. of the State of Jammu and Kashmir through Secretary S&GAD, having his office at New Secretariat Muzaffarabad.
4. Inspector General of Police, Azad Govt. of the State of Jammu and Kashmir, having his office at New Secretariat Chatter Muzaffarabad.
5. Finance Department of Azad Govt. of the State of Jammu and Kashmir through Secretary Finance, having his office at New Secretariat Muzaffarabad.
6. Deputy Inspector General of Police Headquarter Azad Govt. of the State of Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
7. Deputy Inspector General of Police Reserve/Rangers, Azad Govt. of the State of Jammu and Kashmir, having his office at new Secretariat Muzaffarabad.
8. Azad Jammu and Kashmir Public Service Commission through Chairman Public Service Commission, having his office near Narrul Stadium Muzaffarabad, Azad Jammu & Kashmir.
9. Raja Najam Dad Khan, R/o village Tharian tehsil and district Muzaffarabad.
10. Danyal Tahir Kiani S/o Tahir Saleem R/o Gujjar Bandi Tehsil Oorhi district Jehlum Valley.
11. Amjid Ali S/o Liaqat Ali R/o village Dosut tehsil Sharda District Neelum.
12. Raja Samidad Khan R/o village Therian tehsil and district Muzaffarabad.

.... *Respondents*

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

M/s Sardar Jahandad Khan Mughal, Nasir Masood Mughal and Salma Tariq Sadozai, Advocates for the petitioners.

Raja Zulqarnain Khan, Advocate for official respondents No.1,2,4 and 7.

Raja Nasir latif Khan and Raja Shujat Ali Khan, Advocate on behalf of respondents No.9 to 12.

Ch. Shoukat Aziz, Noshaba Iqbal, Advocates on behalf of interveners Sidheer Ahmed & 654 other.

Aliya Abdur Rehman, Legal Advisor on behalf PSC department.

Judgment:

The petition in hand has been filed by the petitioners- Muhammad Yaseen and other, under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, whereby following relief has been solicited by the petitioners:-

“It is, humbly prayed that by accepting the constitutional petition an appropriate and expedient writ petition in the interest of justice may very kindly be issued against the respondents directed the official respondents to promote the police officials in above rank against 50% reserved quota to all the categories i.e. Executive, Regular, Reserve, Rangers, Traffic Police, Crimes Branch and Special Branch etc. and also filled the vacant posts through direct recruitment according to above said criteria.

It is further prayed that the impugned advertisement No.AJK 478-N dated 01.06.2019 alongwith whole selection process to the extent of vacant posts of Assistant Sub Inspectors may very kindly be set-aside as being contrary to law, Rules, fundamental rights of petitioners and against the norms of justice.” Any other relief which the petitioners are entitled may kindly be granted in the interest of justice.”

I. BRIEF FACTS AND THE ENSUING PROCEEDINGS:-

According to Rule 12.3 of Chapter XII of the Police Rules, 1934, 25% quota was fixed for direct recruitment against the posts of ASIs and 75% quota was fixed for promotion on the basis of seniority-cum-fitness but later on, vide notification dated 05.07.1992, the Govt. of Azad Jammu & Kashmir amended the aforementioned rules and reduced the promotion quota upto 50% by promotion instead of 75%. Thereafter the government through another notification dated 03.01.1998 accorded the approval for the appointment of Assistant Sub Inspector (B-9) and

prosecuting Sub Inspector (B-14), against direct quota through Public Service Commission. It is further averred that according to notification dated 05.07.1992, 50% quota reserved for direct recruitment is liable to be divided in all the sections/categories of the Azad Jammu and Kashmir Police, but due to the appointment/adjustment of the District Police against 50% quota the rights of promotion of the Police employees of all the other categories are being adversely affected. In this regard, a direction is sought by the petitioners against the respondents.

In first round, this Court vide judgment dated 26.02.2021 accepted the writ petition and direction was issued to the respondents accordingly. Feeling aggrieved from the aforesaid judgment, respondents alongwith others challenged the said judgment before the Hon'ble Supreme Court by way of filing PLAs. The Hon'ble Apex Court after hearing both parties, set-aside the judgment of this Court and remanded the case for afresh decision vide judgment dated 09.12.2021.

Written arguments have been filed by both the parties on the direction of this Court vide order dated 01.04.2022. Record perused.

II. PETITIONERS' SUBMISSIONS:-

Sardar Jahandad Khan Mughal, learned Advocate submitted written arguments wherein he staunchly contended that the Govt. of Azad Jammu and Kashmir framed/adopted Police rules for appointment, promotion and compensation of employees of police department of Azad Jammu & Kashmir, the same is called Police Rules 1934; according to rule 12-3 of Chapter XII, against the post of ASIs 25% quota was reserved for direct recruitment as ASI and 75% quota reserved for promotion on the basis of seniority cum fitness. The learned counsel

further contended that the Azad Govt. through notification dated 05.07.1992 amended the above said rules and fixed the 50% promotion quota, instead of 75%. He further contended that through another notification dated 03.01.1998 the Government of Azad Jammu & Kashmir made approval to fill the posts of ASIs (B-9) and Prosecuting Sub Inspectors (B-14) through Public Service Commission. The learned counsel maintained that 50% quota reserved for the direct recruitment is liable to be divided in all the sections of Azad Jammu and Kashmir Police. He zealously contended that due to the appointment of the district police, the rights of Head constables who are fulfilling the criterion envisaged in the promotion list (D) are terribly affected and number of employees of police department i.e Head Constables and S/G constables have terribly been deprived from their fundamental rights i.e. right of promotion, hence, all the appointments of ASIs regarding direct recruitment in District Police are against the law and rules, especially against the police rules. The learned counsel persistently contended that from year 2002 to up till now, 100% appointments have been made in district regular force for 50% direct recruitment quota, due to which, the promotions of Head constables and other officers have vanished. The learned counsel vehemently contended that the official respondents advertised some posts of Assistant Sub Inspector including the posts of district Muzaffarabad, district Neelum & district Jhelum Valley and are going to fill in the said vacant posts on routine matter against district wise quota by depriving the promotion rights of petitioners, hence, the selection process is liable to be set-aside. He further maintained that the petitioners continuously faced injustice which resulted continuous

deprivation of their vested Service rights viz-a-viz the matter of promotion to the posts of ASIs, but having no tools and measures for their promotion, due to this reason the petitioners in essence are literally aggrieved persons in the eye of law who have got no other alternate and efficacious remedy except to invoke the extra-ordinary jurisdiction of this Court. The learned counsel vehemently contended that in every functional unit, a uniform service structure with common nomenclature for both the categories of direct recruitment as well as for the promotion is provided. The learned counsel pressed on the point that in the larger interest of justice, direction may be issued to respondents that they after dividing impugned advertised posts into all units/sections of Police department, the same may be adjusted accordingly, instead of only district regular force. The learned counsel negated the version of the respondents raised in the comments/ written statement regarding point of laches. He further submitted that discriminatory treatment has been made with the petitioners since last 20 years by depriving them from their right of promotion. He stated that the respondents are bound to make appointments of direct recruitment in all the units equally. The learned counsel further contended that 4 posts of ASIs have recently been filled in through promotion in the special branch of police, which are also against the law and rules. The learned counsel pointed out that in Counter Terrorism Department (CTD) 10 posts of ASIs have been created which have been filled in through promotion by violating 50% quota of direct recruitment. The learned counsel maintained that the said act of the respondents is totally discriminatory, unjust, unfair which comes in the ambit of continuous wrong and where there is a continuous

wrong the statute of limitation will be tolled to the latest date to which a wrongful act is committed and where there is a continuous wrong then law of limitation does not attract, so no question of laches is involved in the instant case. Finally, the learned counsel prayed for acceptance of the writ petition by referring following case law:-

1. 2014 SCR 41, 813.
2. 2009 SCR 415(E).
3. 2002 SCMR 82-rel.
4. 2011 SCR 257 (e).
5. 2015 SCR 1362.

III. SUBMISSIONS OFFERED BY OFFICIAL RESPONDENTS:-

On the other hand, Raja Zulqarnain Khan, the learned counsel for respondents No.1,2,4,6 and 7 submitted written arguments wherein he contended that the petitioners have got no locus standi to file captioned writ petition, therefore, the same is liable to be dismissed. He further contended that the instant writ petition has been filed after a long time (after 28 years) and principle of laches is attracted in this case, in this regard he placed reliance upon [2015 SCR 91]. The learned counsel submitted that PSC advertised the impugned posts on 05.06.2018 and applications were invited from the desirous candidates, after that on addition of some posts another advertisement was issued on 01.06.2019, in reply of that respondents No.9 to 11 have participated in written test, but despite knowledge, the petitioners did not challenge the aforementioned advertisement at any forum and kept mum themselves for 2 years whereas, private respondents after passing exams, have been short listed in the aforesaid test, but petitioners have filed instant writ petition and stopped further selection process of the impugned posts. The learned counsel zealously contended that petitioners are civil servants

and if they are aggrieved from any rules/orders or notification they have an alternate remedy in shape of filing an appeal before the Service Tribunal.

IV. SUBMISSIONS OFFERED BY INTERVENERS:-

Ch. Shoukat Aziz, the learned counsel for Interveners-Reserve & Rangers, also submitted written arguments wherein the learned counsel vehemently contended that as the different branches of Police were established from last half century and in this regard necessary amendments were made in Police Rules, 1934, which are acted upon by the department successfully according to the Police Rules direct/initial recruitment only to the extent of recruits should be made in all the other branches and only in District Police by initial appointment, the quota was fixed for ASI (Assistant Sub Inspector) and ASPs as well as direct appointment of PDSPs through Public Service Commission was made. He further submitted that as the petitioners failed to challenge all these rules and notifications, hence, their writ petition is liable to be dismissed. The learned counsel staunchly contended that the petitioners who are serving as Head Constables, have no right to challenge the recruitment of ASIs through Public Service Commission because they could not be appointed against the post of direct quota as well as these posts were advertised in May 2019 through advertisement bearing No.2/2019 and Public Service Commission after written test called the successful candidates, they filed writ petition on 16.12.2020 after one and a half year which is hopelessly a belated attempt hence, instant writ petition is liable to be dismissed. The learned counsel pointed out that the functioning and composition of the Police in all the braches is totally

different from each other as in Reserves and Rangers Police all over Azad Jammu & Kashmir have a same seniority from constables upto DSPs, whereas, in District Police right from constables to Inspectors the seniority was issued at district level, hence, the quota could not be bifurcated or calculated equally amongst all the different branches of Police, moreover, as the Reserve and Rangers Police were bifurcated in Platoons in which numbers of constables, Head Constables and ASIs were posted according to Platoons, whereas in district Police no such like composition of Police is available. The learned counsel maintained that petitioners have not placed any documents from which it can be ascertained that they are eligible for promotion and are in seniority position for promotion as well as they also did not pray for promotion. He staunchly contended that the petitioners have got no legal grievance as well as locus standi to challenge the criteria for promotion and appointment in different braches of police because the petitioners could only be considered against the posts of their functional units and quota reserved for their promotion in their functional units, hence, quota of other functional units if enhanced or decreased cannot adversely affect the service rights of petitioners, thus, the writ petition is liable to be dismissed. The learned counsel vehemently submitted that according to Section 12 of Police Act, 1861 IGP is empowered to issue police orders for regulating the police force and has divided the force into different units. Finally, the learned counsel prayed for dismissal of the writ petition.

V. **SUBMISSIONS OFFERED BY PRIVATE RESPONDENTS:-**

Raja Shujat Ali Khan, the learned counsel for respondents No.9 to 12 contended that the competent authority after consultation with the concerned quarters made an amendment in the Police Rules 1934 through notification dated 05.07.1992, which is the sole prerogative of the competent authority. It is worthwhile to mention here that rules cannot be framed at sweet will of any person. The learned counsel further contended that the aforesaid amended rules are in the field since 1992 but petitioners herein challenged the said rules after a lapse of 28 years without furnishing any sufficient reasons, therefore, the instant writ petition is hit by the doctrine of laches and same is liable to be dismissed on this sole point. He staunchly contended that the right of the petitioners has not been curtailed or badly affected due to the issuance of notification dated 05.07.1992 as well as under impugned advertisement, therefore, the petitioners are not entitled to invoke extraordinary jurisdiction of this Court.

I have considered the written arguments submitted on behalf of the learned counsel for the parties and gone through the case with due care.

VI. DETERMINATION BY THE COURT:-

As adumbrated main grievance of the petitioners as per pleaded stance articulated/voiced in the writ petition is that according to the AJ&K Police Rules 1934, 25% quota was reserved for direct recruitment against the slot of ASIs and rest of 75% quota was fixed for promotion on the yard stick of seniority-cum-fitness, but thereafter vide notification dated 05.07.1992 the above fixed quota for promotion was reduced by bringing back the same from 75% to 50%, while through

another notification dated 03.10.1998 government accorded approval for the appointment of ASIs (BPS-9) and Prosecuting Sub Inspector (BPS-14) against the above mentioned direct quota through Public Service Commission. As per estimation & pleaded stance of the petitioners, quota reserved for the direct recruitment is liable to be divided in all the relevant functional units/sections of the AJ&K Police irrespective of any differentia or classification, but on account of exhausting rest of the 50% quota of direct recruitment from the district police, hence, rights of other segment/functional units are adversely affected.

The above constitutional petition was issued previously but ultimately the Hon'ble Supreme Court remanded back the lis for denovo proceeding.

The lis is ripe up now and came up before the court for final adjudication.

Thrust of the arguments and main plank in black and white unequivocally reveals that disbursement and reserved quota as per Police Rules is unjust and arbitrary which is not being adhered to in judicious manner on the rational of the principle of equality among equals enshrined in the Interim Constitution which is ex-facie negation of right of equal opportunities of promotion in next higher grade.

Advertisement for the slots of ASIs was published in newspapers on 1st June, 2019 and in furtherance of the same decisive steps have been taken in shape of conducting test interview; but recommendation could not be made by the PSC on account of pendency of the instant lis.

While in juxta-position the writ petition has been filed on 15.12.2020 after one and half years of the above advertisement. It has been averred by the respondents in their written statement that quota for direct recruitment is being adhered to through PSC while the promotion quota against the slot of ASIs has already stood exceeded.

It is an astonishing state of affairs as how those constables could be deprived from their rights who appeared in response of the above advertisement before the PSC and have given active participation in the proceedings against 50% quota fixed for direct recruitment as nobody can made suffer for an loophole or inaction of the authority.

We come back to the realm of law governing the matter.

Rule 12-3 of AJK Police Rules 1934 speaks as under:-

The Police Rules, 1934

Chapter XII Appointment and enrollments.

12.3. “[*Direct appointment of Inspectors, Sub-Inspectors and Assistant Sub-Inspector.—* Except as provided in rules 12.1 and 12.4, direct appointments shall not be made except in the rank of Inspector, Prosecuting Sub-Inspector, Sub-Inspector and Assistant Sub-Inspector. Such appointments in the rank of Inspector, Sub-Inspector and Assistant Sub-Inspector may be made up to a maximum of ten per cent, forty per cent and twenty-five per cent of vacancies, respectively.]”

Viz-a-viz vide notification dated 05.07.1992 certain changes have been made in the supra rules by way of modifying and enhancing the 25% quota up to 50%. Abstract of the aforesaid notification is reproduced as under:-

AZAD GOVT. OF THE STATE OF JAMMU AND KASHMIR,
SERVICES AND GENERAL ADMINISTRATION DEPARTMENT

‘MUZAFFARABAD’
Dated:- 5-7-1992.

NOTIFICATION

No.S&GAD/R/A-4(281)/92. In exercise of the powers vested in it vide section 46(3) of the Police Act, 1861, the Azad Government of the State of Jammu and Kashmir is pleased to direct that the following amendment shall be made in the Police Rules, 1934:-

“ In the aforesaid Rules, in Rule 12.3 of chapter XII, for the words “twenty five” the word “Fifty” shall be substituted.”

**(M.A.BARI),
SECTION OFFICER SERVICES (R).**

Copy to:-

1. Secretary to the President, Azad Jammu and Kashmir.
2. Secretary to the Prime Minister, Azad Govt. of the State of Jammu and Kashmir.
3. Private Secretary to the Chief Secretary, Azad Govt. of the State of Jammu & Kashmir.
4. All Secretaries to Government.
5. Inspector General Police Muzaffarabad.
6. All Heads of Attached department.
7. Accountant General Azad Jammu and Kashmir.
8. All Officers of S&GAD Azad Govt. of the State of Jammu and Kashmir.
9. Controller, Government Printing Press, Muzaffarabad for publication in the ordinary issue of the official gazettes.
10. Master File.

SECTION OFFICER SERVICES (R).

The petitioners infact are seeking share from the quota fixed for direct recruitment while on other hand the above quota for direct recruitment has been enhanced and modified by way of amendment in the AJ&K Police Rules, 1934 vide notification of 1992.

Neither these rules have been specifically challenged nor Rules can be made on sweet will of the civil servants. It is prerogative of the competent authority. That too, the grievance in this regard regarding bifurcation and enhancement of quota has been voiced before this Court after more than 2 decades. Moreover, advertisement has also been challenged after pretty long time.

Remedy of writ is an extraordinary relief and litmus test for the petitioner asking for issuance of writ is that he should come with clean hands. Power in this regard is to be exercised in an extraordinary circumstances within the ambit and yardstick of the jurisdictional arena.

The petitioners have made an attempt to question the amended Rules of 1992 impliedly without challenging the aforesaid rules specifically.

All employees of Police are civil Servants within the meaning of Civil Servant Act, 1976 can bring their grievance before the Tribunal of exclusive jurisdiction i.e. Service Tribunal against any adverse order or for that matter statutory Rules detrimental to their service rights.

The petitioners in fact by one way or other have made an attack to the amended rules without specifically challenging the same.

Rules making power in view of Section 23 of the Civil Servants Act vest in the Govt./Competent Authority. It is right of the Govt./Competent Authority to frame rules and amend the same whenever required. Ready reference in this regard is 2005 SCR 259 and 2010 SCR 156+201.

Averments made in the writ petition are simplex dictum i.e. (averments without proof) as no affidavit in support of the contents of writ petition has been tendered and appended with the writ petition, although at belated stage an application was submitted during the course of arguments but as the other side objected the same, leaving aside this aspect in the large interest of justice we consider the same even that the petition in hand is fateless on above multiple reasons.

For the safe administration of justice we can sum up the saga of factual matrix of the case in light of the detailed written statement offered by the official respondents. Para No.4, 5 and 6 are reproduced as under:-

Provision "ASI" 03 12
"Except as provided in rules 12.1 and 12.4, direct appointments shall not be made except in the rank of Inspector, Prosecuting Sub Inspector, Sub-Inspector, and Assistant Sub Inspector may be made up to a maximum to Ten per cent, Forty per cent and twenty five percent of vacancies, respectively."

05-07-1992 S&GAD/R/A-4(281)/92
"In the aforesaid Rules, in Rule 12.3 of Chapter XXII, for the words Twenty-five the word "fifty" shall be substituted"

03.01.1998 97/21-27
Fill
PSC 50 ASI
4/1998 24/1993
11.06.1999 S&GAD/RA-4(8)/97
provision 26%
(4)1 13

4. "For the purpose of regulating promotion among enrolled police officers in the reserve police, Inspector General of Police shall be competent to prescribe promotion list linked with special training courses and examinations for the present constitution of Police force through standing orders.

4(1)13
1999
50 ASIs
02/2017
provision
100% ASI
02/2017

ASIs 3/2019
ASIs 2014
18
ترقیاب میں بدیں وجہ ناقابل پذیرانی ہے۔

12 1861
" 13
05-07-1992 S&GAD/R/A-4(281)/92
4(1)13
02/2017
ASI
Centralized

Nub of above discussion is that the titled writ petition on the above multiple reasons is not maintainable and meritless, hence, same is dismissed.

Muzaffarabad,
28.04.2022.

-Sd-
JUDGE