

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No: 1150/2019.

Date of Institution: 17.07.2019.

Date of decision: 28.04.2022.

1. Mujtaba Ahmed Khan, Constable No.1167 presently Reserved Police Headquarter Muzaffarabad.
2. Muhammad Adnan, constable No.792 presently Reserved Headquarter Muzaffarabad.
3. Muhammad Sharjeel, Constable No.1623, presently Serving in Traffic Police Muzaffarabad.
4. Iftikhar Ahmed, Constable No.527, presently Reserved Headquarter Muzaffarabad.
5. Muhammad Saleem, constable No.633, presently Reserved Headquarter Muzaffarabad.
6. Muhammad Faisal, Constable No.106, presently Reserved Headquarter Muzaffarabad.
7. Asad Khan, Constable No.1378, presently Reserved Headquarter Muzaffarabad.
8. Rashid Khan, Constable No.647, presently Reserved Headquarter Muzaffarabad.
9. Shahzad Ahmed constable No.1070, presently Reserved Headquarter Muzaffarabad.

(Petitioners)

Versus

1. Inspector General of Police, Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat Muzaffarabad.
2. Deputy Inspector General of Police, Rangers/Reserve having his office at New District Complex Muzaffarabad.
3. Deputy Inspector General of Police Headquarter, having his office at New District Headquarter Complex Muzaffarabad.
4. Senior Superintendent of Police Reserve, Police Line Shoukat Line Muzaffarabad.

(Non-Petitioners)

WRIT PETITION

Before: Justice Syed Shahid Bahar J.

PRESENT:

Sardar M.R. Khan, Advocate for the petitioners.

Raja Zulqarnain Khan, Legal Advisor for Police department.

Judgment:

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

“It is, therefore, prayed on behalf of petitioners that this Hon’ble Court may very graciously be pleased to issue high prerogative writ directing the non-petitioners to tread the permanent adjustment of petitioners against the post of Constable with effect from the date of issuance of notification dated 02.04.2015 declaring the petitioners as entitled for the benefits of service and salary with effect from 02.04.2015. Any other relief which is just and proper in the estimation of this Hon’ble Court may also be granted to petitioners in the interest of justice.”

I. FACTS IN BREVITY:-

Petitioners are 1st Class State Subjects who were initially inducted on temporary basis in Police Department and are presently serving as constable on different position of Reserve Police Muzaffarabad. It is averred that during contract service, petitioners had undergone departmental training for 14 months deputed by the higher authority of Police Department, however, on expiry of contract, the government issued notification dated 02.04.2015 through which the petitioners were approved for their adjustment against available posts in Police Department. It is further averred that petitioners after waiting for considerable period for their adjustment filed a writ petition before this Court on 08.02.2016 seeking direction by this Court for implementation

of notification dated 02.04.2015. The writ petition was resisted by non-petitioners, however, finally, the writ petition was accepted while directing the official respondents to adjust the petitioners against the posts of constables on the basis of Government notification dated 02.04.2015 vide judgment dated 01.07.2016. The said judgment was challenged before the Hon'ble Apex Court of Azad Jammu & Kashmir by the respondents by way of filing an appeal, but the same was dismissed vide judgment dated 18.11.2016. It is contended that respondents instead of adjusting the petitioners on permanent basis adjusted the petitioners again on contract basis vide order dated 10.02.2017. The petitioners time and again approached to the concerned authority for their permanent adjustment but they did not adjust the petitioners on permanent basis.

Written arguments have been filed on behalf of the learned counsel for the parties.

II. PETITIONERS' SUBMISSIONS:-

Sardar M.R. Khan, the learned counsel for the petitioners submitted written arguments wherein he reiterated the facts narrated in the petition and vehemently contended that a legal/ lawful government notification dated 02.04.2015 was issued but instead of acting upon with letter and spirit, the same has been procrastinated by the official respondents, which lapses cannot be attributed towards the petitioners nor the petitioners can be punished, whereas the authority was bound to implement the

notification dated 02.04.2015. The learned counsel further contended that under the provision of fundamental rights as enshrined in Azad Jammu & Kashmir Interim Constitution, 1974, the petitioners deserve to be treated equal before law and not to be discriminated, therefore, an appropriate writ is liable to be issued in favour of petitioners in order to maintain law and justice. He zealously maintained that while issuing writ this Court had already directed to implement the notification dated 02.04.2015, which was thereafter acted upon in compliance with the judgment of this Court, hence, implementation shall deem implementation of notification dated 02.04.2015, thus, deviation from the implementation of the said notification with effect from 02.04.2015 is tantamount to flout the judgment of this Court dated 01.07.2016. The learned counsel further maintained, it is well settled principle of law that individual cannot be punished or penalized for the fault of authority, thus, petitioners cannot be blamed for any lapses without rhyme or reason, for which they could be deprived from the consequential right of notification dated 02.04.2015. In support of his submissions, the learned counsel placed reliance on 2018 SCR 1195, 2007 SCR 208, 2009 SCR 425 and 2018 SCR 1327. The learned counsel finally prayed for acceptance of the writ petition.

III. **RESPONDENTS' SUBMISSIONS:-**

Raja Zulqarnain Khan, learned Legal Advisor appearing on behalf of official respondents submitted written

arguments wherein the learned counsel vehemently contended that petitioners were appointed on temporary basis in a Project in year 2010. He further contended on the direction of this court vide judgment dated 01.07.2016 and through the Judgment of Hon'ble Supreme Court dated 18.11.2016, the petitioners were adjusted in Reserve Police on contract basis, later on a contempt application was filed by the petitioners and in view of the order of this Court dated 11.10.2018, the words "contract basis" from the appointment orders of the petitioners were deleted. The learned Legal Advisor maintained that petitioners have been adjusted on permanent basis as Constables. The learned Legal Advisor further maintained that the petitioners are claiming their adjustment and financial benefits from 02.04.2015, but during the said period they were not employees of the police department, whereas they were adjusted through order book No.195 dated 10.02.2017 on contract basis in Reserve department of Police on the direction of this court as mentioned above. The learned Legal Advisor submitted that the petitioners are depending upon the impugned notification, against which the Police through interior department moved to review the said notification before the government but on account of institution of the instant writ petition, same could not be finalized. The learned counsel finally prayed for dismissal of the writ petition.

I have considered the written arguments submitted on behalf of the learned counsel for the parties and gone through the record appended with the writ petition, with due care.

IV. **DETERMINATION BY THE COURT:-**

As per pleaded stance of the parties, the petitioners are seeking fruits of the notification dated 02.04.2015 for the purpose of benefit of services in shape of salary and other emoluments w.e.f 02.04.2015 on the strength that the appointment of the petitioners were carried out completely in accordance with law after advertisement of the posts and in light of the respective selection Committee as Constables in Police Department on contract basis and thereafter they have deputed by the concerned quarters for training of 14 months, subsequent of which after obtaining due training when the Project was likely to come to an end, competent authority vide notification dated 02.04.2015 read with corrigendum dated 09.04.2015 decided to confirm the petitioners by bringing their posts on pedestal of normal budget. Thereafter as the relevant quarters slept over the matter by making procrastination quo implementation of the notification dated 02.04.2015, consequent of which petitioners were constrained to file writ petition for implementation of the notification dated 02.04.2015, which was accepted vide decision dated 01.07.2016 and specific direction was given to the answering respondents to implement the aforesaid notification by adjusting the petitioners

accordingly. The above decision remained intact in the Apex Court as well.

As per stance of the petitioners the answering respondents half heartedly once again issued order of the petitioners on contract basis, resultant of which, the petitioners filed an application for initiation of contempt proceedings against the official respondents, as a result of endeavor of the petitioners, the official quarter adjusted the petitioners vide order dated 17.10.2018.

While in juxta-position the official respondents in their written arguments staunchly opposed the stance of the petitioners by alleging that the petitioners have already availed alternate remedy by filing review petition which is pending adjudication therein, moreover, the writ petition is not maintainable as the grievance of the petitioners has already been stood redressed in view of notification dated 02.04.2015.

As adumbrated above, rigmarole and delaying tactics on part of official quarter is appearing on the record as they procrastinated the matter by one pretext or other, resultant of which, the petitioners were constrained to approach the Courts of law, that too, after getting decision in their favour, the relevant quarter remained reluctant to implement the same for pretty long time without rhyme or reason which is negation of doctrine of administrative justice as well as constitutionally guaranteed rights i.e. right No.1 and 15. The petitioners could not be penalized for

inaction or loophole of the departmental authority. It was incumbent upon official quarters to implement the notification dated 02.04.2015 forthwith when it was issued in order to provide benefit/fruits of the same to the incumbent employees.

The High Court in its extraordinary jurisdiction provided under Article 44 of the Interim Constitution cannot sit as a silent spectator, particularly where enforcement of constitutionally guaranteed fundamental rights is involved.

The petitioners have come up with bona fide claim as reflecting from the record, hence, held entitled for equitable relief.

Majesty of law demands that justice is not only to be done by courts of law but by everyone who is at the helm of affairs and burdened with duty to adjudicate any matter at the administrative end in order to administer justice (which is called administrative justice).

It is a celebrated principle of law that a government notification cannot be given retrospective effect to the extent of rights already stood created but when the same is beneficial it can be given retrospective effect. Be that as it may, the notification dated 02.04.2015 for its all practical purpose is beneficial to the extent of rights of the petitioners, hence, the petitioners are entitled to receive benefits of notification dated 02.04.2015 from the date of issuance of the same. Reliance in this regard is placed on the case law titled “Messers Elahi Cotton Mills Ltd. and others V.

Federation of Pakistan through Secretary and 6 others [PLD 1997 SC 582] and case law reported as 2018 SCR 1327.

Nub of above discussion is that the titled writ petition is accepted as prayed for and in the manner indicated above.

Muzaffarabad,
28.04.2022.

-Sd-
JUDGE