

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.2259/2021.

Date of institution 18.06.2021.

Date of decision 10.03.2022.

Naveed Nazir S/o Muhammad Nazir Khan R/o Hussain-Kot, Rawalakot Tehsil and District Poonch, Azad Jammu and Kashmir

....Petitioner

VERSUS

1. Department of Agriculture, Livestock, Irrigation and ESMA, through Secretary Agriculture, Livestock, Irrigation and ESMA, Azad Govt. having office at new Secretariat Complex, Chatter, Muzaffarabad.
2. Secretary Agriculture, Livestock, Irrigation and ESMA Azad Govt. having office at New Secretariat Complex, Chatter, Muzaffarabad.
3. Project Director National Program for Improvement of Watercourses in Pakistan Phase-II (AJ&K Component) having office at Ghari Pan Chowk Muzaffarabad.
4. Selection Board for the positions of contract employees in National Program for Improvement of Watercourses in Pakistan Phase-II (AJ&K Component) through its Chairman/members, Secretary Agriculture, Livestock, Irrigation and ESMA Azad Govt. having office at New Secretariat Complex, Chatter, Muzaffarabad.
5. Raja Waqar Ahmed Azad S/o Raja Mohammad Azad Khan unlawfully appointed Water Management Officer NPIWP Project presently working as Manager Siyahkalem Eng.Inc, office Blue Area Islamabad.
6. Miss Iram Naqvi D/o Syed Ali Afsar Shah unlawfully appointed as Monitoring and Evaluation Officer B-17 NPIWP Project, Ghari Pan Chowk, Muzaffarabad.

.... Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Syed Zulqarnain Raza Naqvi, Advocate for the petitioner.

Muhammad Saghir Javed, Advocate for respondent No.5.

Waheed Bashir Awan, Advocate for respondent No.6.

Syed Wasif Ali Gardezi, Advocate for official respondents.

Judgment:-

By way of instant constitutional petition under Article 44 of the Interim Constitution, 1974, the petitioner has beseeched the following relief:-

“In view of above mentioned facts and circumstances, it is, therefore, very humbly prayed on behalf of the petitioner to issue an appropriate writ in the following manner:-

- i. *That the impugned appointment notification of private respondents bearing no.SZ 20(1)24/2280-88/2021 and SZ 20(1)24/2289-97/2021 dated 30.04.2021 may kindly be*

declared illegal, void, without lawful authority, coram-non-judice, ultra-vires to the constitutional norms and the same may kindly be struck-down.

- ii. *It is further prayed that the official respondents be directed to issue the appointment notification of the petitioner on one of the ibid advertised posts as an eligible candidate on top of the merit list having the requisite experience against the post of Monitoring & Evolution Officer or Water Management Officer B-17.*
- iii. *Any other relief which deemed to be fit may also be granted in favour of petitioner.”*

BRIEF FACTS:-

Facts of the case succinctly required for disposal of the case in hand are that the petitioner in response of public advertisement applied against the post of Water Management Officer B-17 & Monitoring & Evaluation Officer BPS-17, requisite proceedings were carried out resultantly test and interview was conducted/concluded by way of appointments of respondent No.5 & 6 respectively vide notification bearing No. SZ 20(1)24/2280-88/2021 and SZ 20(1)24/2289-97/2021 dated 30.04.2021 (impugned herein).

Main grievance voiced by the petitioner is against the aforesaid notifications regarding appointments of the respondent No.5 & 6. The petitioner pleaded 6 grounds of attack to the legality of the aforesaid notifications (impugned herein) and overall trend of all the grounds particularly, ground-D are composite common and amalgamated, crux of the same, ex-facie reveals that appointments of the private-respondents are politically motivated and outcome of connivance of official quarters and lack of requisite qualification of the respondents No.5&6. Both the learned counsel for the parties submitted their written arguments pro and contra, record of the case has minutely been perused.

PETITIONER'S SUBMISSIONS:-

The learned counsel for the petitioner, Mr. Syed Zulqarnain Raza Naqvi, Advocate vehemently contended that the notification of

appointments of respondents No.5 & 6 (impugned herein) are outcome of connivance of official respondents with the petitioner, which as per his estimation is sheer violation of law, thus, the notification under challenge is void ab-initio. He further added that the aforesaid notification has been issued on political motivation. The learned counsel in parlance of the alleged grievance narrated that the official respondents are under legal obligation to act in accordance with law, he added that the basic qualification was determined by the respondents as B.Sc. Honors Agriculture/ Master's degree (Soil Sciences) with 3 years experience, whereas the private respondents at the eve of selection were lacking the requisite qualification.

SUBMISSION TENDERED BY PRIVATE RESPONDENT No.5:-

While in response, the learned counsel for respondent No.5, Mr. Saghir Javed Advocate filed written arguments, wherein he tenaciously opposed the writ petition and maintained that all the proceedings have been initiated and concluded by the official respondents completely in accordance with law and no illegality has been committed in this regard. He further maintained that the petitioner has got no locus-standi to file the instant petition at the eve of applying against the post, he submitted a fake experience certificate, which is reflecting from the record appended with the written statement, wherein the relevant department has categorically denied issuance of certificate of experience tendered by the petitioner before Selection Authority, hence, the writ petition merits dismissal.

SUBMISSIONS OFFERED BY PRIVATE RESPONDENT NO.6:-

Mr. Waheed Bashir Awan, the learned counsel for private respondent No.6 also filed written arguments wherein he contended that the appointment of said respondent has been made by selection board on contractual post. He further contended that the writ petition has been filed by

the petitioner with malafide intention after failure in selection process. He further added that the petitioner has got no locus-standi to challenge such process, in which he participated, hence, rule of acquiescence is fully attracted in the matter.

OFFICIAL RESPONDENTS' SUBMISSIONS:-

The learned counsel for official-respondents Syed Wasif Ali Gardezi, staunchly contended and submitted (through written arguments) that in fact the posts in question were advertised in “National Programme for improvement of Water Channel/Water Courses Phase-II AJK Component” and the aforesaid project was sanctioned on 29.08.2019. He further added that for the post of Water Management Officer B-17, (seventy) 70 applications were received by the department, wherein, name of the petitioner figured at serial No.19 while for the post of Monitoring & Evaluation Officer B-17, total 87 applications have been submitted, for which, the name of the petitioner appeared at serial No.22, resultantly, on the direction of the Selection Board No.3, a Committee was constituted for the purpose and the aforesaid Committee conducted written test of the candidates and submitted the matter to the Selection Board No.3. The learned counsel for official respondents further submitted that as the nature of the appointments in the project is totally contractual and the appointments to the posts carrying grade 16 to 18 were likely to be made by Selection Board No.3 as per policy notification dated 23.04.2021. The learned counsel for official respondents further maintained that in light of the overall received applications, after shortlisting for the post of Water Management Officer, only Eight (8) candidates have been short listed, while for the post of Monitoring and Evaluation Officer (B-17), Nine (9) candidates were short listed, whereas rest of the candidates could not qualify according to requisite

criteria. He further added that for the post of Water Management Officer (B-17) the name of the petitioner figures at serial No.2 while against the post of Monitoring and Evaluation Officer (B-17) his name is at serial No.1. He apprised the court that due to lock down of covid-19 pandemic, the written test of the candidates was delayed for some days and ultimately, the interview for the aforesaid post was conducted by the competent authority (selection board) and the selection board, after taking into consideration the merits, experience and other credentials recommended the private respondents, herein, for appointment in accordance with law. The learned counsel for official respondents apprised the court, that the petitioner has tendered a fake certificate of experience before Selection Board on 01.06.2021 for the post in question, for which he was claiming his right while the office of Director General Agriculture categorically denied issuance of such like certificate in favour of the petitioner. The learned counsel vehemently contended that as the petitioner himself appeared before the Selection Board and could not come up to the mark, therefore, he is estopped by his own conduct to challenge the selection process. Vertical precedents in this regard relied by the learned counsel are:-

- a. Abdul Qadir v/s Abdul Karim 2000 SCR 97.**
- b. Najma Parveen v/s Samar Ayub 2016 SCR 15.**
- c. Salman Ahmed v/s Tanveer Ahmed 2001 SCR 282.**

After going through the written arguments offered by both the parties and perusing the record appended with writ petition and submitted by the department, it is pertinent to reproduce hereunder the merit list/result sheet for both positions, i.e.

برائے آسائی وائرٹھیف آفیسر B-17 (تعمیر آسائی 01)

National Programme for improvement of Water Channels/ Water Courses Phase-II Pakistan AJK Component

نمبر شمار	روٹ نمبر	مٲ	دولت	گونت ضلع	ایڈریس	تاریخ پیدائش	عمر	تعلیمی قابلیت	اعلیٰ تعلیم (15)	انسانی تعلیم (1)	تجربہ (9)	تحریری امتحان (50)	انٹرویو (25)	حاصل کردہ نمبر	کیفیت
01	566	فوجیہ خانہ	محمد نیر خان	پونچھ	زراعت آفیسر (ایڈساک) توسیع کرکری سنگ مدھوتی 0336-1539262	24.06.1978	42 سال	بی اے ایس ای آئرز ایگریکلچر ایف ایم ایس ای آئرز ایگریکلچر	8.77	01	09	40	10	68.77	
02	568	فصل الزمان	میدار شید چہ بوری	منظر آباد	مہوڑت اور بٹیل بک شاپ نزد ایکس کس اینڈ لیکری بی بی پاس روڈ گوجرہ منظر آباد 0300-3555441	07-07-1968	52 سال	بی اے ایس ای آئرز ایگریکلچر	9.88	01	09	18	08	45.88	
03	571	رہنوردہ احمد زادہ	راج محمد آزار انان	بانج	الغیرت ٹریڈرز مارگ کس ایجنسی محمدی بی بی چوک منظر آباد آزار کھنجر 0333-2489244	25.09.1987	33 سال	بی اے ایس ای آئرز ایگریکلچر ایف ایم ایس ای آئرز ایگریکلچر	11.99	01	09	41	22	84.99	
04	572	فصل قدیم	محمد اقصیٰ خان	منظر آباد	جنرل کھنجر نواب خان تحصیل وطن منظر آباد 0346-9374475	03-12-1985	35 سال	بی اے ایس ای آئرز ایگریکلچر	10.99	0	09	31	10	60.99	

یکڑی سرور (زنا بھرا)

چیف زراعت پائٹنگ اینڈ ڈولپمنٹ (نمبر)

ایڈیشنل سیکڑی زراعت و آبپاشی (نمبر) سیکڑی سٹی

یکڑی زراعت و آبپاشی (جنرل منتر قیاس گلشن پورڈ نمبر 3)

یکڑی پائٹنگ اینڈ ڈولپمنٹ (نمبر)

پائٹنگ ڈائریکٹر (نمبر)

رولٹ شیٹ برائے انٹریگس اینڈ ایویشن آف ایف 17-B



"National Programme for Improvement of Water Channels/ Water Courses Phase-II Pakistan AJK Component"

نمبر شمار	رولٹ نمبر	م 4	دہلیت	گورنٹ ضلع	ایئر لائن	ڈیزین پیویشن	عمر سال	تقدیمی قابلیت	مطلوبہ تعلیم (15)	اشفاق تعلیم (1)	تجربہ (9)	تجزیاتی امتحان (50)	انٹرویو (25)	حاصل کردہ نمبر	کافییت
01	573	نوبیندر	محمد نذر خان	پونچھ	سال زراعت آفیسر (ایڈساک) توسیع کرنل سنگ مدھنی 0336-1539262	24.06.1978	42 سال	ایم اے سی انٹرنیٹ ایگریکلچر	8.77	01	09	18.5	10	47.27	
02	577	سمیرہ رفیق	محمد رفیق	منظر آباد	محلہ سٹریٹ وارڈ نمبر 11 منظر آباد 0345-5407744	22.05.1984	36 سال	ایم اے سی انٹرنیٹ ایگریکلچر بی اے سی ایگریکلچر	11.22	01	09	21.5	12	54.72	
03	576	انص انور	خوشی انور	منظر آباد	ایڈولٹرز سوسائٹی سکول جتھروہل منظر آباد، 0312-9003132	14.02.1989	31 سال	ایم اے سی انٹرنیٹ ایگریکلچر	9.55	01	09	21	نمبر مختصر	40.55	
04	578	مہمان طلسم	محمد سلیم	پونچھ	مہرقت سابق جتھروہل ایگریکلچر اینڈ ایڈیو ایٹس سیکس پاک نمبر 9 کرو نمبر 941 جتھروہل منظر آباد، آزاد سکیم، 0333-5649458	18.04.1980	40 سال	ایم اے سی انٹرنیٹ ایگریکلچر بی اے سی انٹرنیٹ ایگریکلچر	8.85	01	09	30.5	18	67.35	
05	579	ارشد نقوی	سیٹی انور شاہ	منظر آباد	نزد چیف انجینئر برقیات جہاں آباد گولڈ بی بن مہرقت DCRIP 0300-9704777	10.10.1982	38 سال	بی اے ایم اے سی اے اے	7.19	01	09	41.5	20	78.69	
06	582	راشد رحمان	سید راشد رحمان	مجمبر	ایگریکلچر سیکشن P&DD پاک نمبر 11 نزد میل کمرڈیٹ منظر آباد، 0314-5454324	09.12.1989	31 سال	ایم اے سی انٹرنیٹ ایگریکلچر بی اے سی انٹرنیٹ ایگریکلچر	10.9	1	09	37	10	67.9	

یکڑی سرودھن (فنانس)

یکڑی زراعت و آبپاشی (جیٹریٹن ترقیاتی سلیکشن بورڈ نمبر 3)

چیف زراعت پلاننگ اینڈ ڈویلپمنٹ (ممبر)

یکڑی پلاننگ اینڈ ڈویلپمنٹ (ممبر)

ایڈیشنل یکڑی زراعت و آبپاشی (ممبر/یکڑی کسٹی)

پراجیکٹ ڈائریکٹر (ممبر)

After perusal of the above result sheets, it is oozing and reflecting that the petitioner for the post of “Water Management Officer B-17” obtained 68.77 marks while the private respondent Raja Waqar Ahmed Azad obtained 84.99 marks, whereas against the post of Monitoring and Evaluation Officer B-17, the petitioner obtained 47.27 marks while successful candidate, respondent No.6-Iram Naqvi got 78.69, much more than that of the petitioner.

It is an admitted position that petitioner applied against both the posts in question and his name was included in the short listed candidates, thereafter he participated in the selection process actively but could not succeed. It has also been brought on record by the respondents that the petitioner has tendered fake certificate of his experience. It is useful to reproduce the same as under:-

OFFICE OF THE DIRECTOR GENERAL AGRICULTURE
DEPARTMENT OF AGRICULTURE
Azad govt. of the State of Jammu & Kashmir
MUZAFFARABAD
Phone No:05822-920563

Ref. No. 1845

Date: 07.06.2021.

To Whom It May Concern

It is to certify that **Mr. Naveed Nazir S/o Muhammad Nazir Khan**, R/o Hussain-Kot, Tehsil Rawalakot, District Poonch AJK had been serving in this department as an **Agriculture Officer Extension/ Assistant Research Officer Crops (B-17)** on Adhoc basis since 1st December, 2007 to 18th January, 2021.

He performed meritorious services under my supervision. He proved himself as a responsible, keen to learn and an individual who completed his assignments well in time. His work and conduct remained quite satisfactory and I wish him success in all walks of life.

Signature
Director General
Agriculture
AJK Muzaffarabad

The aforementioned experience certificate has been declared fake and bogus by the office of Directorate of Agriculture vide letter dated 28.01.2021, and the same has also been placed before the court alongwith

written arguments on behalf of official respondents as "ضمیمہ". It is relevant to reproduce the same as under:-

**”نظامت اعلیٰ زراعت
آزاد حکومت ریاست جموں و کشمیر
مظفر آباد**

نمبر / ان/از/ 2021ء مورخہ 28 جون 2021

بخدمت:-

محترمہ ارم نقوی
مانیٹرنگ اینڈ ایجوکیشن آفیسر

عنوان:- درخواست بمراد صدورگی حکم نسبت فراہم کیے جانے تصدیق برائے لیٹر نمبر 1845 محررہ 01.06.2021 بحق نوید نذیر ولد محمد نذیر خان دفراہمی جملہ حکم ایڈھاک تقرری بحق مسول از کم دسمبر 2007ء تا 18 جنوری 2021ء جملہ تعلیمی اسناد سمی نوید نذیر (سابق زراعت آفیسر) ”السلام علیکم“

معاملہ عنوان الصدر میں بحوالہ آپ کی درخواست محررہ 23.06.2021 (جو کہ بذریعہ کونسل میر رضوان الرحمان ایڈووکیٹ) دفتر ہذا میں موصول ہوئی ہے۔ ضامن میں حسب ہدایت تحریر خدمت ہے کہ عنوان بالا میں درج لیٹر نمبر 1845 محررہ 01.06.2021 دفتر سے جاری ہونا نہیں پایا جاتا اور نہ ہی مسمی نوید نذیر کے حکم نامہ جات ایڈھاک تقرری دفتر ہذا سے جاری ہوئے ہیں۔ جملہ آفیسران کے ایڈھاک تقرری کے حکم نامہ جات سیکرٹریٹ زراعت کی سطح سے جاری کیئے جاتے ہیں۔ اس طرح جس دفتر سے کوئی حکم نامہ یا نوٹیفکیشن جاری ہو وہی دفتر تحت ضابطہ نقول جاری کرنے کا اختیار رکھتا ہے۔ متذکرہ بالا حکم نامہ جات کی مصدقہ نقول دفتر ہذا کی سطح سے جاری نہ ہو سکتی ہے۔

لہذا آپ کو بذریعہ مکتوب مطلع کیا جاتا ہے۔

والسلام

(لیگل آفیسر)

نظامت اعلیٰ زراعت مظفر آباد

The above reproduced letter clearly reveals that the petitioner’s experience certificate on which he is heavily relying was found fake and fabricated attributed to issuing department.

DETERMINATION BY THE COURT:-

The petitioner participated in the selection process and could not get the merit position, hence turned around and filed this writ petition. It is settled principle of law when a person actively participates in the selection process subsequently he can not come up with volta face and challenge the selection process at random by criticizing the mode of selection or questioning the bonafides of the selection authority. While exercising extraordinary jurisdiction, the conduct of the petitioner is also to be filtered through the lens of bonafide, which is to be judged by the court in light of

the conduct of the petitioner and overall circumstances of the case. In my estimation the doctrine of acquiescence and estoppel are fully attracted into the matter. Moreover, this Court cannot substitute the findings of the selection authority (based upon wisdom) without indication of any arbitrariness and illegality. Reliance in this regard is placed on the following dicta laid down by the Honorable Supreme Court of Pakistan, in a case reported as 2008 SCMR 960, titled Dr. Mir Alam Jan Vs. Dr. Muhammad Shahzad and others, wherein it has been ordained:-

“----Art. 199---Constitutional jurisdiction of High Court--
-Scope---Civil service---Appointment---High Court, in
exercise of the constitutional jurisdiction under Art. 199
of the constitution was not expected to perform the
functions of a selection Authority in service matters so as
to substitute its opinion for that of competent authority.”

Same view has been taken in the following case law as well
i.e. 2007 SCMR 682, titled Muhammad Iqbal v/s Executive Dist. officer.

Petitioner has failed to make out any point for interference by this Court in its extra-ordinary jurisdiction, as he miserably failed to point out any illegality on the part of official-respondents, that too, although he has taken a ground of malafide and political connivance but in support of this specific allegation, the petitioner has failed to bring on record any sufficient and cogent evidence for consideration of this Court. The term “Malafide” has been interpreted by the Honorable Apex Court of Pakistan in a case reported as “The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi Versus Saeed Ahmed Khan and others” [PLD 1974 SC 151] in the following terms i.e.

“Malafide is one of the most difficult things to prove and the onus is entirely upon the person alleging malafides to establish it, because there is, to start with, a presumption of regularity with regard to all the official acts, and until that presumption is rebutted, the action cannot be challenged merely upon a vague allegation of malafides.

The Honorable Apex Court of Pakistan in a case titled Dr. Akhtar Hussain Khan and others Versus Federation of Pakistan and others reported as 2012 SCMR 455 has reiterated and fortified the stance of “malafide” which the Apex Court took in Saeed Ahmad Khan’s case [PLD 1974 SC 151].

Therefore, this court is not inclined to interfere in such like matter, stale and bald allegation quo attributing malafide to other party without proving the same serves no purpose.

The crux of above discussion is that finding no substance in this writ petition, the same is hereby dismissed in limine. No order as to costs.

Muzaffarabad,
10.03.2022.(A)

-Sd-
JUDGE

Approved for reporting

-Sd-
JUDGE