

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.1239/2021.

Date of Institution.07.04.2021.

Date of Decision.15.12.2022.

1. Raja Bilal Ahmed Assistant B-16 Services and General Administration Department Azad Govt. of the State of Jammu and Kashmir presently serving in Planning and Development Department of Azad Jammu & Kashmir.
2. Muhammad Zeeshan Assistant B-16 Services and General Administration Department Azad Govt. of the State of Jammu and Kashmir presently serving in Finance Department of Azad Jammu & Kashmir.
3. Farooq Haider Assistant B-16 Services and General Administration Department Azad Govt. of the State of Jammu and Kashmir presently serving in Secretariat Higher education Department of Azad Jammu & Kashmir.
4. Ahsan Rasheed Dar, Assistant B-16 Services and General Administration Department Azad Govt. of the State of Jammu and Kashmir presently serving in Planning and Development Department of Azad Jammu & Kashmir.
5. Waqar Ahmed Senior Scale Stenographer B-14 Services and General Administration Department Azad Govt. of the State of Jammu and Kashmir presently serving in Presidential Secretariat of Azad Jammu & Kashmir.

Petitioners

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Chief Secretary Azad Jammu & Kashmir, having its office at New Secretariat, Muzaffarabad.
2. Rules Framing Committee through its Chairman Additional Chief Secretary (General) Azad Govt. of the State of Jammu and Kashmir, having its office at New Secretariat, Muzaffarabad.
3. Secretary Services and General Administration Department Azad Govt. of the State of Jammu

and Kashmir, having its office at New Secretariat, Muzaffarabad.

4. Department of Finance Azad Govt. of the State of Jammu and Kashmir, having its office at New Secretariat, Muzaffarabad.

Respondents

2. Writ Petition No.1896/2021.
Date of Institution.01.06.2021.

1. Munir Iqbal Current Charge Deputy Secretary Services and General Administration Department, Muzaffarabad.
2. Waqas Ahmed Zia, Current Charge Deputy Secretary Tourism and Information Technology, Azad Jammu & Kashmir, Muzaffarabad.
3. Shoaib Yaqeen Khan Current Charge Deputy Secretary Home Department, Azad Jammu & Kashmir, Muzaffarabad.
4. Raja Israr Ahmed Khan Current Charge Deputy Secretary PP&H Department, Azad Jammu & Kashmir, Muzaffarabad.
5. Haleema Qureshi Current Charge Deputy Secretary, Inland Revenue Department, Azad Jammu & Kashmir, Muzaffarabad.
6. Ambreen Asghar Current Charge Deputy Secretary Secondary Services and General Administration Department, Muzaffarabad.
7. Madiha Kousar Current Charge Deputy Secretary Higher Education Department Azad Jammu & Kashmir, Muzaffarabad.
8. Dr. Rabia Naqvi, Current Charge Deputy Secretary Communication and Works Department, Azad Jammu & Kashmir, Muzaffarabad.

Petitioners

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Chief Secretary Azad Jammu & Kashmir, having its office at New Secretariat, Muzaffarabad.
2. Cabinet of Azad Jammu & Kashmir through Secretary Cabinet Azad Jammu & Kashmir,

having his office at New Secretariat, Muzaffarabad.

3. Chief Secretary Azad Govt. of the State of Jammu and Kashmir through Secretary Services and General Administration Department, having its office at New Secretariat, Muzaffarabad.
4. Services and General Administration Department Azad Govt. of the State of Jammu and Kashmir, through Secretary Services and General Administration Department, having his office at New Secretariat, Muzaffarabad.
5. Rules Framing Committee through its Chairman Additional Chief Secretary (General) Azad Govt. of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
6. Finance Department Azad Govt. of the State of Jammu and Kashmir, having its office at New Secretariat, Muzaffarabad.
7. Sub Committee notified vide No.S&GAD/G-7(77)2020 Part-II dated 03.03.2021 through its Chairman Special Secretary Services and General Administration Department, having his office at New Secretariat, Muzaffarabad.
8. All Pakistan Clerk Association (APCA).

Respondents

WRIT PETITIONS

Before:- **Justice Sardar Liaqat Hussain, J.**

PRESENT:

Ch. Shoukat Aziz, Advocate for Petitioners.

Mr. Shahid Ali Awan, Advocate for Respondents.

Raja Ayaz Ahmed, Advocate for Intervener.

JUDGMENT:

The captioned writ petitions have been addressed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974.

2. As common questions of facts and law are involved in the instant writ petitions, therefore, I proposed to decide the same through this single judgment.

3. Facts forming the background of writ petition No.1239/2021 are that the petitioners are 1st class State Subject and are serving as Assistants B-16 and Senior Scale Stenographers B-14 in S&GAD. It has been alleged that petitioners No.1 to 3 having qualification as M.A. M.Sc. were inducted as Section Clerks in S&GAD through direct recruitment on 12.01.1994, whereas, petitioner No.4 having qualification as B.A. was inducted as Section Clerk in S&GAD through direct recruitment on 13.01.1998. It has been stated that the petitioners No.1 to 3 were promoted as Assistant B-16 on 20.04.2009, whereas petitioner No.4 was promoted as Assistant B-16 on 05.08.2015 and petitioner No.5 was inducted as Senior Scale Stenographer B-14 in S&GAD on 03.03.2009. It has been further stated that the department prepared final seniority list of Assistants B-16 and Senior Scale Stenographers B-14 through notification/order dated 24.07.2020 & 08.08.2020. It has been stated that the Govt. of Azad Jammu &

Kashmir vide notification dated 22.08.2016 fixed the minimum qualification for promotion in BPS-17 as graduation and the employees, who were lacking qualification were given a grace period of four years to complete/enhance the qualification. It has been submitted that earlier Azad Govt. of the State of Jammu and Kashmir through notification dated 01.07.2020 fixed the minimum qualification for promotion in BPS-18 and above shall be graduation. This condition was enforced in all departments of the Azad Jammu & Kashmir Government with immediate effect. Later on, Azad Govt. of the State of Jammu and Kashmir through another notification dated 30.07.2010, clarified that notification dated 01.07.2010 shall be applicable after a grace period of two years in order to provide fair chance of promotion to the officers who are already in promotion zone. It has been pleaded that Azad Govt. of the State of Jammu and Kashmir framed rules called as Azad Jammu & Kashmir Secretariat (Ministerial Post) Service Rules, 1983 vide notification dated 30.07.1983 and according to the said rules, the status of the post of Superintendent was fixed as B-16. It has been craved that Azad Govt. of the State

of Jammu and Kashmir Finance Department through office memorandum dated 03.06.2016 re-designated/ upgraded scales of the posts of Clerical Staff i.e. Superintendent B-16 to Superintendent B-17, Head Clerk B-14 to B-16, Senior Account Clerk B-11 to Senior Account Clerk B-14 and Junior Clerk B-11 to B-14 and later on S&GAD brought an amendment through notification dated 27.05.2013 according to which the method of the recruitment for the posts of Superintendents and Private Secretaries was fixed as 45% by promotion on the basis of Seniority cum-fitness amongst the Superintendents and Private Secretaries of the Azad Jammu & Kashmir Secretariat (Ministerial) service who are graduates in the ratio of 22.5 each. It has been claimed that the petitioners having qualification as M.A, serving as Assistants B-16 and Senior Scale Stenographers B-14 serving for the last ten years, are standing in the line of promotion to B-17 because Assistants B-16 ahead to the petitioners in the seniority list have been promoted and rest of the Assistants B-16 and Senior Scale Stenographers are not in possession of the required qualification, hence, not eligible for promotion, however, the respondents without any

justification have not promoted the petitioners just to deprive them from their accrued right, which is against the law and rules, hence, the petitioners constrained to file the instant writ petition.

4. Writ petition was admitted for regular hearing vide order dated 1.06.2021 and as per application, comments filed on behalf of respondents No.2 & 3 were treated as written statement, wherein, stand taken by petitioners has been refuted.

5. The facts of writ petition No.1896/2021 are that the petitioners are 1st class State Subjects and are serving as Current Charge Deputy Secretaries B-18 and Section Officers B-17, who initially were appointed on the recommendations of Public Service Commission as Sections Officers B-17. It has been averred that the qualification of the petitioners is at least Master's degree and they are in seniority zone for promotion against the post of B-18. It has been alleged that the Govt. has framed rules for appointment in civil secretariat known as Section Officer Rules, 1978 and Deputy Secretary Service Rules, 1978 wherein minimum qualification for appointment against these posts is graduation,

whereas against the posts of lower grade was Metric and now the Govt. has upgraded the posts of Ministerial Staff keeping in view their pay and job description and qualification for the post of B-11 Junior Clerk and other ministerial posts has been fixed as graduation. It has been alleged that the Govt. of Azad Jammu & Kashmir, has prescribed minimum qualification as graduation for all the posts of B-18 and above for promotion against the posts of Section Officer B-17 and Deputy Secretary B-18 in Secretariat Services vide notification dated 01.07.2010 has also enforced in all other departments and according to the petitioners, condition of minimum qualification was relaxed with the grace period of two years for providing chance of promotion by improving qualification vide notification dated 30.07.2010 and thereafter further two years were extended but the officers B-17 could not get improve their qualifications as graduation. Through notification dated 26.08.2016 for promotion in B-17 minimum qualification was fixed as graduation with grace period of further four years and in the said notification, it is clearly mentioned that the minimum qualification for promotion shall be operative after

four years. It has been alleged that all grace periods have elapsed and according to policy for promotion against the post of Junior Clerk B-11 from amongst employees of B-1 to B-4 and from B-11 up to B-16, B-17 & B-18 minimum qualification is fixed as graduation. It has been stated that the Govt. to provide monetary benefits to the officers who could not get promotion in B-18 due to lack of minimum qualification vide notification dated 14.05.2019 announced time scale/personal scale B-18 and the same was awarded to the matriculate officers having 35 years service vide notification dated 28.05.2019 and these officers who could not be promoted on the seniority cum fitness as Deputy Secretary B-18 and have promoted the other officers who were junior in the seniority of B-17 but possessed minimum qualification as graduation for promotion against the post of Deputy Secretary B-18 vide notification dated 13.01.2021. It has been alleged that the Govt. issued tentative seniority list of Section officers B-17 vide office memorandum dated 30.04.2021 in which all particulars of the officers were mentioned and according to which the officers, who are under graduates but due to time scale policy are enjoying

monetary benefits of B-18 as per policy notification dated 14.05.2019 and the officers who possess minimum qualification as graduation were appointed as Deputy Secretary B-18 on current charge basis through notification dated 12.04.2021. It has been alleged that all the posts in services of Azad Jammu & Kashmir and Pakistan from B-11 and above, the minimum qualification for appointment and promotion is provided as graduation and the Govt. has rightly framed policy. It has been pleaded that the Higher Education Commission has also changed the policy and now for graduation four years academic session has been approved and now the officers who are serving in B-16 and B-17 and their qualification is under graduate do not have any chance to improve their qualification. It has been craved that Clerk Association of Azad Jammu & Kashmir APCA demanded for exemption the already appointed ministerial staff on the basis of up-gradation notification dated 03.06.2016 for promotion in the next higher scale from junior Clerk to Superintendent, however, the committee after detailed scrutiny has rejected the demand. It has been alleged that after two years, again APCA

submitted its demand in which again the matter was agitated for setting aside the condition of minimum qualification for promotion of the clerical cadre and the matter was placed before the cabinet, who accepted the proposal for cancellation of prescribed qualification, however, Prime Minister agreed to the extent of granting further grace period of three years. The decision of the cabinet and Prime Minister is also discriminatory, which is sheer violation of rule and law, hence, the petitioners have no other alternate and efficacious remedy except to invoke the extraordinary jurisdiction of this Court, hence, this writ petition.

6. Writ petition was admitted for regular hearing vide order dated 01.06.2021 and as per application comments filed on behalf of respondents were treated as written statement, wherein, stand taken by petitioners has been refuted.

7. During the course of arguments, the learned counsel for the petitioners stated that petitions filed on behalf of petitioners are comprehensive, therefore, the same be treated as arguments. The learned counsel for the respondents as well as learned

counsel for intervener argued the case according to their respective pleadings.

8. Arguments heard. Petition & record perused.

9. The claim of petitioners, Raja Bilal Ahmed & others, in writ petition No.1239/2021 is that respondents may be restrained to abolish the condition of the qualification for promotion against the post of B-17 & B-18 in the S&GAD of Azad Jammu & Kashmir, in pursuance of the notification dated 01.07.2010, 23.07.2010 and 22.08.2016 and further craved that the respondents be directed to frame rules for promotion against the post of B-17 and B-18 as graduation in accordance with the notification dated 01.07.2010, 30.07.2010 and 22.08.2016. The petitioners have also claimed that the respondents be restrained to promote the employees of the S&GAD against the posts of B-17 and B-18 those who could not improve their qualification of the graduation. However, in writ petition No.1896/2021, the claim of petitioners, Munir Iqbal & others, is that action of the respondents with regard to cancellation of the policy notification dated 01.07.2010 & 22.08.2016 and

condition of minimum qualification of up graduation for the promotion against the post of officer B-17 & B-18 and approval of the sub-committee for abolishing bar of qualification or extending further grace period of three years is illegal, unjust, discriminatory and based on mala-fide which is liable to be set-aside. A prohibition has also been sought against the respondents not to notify any such approval which could adversely frustrate the service law and rules on the subject, violate constitutionally guaranteed rights of equality of the State Subjects.

10. As per Section 23 of Civil Servants Act, 1976 it is prerogative of the Government to frame rules which cannot be made on sweet will of any person or group of persons. An identical point came under consideration before the apex Court in case titled Syed Suleem Hussain Kazmi vs. Azad Govt. and 4 others [2005 SCR 259], wherein at page 262 of the report it was held as under:-

“6. We have considered the respective arguments of the learned counsel for the parties and gone through the record of the case. From the record it is clear that the appellant before us is M.A. Economics as compared to respondent No.5 who besides M.A. Economics is also Master in Health Management, Planning and Policy HMBP from U.K. The appellant has attributed mala fide to the Government for framing rules whereby educational qualification higher than M.A. has been prescribed for

the post of Assistant Director/Assistant Chief Planning but no details have been provided as to why the Government/Authority was trying to extent benefit to contesting respondent over and above the service rights of the appellant. The mala fide cannot be attributed to the Government in vacuum without furnishing any supporting material in this regard. Under section 49 of the Azad Jammu & Kashmir Interim Constitution Act, 1974, the Azad Jammu & Kashmir Civil Servants Act, 1976 was enacted to regulate the terms and conditions of the employees in the service of Azad Jammu & Kashmir Government. The Azad Jammu & Kashmir Civil Servants Act, 1976, is therefore, a mother Act. In exercise of powers conferred to Government or any other person under section 23 of the said Act, the Government or such person is authorized to make such rules as are necessary and expedient for carrying out the purposes of this Act. So it is for the Government or that authorized person to lay down the qualification or make rules in respect of civil servants under its/his command. The wisdom of the Government or such authorized person without any proof of mala fide in this regard cannot be challenge or substituted by the Courts of law.”

11. The same proposition came under consideration before the Apex Court in case titled “Syed Rasheed Hussain Shah V. Azad Govt. & 6 others” (2014 SCR 883), wherein at page 893, it was observed as under:-

“.....Even otherwise, Rules cannot be framed/ amended at the sweet-will of a party and it is the sole prerogative of the Authority concerned to frame or amend the same, therefore, the argument of the learned counsel for the

appellant in this regard has no substance, hence, the same is hereby repelled.”

Similar view was expressed by the Hon’ble Supreme Court in case titled “Rizwan Muzaffar V. Azad Govt. & 8 others” (2010 SCR 156). At page 169, it was held as under:-

“.....We may observe that rules making powers vest in the Govt. under Section 23 of Civil Servants Act, 1976, the Govt. is competent to enhance, alter or amend the prescribed qualification for a particular post.”

12. Being part of the society, I have got an unfortunate experience that when one needs guidance, he rushes to his seniors and elders without considering their qualification but when their comes benefits of the seniors, he claims to have more qualification vis-à-vis to his seniors, which is very unfortunate. I would like to quote a holy Hadith here, which reads as under:-

من لم یم صغیر* ولم یوقر کبیر* فلیس منا

13. Moreover, it is the sole prerogative of the Govt. or the authority, as the case may be, to frame/amend/ modify rules, policies, law etc. in the interest of public-at-large or in the interest of any

department, and even, in order to benefit some employees who had served the State for a long time and spoiled their prime youths serving the State.

14. As far as the application filed on behalf of intervener is concerned. In view of the proposed conclusion I am not inclined to pass any order in this regard.

In view of the above facts and circumstances, the instant writ petitions, being meritless, stand dismissed and consigned to record. Status quo order, if any, stands vacated with immediate effect.

Muzaffarabad:
15.12.2022.

JUDGE

Approved for reporting.

JUDGE