

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

1. Writ petition No.442/2023,  
Date of Ins. 18.01.2023,  
Date of Decision. 11.05.2023

1. Raja Naveed Khan S/o Raja Mumtaz Khan R/o Neelum, P/o Keran Tehsil Authmuqam District Neelum, Azad Jammu and Kashmir;
2. Siddiqa Khurhseed D/o Khuwaja Khursheed Ahmed R/o Malik Sari Tehsil Sharda District Neelum, Azad Jammu and Kashmir.

...Petitioners.

**VERSUS**

1. Department of Elementary & Secondary Education through Secretary having its office at new Secretariat Muzaffarabad;
2. Director Public Instructions Elementary & Secondary Education (Male), Azad Jammu and Kashmir having his office at new District Complex, Muzaffarabad;
3. Selection Committee for the impugned advertisement No. AJK-267/N/1/2023 through Chairman DPI & District Education Officer (Male/Female) Azad Jammu and Kashmir.
4. Divisional Director Elementary & Secondary Education Muzaffarabad Division (Male/Female) having office at District Complex, Muzaffarabad;
5. District Education Officer Male/Female having office at District Headquarter Authmuqam District Neelum.

Respondents

2. Writ petition No.443/2023,  
Date of Ins. 28.01.2023,

Mohammad Ikram Son of Mohammad Akram R/o Katheli Tehsil and District Muzaffarabad, Azad Jammu and Kashmir.

...Petitioner.

**VERSUS**

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Services and General Administration Department having its office at new Secretariat Muzaffarabad;
2. Secretary Elementary and Secondary Education Azad Govt. of the State of Jammu and Kashmir having his office at new Secretariat Muzaffarabad;
3. Director Public Instructions Elementary and Secondary Education (male), Azad Govt. of the State of Jammu and Kashmir office situated at new District Complex, Muzaffarabad;
4. Director Public Instructions Elementary & Secondary Education (male) Azad Govt. of the State of Jammu and Kashmir, office situated at new District Complex, Muzaffarabad;
5. Divisional Director Elementary and Secondary Education Muzaffarabad, Division Muzaffarabad Azad Jammu and Kashmir;
6. Divisional Director Elementary and Secondary Education Poonch, Division Rawalakot Azad Jammu and Kashmir;
7. Divisional director Elementary & Secondary Education Mirpur, Division Mirpur, Azad Jammu and Kashmir.

Respondents

3. Writ petition No.444/2023,  
Date of Ins. 28.01.2023,

1. Mohammad Abdul Rehman Khan S/o Mohammad Yaqoob Khan R/o Chaprian Rangla Tehsil Dhirkot District Bagh, Azad Jammu and Kashmir Surplus Malam-ul-Quran BS-1);
2. Zakir Hussain Son of Abdul Razaq R/o Rangla Tehsil Dhirkot District Bagh, Azad Jammu and Kashmir (Surplus Malam-ul-Quran B-01).

...Petitioners.

**VERSUS**

1. Secretary Elementary and Secondary Education Azad Govt. of the State of Jammu and Kashmir office situated at new Secretariat Muzaffarabad;
2. Director Public Instructions Elementary and Secondary Education (male) Azad Jammu and Kashmir having his office at new District Complex, Muzaffarabad;
3. District Education Officer Elementary and Secondary Education (Male) District Bagh, Azad Jammu and Kashmir.

Respondents

4. Writ petition No.445/2023,  
Date of Ins. 28.01.2023,

Mahnaz Arif Surplus Mohallam ul Quran resident of Jabarr Ratnohi District Bagh, Azad Jammu and Kashmir.

...Petitioner.

### VERSUS

1. Azad Govt. through Secretary Elementary and Secondary Education of the State of Jammu and Kashmir having his office at new Secretariat Chatter Muzaffarabad;
2. Secretary Elementary and Secondary Education of the State of Jammu and Kashmir having his office at new Secretariat Chatter Muzaffarabad;
3. Director Public Instructions Elementary and Secondary Education Male AJ&K having his office at District Complex, Muzaffarabad;
4. Director Public Instructions Elementary and Secondary Education Female AJK having his office at new District Complex, Muzaffarabad;
5. Assistant Director Elementary and Secondary Education male AJ&K having his office at new District Complex, Muzaffarabad;
6. Divisional Director Elementary and Secondary Education Female Rawalakot having his office at Headquarter Rawalakot;
7. District Education Officer Elementary and Secondary Education Female District Bagh.

Respondents

5. Writ petition No.477/2023,  
Date of Ins. 30.01.2023,

1. Mohammad Naeem Son of Abdul Kareem R/o Halan Janobi Tehsil and District Haveli, Kahutta, Azad Jammu and Kashmir;
2. Mohammad Afraz Son of Mohammad Din Ch. R/o Digwar Tarwan Tehsil and District Haveli, Kahutta, Azad Jammu and Kashmir.

...Petitioners.

**VERSUS**

1. Azad Govt. of the State of Azad Jammu and Kashmir through Secretary Elementary and Secondary Azad Jammu and Kashmir having his office at new Secretariat Muzaffarabad.
2. Department of Elementary & Secondary Education through Secretary having its office at new Secretariat Muzaffarabad;
3. Director Public Instructions Elementary & Secondary Education (Male), Azad Jammu and Kashmir having his office at new District Complex, Muzaffarabad;
4. District Education Officer Male/Female having office at District Haveli Kahutta.
5. Selection Committee for the impugned advertisement No. AJK-267/N/1/2023 through Chairman DPI & District Education Officer (Male/ Female) Azad Jammu and Kashmir.
6. Divisional Director Elementary & Secondary Education Muzaffarabad Division (Male/Female) having office at District Complex, Muzaffarabad;

Respondents

6. Writ petition No.476/2023,  
Date of Ins. 31.01.2023,

1. Shahid Mehmood Son of Mehmood Khan R/o Kothar Sehnsa Tehsil Sehnsa District Kotli, Azad Jammu and Kashmir;

2. Hafiz Mohammad Habib Son of Hafiz Abdul Karim R/o Sair Mandi Tehsil Sehnsa District Kotli, Azad Jammu and Kashmir;
3. Mohammad Aziq Chohan Son of Abdul Khaliq R/o Sair Mandi Tehsil Sehnsa District Kotli, Azad Jammu and Kashmir;
4. Faisal Mehmood Son of Naziq Hussain R/o Chani Sehnsa Tehsil Sehnsa District Kotli, Azad Jammu and Kashmir;
5. Syeda Saida Ibrar D/o Syeda Ibrar Hussain Shah R/o kari Tehsil Sehnsas District Kotli, Azad Jammu and Kashmir;
6. Fakhra Ammer W/o Irfan Haneef R/o Sehnsa Tehsil Sehnsa District Kotli, Azad Jammu and Kashmir.

...Petitioners.

**VERSUS**

1. Azad Govt. of the State of Jammu and Kashmir, through Secretary Elementary and Secondary Education Muzaffarabad, having his office at new Secretariat Muzaffarabad;
2. Secretary Elementary and Secondary Education Muzaffarabad having his office at new Secretariat Muzaffarabad;
3. Director Public Instructions (male) Schools Elementary and Secondary Education Azad Govt. of the State of Jammu and Kashmir having its office at old Secretariat Muzaffarabad;
4. Director Public Instructions (Female) Schools Elementary and Secondary Education Azad Govt. of the State of Jammu and Kashmir having its office at old Secretariat Muzaffarabad;
5. Divisional Director School Mirpur Division Mirpur, Azad Jammu and Kashmir;
6. District Education Officer (Male) District Kotli, Azad Jammu and Kashmir;
7. District Education Officer (Female) District Kotli, Azad Jammu and Kashmir.

Respondents

7. Writ petition No.478/2023,  
Date of Ins. 30.01.2023,

Mohammad Ibrahim Son of Mohammad Younas R/o Village Bhana Constituency No. 5, (Khawarra) Tehsil and District Muzaffarabad, Azad Jammu and Kashmir.

...Petitioner.

**VERSUS**

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Elementary and Secondary having his office at new Secretariat Muzaffarabad;
2. Department of Elementary and Secondary Education through Secretary Elementary and Secondary having his office at new Secretariat Muzaffarabad;
3. Service and General Administration Department Azad Govt. of the State of Jammu and Kashmir having his office at new Secretariat Muzaffarabad;
4. Director Public Instructions Elementary and Secondary Education Azad Govt. of the State of Jammu and Kashmir having his office at new Secretariat Muzaffarabad;
5. Divisional Director Elementary and Secondary Education Muzaffarabad Division Muzaffarabad Azad Jammu and Kashmir.

Respondents

8. Writ petition No.544/2023,  
Date of Ins. 01.02.2023,

Umaira Khalid D/o Mohammad Khalid R/o Chirrikot P/o Pallangi Tehsil Mumtazabad District Haveli, Azad Jammu and Kashmir.

...Petitioner.

**VERSUS**

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Services and General Administration Department having its office at new Secretariat Muzaffarabad;
2. Secretary Elementary and Secondary Education Azad Govt. of the State of Jammu and Kashmir having its office at new Secretariat Muzaffarabad;
3. Director Public Instructions Elementary and Secondary Education (Male) Azad Govt. of the State of Jammu and Kashmir office situated at new District Complex, Muzaffarabad;
4. Director Public Instructions Elementary & Secondary Education (Female), Azad Govt. of the State of Jammu and Kashmir office situated at new District Complex, Muzaffarabad;
5. Divisional Director Elementary and Secondary Education Poonch Division Rawalakot Azad Jammu and Kashmir;
6. Selection Committee through its Chairman District Education Officer (male) Haveli Kahutta, Azad Jammu and Kashmir;
7. District Education Officer (male) Haveli Kahutta, Azad Jammu and Kashmir;

...Respondents

9. Writ petition No.588/2023,  
Date of Ins. 31.01.2023,

1. Iram Akhtar D/o Mohammad Akhtar R/o Pallandri;
2. Aqsa Basharat D/o Basharat Hussain R/o Pallandri;
3. Ghulam Mohiddin Siddique S/o Mohammad Safeer Siddique R/o Pallandri.

...Petitioners.

**VERSUS**

1. Secretary Elementary and Secondary Education having office at new Secretariat Muzaffarabad;
2. Directorate of Elementary and Secondary Education through its Assistant Director (male) having office at old Secretariat Muzaffarabad;
3. District Education Officer (male) District Sudhnoti Pallandri.

...Respondents

10. Writ petition No.589/2023,  
Date of Ins. 31.01.2023,

1. Mohammad Rashid Son of Raja Farid Khan R/o Post Office Muzaffarabad Manik Piyyan Tehsil and District Muzaffarabad Azad Jammu and Kashmir;
2. Zahoor Ahmed Awan Son of Jalaldin R/o manic Piyaan Tehsil and District Muzaffarabad, Azad Jammu and Kashmir;
3. Khalida Naz D/o Abdul Ghani Tehsil and District Muzaffarabad, Azad Jammu and Kashmir;
4. Irfan Qureshi Son of Bashir Ahmed Qurehsi R/o Ward No. 1, Ambore, Tehsil and District Muzaffarabad, Azad Jammu and Kashmir.

...Petitioners.

**VERSUS**

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Elementary and Secondary Education Muzaffarabad having his office at new Secretariat Muzaffarabad;
2. Secretary Elementary and Secondary Education Muzaffarabad having his office at new Secretariat Muzaffarabad, Azad Jammu and Kashmir;
3. Director Public Instructions (Male) School Elementary and Secondary Education Azad Govt. of the State of Jammu



and Kashmir having his office at old Secretariat Muzaffarabad.

Respondents

**WRIT PETITIONS**

Before:- <b>Justice Sadaqat Hussain Raja,</b>	<b>Chief Justice</b>
<b>Justice Sardar Liaqat Hussain,</b>	<b>Judge</b>
<b>Justice Syed Shahid Bahar,</b>	<b>Judge</b>
<b>Justice Sardar Mohammad Ejaz Khan,</b>	<b>Judge</b>
<b><u>(Larger Bench)</u></b>	

**PRESENT:**

M/s Asghar Ali Malik, Syed Ali Raza Sabzwari, Mohammad Khalid Naqshbandi, Ibrar Abbasi, Mohammad Hanif Nawaz, Ch. Aqif-ud-Din, Saqib Ahmed Abbasi, Raja Sajid Mehtab Siddique, Raja Nasir Latif and Kh. Mohammad Akbar, Advocates for the petitioners.

Ch. Mohammad Manzoor, AAG for the official respondents.

Legal Advisor for Education Department.

Mr. Mohammad Aslam Abbasi, Legal Officer for Education Department.

**JUDGMENT:**

**(Justice Sadaqat Hussain Raja, Chief Justice) As**

common questions of facts and law are involved in the instant writ petitions, therefore, the same were heard together and are disposed off through this single judgment.

The above titled writ petitions filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution 1974. In writ petition No.442/2023, the petitioners prayed as under:-

“In view of the above submissions it is therefore very humbly prayed on behalf of the petitioners that this Hon’ble Court by accepting the writ petition, the impugned advertisement published in Daily Ausaf bearing No. AJK-267-N/1/2023 dated 27.01.2023 is against the rules and issued without lawful authority and is liable to be set

aside. It is further prayed that non-petitioners may kindly be directed to formulate the rules for Quran Teacher/ Mohallam ul Quran and then re-advertise the all available posts vacant in department with particular institutions & Union Council. Any other relief with this Hon'ble Court deems fit may also be granted to meet the ends of justice.

In writ No.443/2023, the petitioner prayed infra relief:-

“(i) That the official respondents may kindly be directed not to brought an amendment in rules dated 02.03.2022 in the interest of some favourite person.

(ii) the impugned advertisement dated 27.01.2023 for the induction against the post of Mualam-ul-Quran may kindly be set aside by declaring against the law, rules and justice.”

(iii) The respondents herein may be directed to re-advertise the post in question after following the due process of law.

(iv) Any other relief which this Hon'ble Court deems fit may also be granted in favour of petitioners in the interest of justice.”

Through the writ petition No.444/2023, the petitioners are seeking following relief from this Court:-

*“(i) Impugned advertisement dated 26.01.2023 to the extent of 02 posts of (Mohallam ul Quran B-1) pertaining to District Bagh may kindly be set-aside by declaring the same as illegal and unlawful.*

*(ii). Respondents may kindly be directed to adjust the petitioners being surplus employee against the newly created posts.*

*Any other relief to which the humble petitioners is found entitled to in law justice and equity by the Hon'ble court or in its estimation may also very kindly be granted and awarded to the petitioners”*

In writ petition No.445/2023, the petitioner prayed as under:-

“It is, therefore, very humbly prayed that by accepting the instant writ petition on behalf of Petitioner the Hon’ble Court may very kindly be direct the respondents to adjust the petitioner against the vacant post of Mohallam ul Quran B-01 in Govt. Girls Middle School Kotla Bagh and restraining the respondents to held test and interview against the post of Moallam-ul-Quran B-01 in Govt. Girls Middles School Kotla Bagh to meet the ends of justice.”

It is further prayed that the Hon’ble Court may very kindly be set-aside the impugned Advertisement/ walk-in-interview under No.AKNo./267-N/01/23 dated 28.01.2023 to the extent of the post of Mohallam ul Quran in Govt. Girls Middle School Kotla Bagh in the interest of justice.”

In writ petition titled “Muhammad Naeem etc. vs. Azad Govt. and others, the petitioners prayed as under:-

“it is, therefore, very humbly prayed on behalf of the petitioners that this Hon’ble Court by accepting the writ petition, the impugned advertisement published in daily Ausaf bearing No.AJK-267-N/1/2023 dated 27.01.2023 is against the rules and issued without lawful authority and is liable to be set-aside. It is further prayed that the non-petitioners may kindly be directed to formulate the rules for Quran teacher/Moalam-ul-Quran and then re-advertise the all available vacant posts in department with particular institutions and union councils.”

In writ petition titled “Shahid Mahmood and others Vs. Azad Govt. and others, the petitioners prayed as under:-

*“(i) the impugned advertisement dated 27.01.2023 for induction against the post of Moalam-ul-Quran to the extent of District Kotli may kindly be set-aside by declaring against the law, rules and justice.”*

*(ii). Respondents herein may be directed to re-advertise the post in question after following the due process of law”.*

In writ petition titled “Muhammad Ibrahim vs. Azad Govt. and others”, the petitioner prayed as under:-

“(i) Declaring the impugned advertisement bearing No.AKNo./267-N/01/23 dated 27.01.2023 is without lawful authority, unjust, arbitrary and against the scheme and spirit of relevant service law and the advertisement dated 27.01.2023 may kindly be quashed/set-aside.

(ii) Directing the respondents to adhere and implement 01% quota reserved for disable persons in light of section 8 of the Azad Jammu and Kashmir Council Disables Persons (Employment and Rehabilitation), Act, 1986.

In writ Petition titled Humaria Khalid Vs Azad Govt. and others the petitioner is seeking infra relief.

- (i) The impugned advertisement dated 27.01.2023 for the induction against the post of Mohallam ul Quran be declared against the constitution and fundamental right No. 17 and same may kindly be set aside by declaring against the law, rules justice as well as various pronouncements of the Apex Court.
- (ii) The official respondents may kindly be directed to calculate/adhere the quota of women against the posts of Mohallam ul Quran din in light of judgment case titled Maulvi Qasim Din and others Vs. Azad Govt. and others dated 03.07.2015 and then re-advertise the posts in question cadre wise after following the due process of law.
- (iii) Any other relief which this Hon’ble Court deems fit may also be granted in favour of petitioners in the interest of justice.

In writ petition titled "Irum Akhter and others Vs Secretary Elementary and others, the petitioners are seeking infra relief:-

"It is, therefore, prayed on behalf of the petitioners that by accepting instant writ petition proclamation for Walk in Interview for the post of Mohallam ul Quran through which interview for the candidates of District Sudhnoti is to be held on 04.02.2023 may very kindly be quashed to the extent of District Sudhnoti being published without lawful authority and respondent No. 3 is liable to be directed to issue the advertisement as per his domain for the appointment of Mohallam ul Quran B-1, and appoint the petitions in accordance with rule of law. Any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case may very kindly be granted in favour of petitioners.

In writ petition titled "Irum Akhter and others Vs Secretary Elementary and others, the petitioners are seeking infra relief:-

It is therefore very humbly prayed on behalf of the petitioners that by accepting the instant petition, the respondents may kindly be directed to adhere and implement 06% quota reserved for refugees 1989 and onward, it is further prayed that the impugned advertisement dated 27.01.2023 of walk in interview for the post of Mohalam ul Quran معلم القرآن B-1 has been advertised against the alw and constitution, fundamental rights of the petitioners which is liable to be set aside. It has also prayed that the official respondents may kindly be directed to calculate the refugees 1989 quota of the Mohallm ul Quran (Male and Female Cadres) and be advertised fresh advertisement for the post of Mohalum ul Quran. Any other relief which this Hon'ble Court deems fit may also be granted in favour of petitioners in the interest of justice.

We have heard the learned counsel for the parties and gone through the record of the case.

Main controversy involved in the instant lis is that the petitioners have alleged that according to Rules, qualification for the post of “Moalam-ul-Quran is Matric with Sanad Qirat etc., but the official respondents with mala-fide intention and in order to accommodate their favourites did not mention the rest of qualification envisaged in the Rules, that too, as the post carrying BPS-1 to BPS-5 are liable to be filled in from the relevant union council, hence, it was mandatory requirement of law to mention in the advertisement specifically as to how much posts are available to be filled in from the specific union council, in juxta-position the respondents by indicating the posts in the districts have failed to ascertain the number of posts as well as the detail of union councils (wherein the aforesaid posts have been created or for that matter vacant).

A perusal of advertisement reveals that the same is ambiguous and violative of the numerous judgments of the Superior Courts, as neither the quota of differently classes have been ascertained nor the relevant village and union councils have been prescribed and the advertisements have been given in arbitrary manner, wherein, material facts have prima-facie deliberately suppressed. Moreover, the apex Court in a case titled “Molvi Abdul

Latif Qari & 336 others Vs Azad Govt. and others, held that the name of the post of Mohallam-ul-Quran means a teacher who teaches the Quran and not the Imam, so, female candidate may compete for the post. The relevant portion of the judgment is as under:

The dictionary meanings are clear that "Mohallam-ul-Quran" means a teacher who teaches the Quran and not the "Imam". The Imam Masjid and Mohallam-ul-Quran are two different terms. The word "Mohammad-ul-Quran" in rules is not used only for men. The findings of the High Court to the extent of words "except female candidates" are not maintainable.

We have also took judicial notice of the fact that posts of Moalam-ul-Quran (Teachers of Holy Quran) are carrying grade BPS-01 while in juxta-position, the Primary Teachers/Junior Teachers are carrying higher grade i.e. in BPS-11. It is an unhealthy state of affairs and disgraceful classification, which is against the teaching of Islam. Mohallam-ul-Quran is the most prestigious persons in the society. The Holy Prophet PBHU said that the best among you (Muslims) are those who learn the Quran and teach it (Sahi Bukhari). The plain reading of this Hadith Mubarak clarify that most prestigious person among the Muslims are those who learn the Quran and teach it. In the instant case, the Mohallam-ul-Quran who are teachers of the Quran has been degraded for appointment in BPS-01.

No cavil to the proposition that policy making/rules making is prerogative of the competent authority but subject to the command of scheme of the Constitution. No law can be made and

rules can be chalked out which come in opposition with the scheme of constitution. Enforcement of the constitutionally fundamental guaranteed rights without aid of the court is false and impossible, thus, the conscious of the court is attracted. However, the learned Legal Advisor and Learned Legal officer for Education Department submitted that the aforementioned advertisement issued inadvertently and the department is ready to re-advertise the posts on constituency basis as per law and departmental rules in accordance with law and the department is also ready to re-advertise the post on Union Council level. So it was basic duties of the respondents to act strictly in accordance with law and rules made there under.

In view of deposition made by learned Legal Advisor and learned Legal Officer for Education Department all the writ petitions are accepted and the impugned advertisement No. AK No./267-N/01/23 dated 27.01.2023 is hereby set aside and the official respondents are directed to re-advertise the posts on constituency basis after upgrading the posts and framing rules of the said posts.

Muzaffarabad

11.05.2023

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

**JUDGE**

**Approved for reporting**

**Chief Justice**