

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

Writ Petition No. 405/2020.  
Date of Institution 09.09.2020.  
Date of decision. 14.12.2023.

Saima Akhlaq D/o Akhlaq Hussain R/o House No. 355 Sector B/5  
Tehsil and District Mirpur.

*....Petitioner*

Versus

1. Azad Jammu and Kashmir Government through its Chief Secretary Muzaffarabad.
2. Education Department Colleges of AJK through its Secretary Muzaffarabad.
3. Secretary Education Department Colleges AJK Muzaffarabad.
4. Director Public Instructions Colleges AJK, Muzaffarabad.
5. Public Service Commission of AJK through its Secretary Muzaffarabad.
6. Secretary AJK Public Service Commission Muzaffarabad.

*...Respondents*

**WRIT PETITION**

**Before:-**                      **Justice Syed Shahid Bahar, J.**

**PRESENT:**

Muhammad Ilyas Khawaja, Advocate for the petitioner.  
A.A.G on behalf of Azad Govt.

**Judgment:-**

Through titled writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, following relief has been solicited by the petitioner:-

“For the reasons and grounds before listed the petitioner humbly beseeches the gracious indulgence of this Court to call off and set aside the impugned advertisement dated 06.09.2020 given by respondent No.6 to the

extent of subject of statistics and disabled quota mentioned in other subjects with the directions to publish after creating the quota of disabled candidates in the subject of Statistics with age relaxation so that present petitioner can participate in the said proceedings.”

2. Facts of the case in hand as per petition are that petitioner is 1<sup>st</sup> Class State Subject of Azad Jammu and Kashmir having domicile of Tehsil Sehnsa District Kotli, presently is residing in Mirpur City and got her M.Sc. Statistics degree in year 2005. The petitioner contended that the respondent No.5/PSC made an advertisement through which numbers of posts of Lecturers of different subjects were advertised under advertisement No.2/2019. The petitioner contended that in the said advertisement no quota of subject of Statistics for differently abled persons was mentioned. The petitioner averred that she participated in the test held in the year 2019 under roll number 01724 but she was not called for interview, hence, the petitioner filed a writ petition before this Court which was dismissed on 02.08.2019 on the ground that the petitioner has not challenged the said advertisement in which the said differently abled persons quota was not mentioned. The petitioner alleged that Public Service Commission in the year 2019 published an advertisement for the appointment of lecturers subject wise but unfortunately the quota of differently

abled persons was mentioned only to the extent of the subjects of Chemistry, English, Islamiyat, Physics and for the posts of Librarian but no differently abled persons quota for the subject of Statistics was mentioned to be reserved for the subject of Statistics, upon which, the present petitioner filed an application before the Hon'ble Prime Minister of AJ&K on 17.09.2019 who directed the Secretary Education to publish an additional requisition for the appointment of petitioner against differently abled persons quota. The petitioner alleged that on 06.09.2020, Public Service Commission again advertised the posts for the appointments of Lecturers in different subjects in which differently abled persons quota was only mentioned in two subjects i.e. Urdu and Physics but no such quota of differently abled candidates has been reserved in the subject of Statistics, which is again clear discrimination on the part of respondents. The petitioner left no stone unturned since year 2005 to get her legal right of appointment on the basis of quota of differently abled persons but all in vain.

3. After admission of the instant writ petition, the respondents No.2 to 4 filed written statement wherein the claim of the petitioners has been negated and further contended that the post of Statistics for differently abled quota was not advertised due to number of posts of other subjects and the

impugned post/Subject is not required at the time of said advertisement. The respondents further contended that the petitioner has failed to point out any error of law and rules in the petition, therefore, the same is liable to be dismissed. The respondents averred that the petitioner is overage and she has no right to apply to participate in exams of competition or appoint against any post as her date of birth is 01.03.1979, thus according to her date of birth she is 44 years old. The respondents refuted the claim of the petitioner in toto and prayed for dismissal of the writ petition.

4. Comments have been submitted on behalf of PSC wherein it has been contended that the impugned advertisement was made according to requisition sent by the Higher Education department, hence, PSC has not committed any illegality while issuing the same.

5. Arguments heard. Record perused.

6. The claim of the petitioner is that the impugned advertisement dated 06.09.2020 may be set-aside to the extent of subject of Statistic and respondents may be directed to create the quota of differently abled persons (disable persons) in the subject of Statistics with age relaxation, so that the present petitioner can participate in the said proceedings. Petitioner is

M.Sc. in Statistics subject. Respondent No.5/PSC advertised many posts of Lecturers for different subjects vide advertisement No.2/2019 against the quota of District Kotli. The petitioner alleged that no quota for the post of Statistics was allocated for differently abled persons, despite this fact that the quota of differently abled candidates was fixed for all other different subjects, except the subject of Statistics, which is clear cut discrimination on the part of the respondents. The respondents in written reply did not negate the quota of differently abled candidates, however, they mentioned that they did not advertise the same in the impugned advertisement due to more posts of other subjects. In the preliminary objections of the written statement submitted by respondents No.2 to 4 it has been mentioned that:-

”پٹیشنر کے یونٹ ضلع کوٹلی کی اسامیاں مضمون شماریات و قفا ف قفا مشتہر ہوتی رہی ہیں۔ مضمون شماریات زنانہ کی اسامی بخلاف معذور کوٹہ بدیں وجہ مشتہر نہ ہوئی کہ محکمہ میں متذکرہ مضمون زنانہ کیڈر اسامیوں کی تعداد اس وقت 15 ہے۔ جبکہ معذور افراد کے ایک فیصد کوٹہ کے مطابق دیگر مضامین کی اسامیوں کی تعداد زیادہ ہونے کی وجہ سے متذکرہ مضمون کی باری نہ آئی۔ بدیں وجہ اسامی مشتہر نہ کی جاسکتی تھی۔“

7. It may be mentioned here that the respondents have failed to advertise the post of Statistics for differently abled candidates despite the fact that the quota was available, thus, a discriminatory treatment has been made at the time of impugned advertisement. It was enjoined upon the authorities to reserve quota of differently abled candidates in the subject of

Statistics as illuminated in other subjects and if it is not possible to reserve the quota district wise then it should be left open to contest it in open merit for all the differently abled candidates of AJ&K and should not be curtailed to the particular subject, hence, the advertisement published in daily “Adalat” and other newspapers on 06.09.2020 is liable to be set aside to the extent of one post of Statistics as the same is liable to be considered for differently abled candidates.

8. It is reflecting from record (Annexure PVIII listed with the writ petition) that the petitioner also preferred an application to the worthy Prime Minister of AJ&K for redressal of her grievance. The crux of the application is usefully to be reproduced:-

”کیونکہ باقی تمام مضامین جیسا کہ فزکس، کیمسٹری، انگریزی، اسلامیات، اسٹنٹ لائبریرین کیلئے معذور افراد کی آسامی مشترکہ کی گئی تھیں لیکن میرے مضمون شاریات کی آسامی معذور افراد کے لیے مشترکہ نہیں کی گئی تھی۔  
لہذا سائلہ ملتمس ہے کہ انسانی ہمدردی کے تحت آپ Requisition بھیجیں تاکہ شاریات کی آسامی برائے معذور افراد کے تحت میری دادرسی ہو سکے۔“

9. The then worthy Prime Minister directed the Education Secretary Colleges to do needful in this regard. Verbatim of the direction on application of the petitioner is as infra:-

”سائلہ کی دادرسی کرتے ہوئے اضافی ریکوزیشن کے لئے تحت قانون پراسس کریں“ Dated 17/9/19

10. The petitioner has categorically alleged the above fact in the para No.3 of the writ petition. The answering respondents have failed to rebut the same. Under the scheme of Rules of Business 1985 (constitutionally mandated rules) postulates a procedure regarding such like orders. Orders passed in above manner are to be dealt by way of implementation of the same or to resubmit the matter to authority concerned for revisit and review. Thus, it can safely be assumed that above order of the Premier is yet in filed and liable to be implemented.

11. Record submitted by the Director PSC on direction of this Court reveals that total 16 posts of Lecturer Statistics are existing in the department, out of which only one post is vacant and is in pipeline for the purpose of requisition/appointment.

12. The petitioner filed the instant petition on 09.09.2020, her date of birth in official record i.e. State Subject is inserted as 01.03.1979, upper age limit for applying against the slot is 40 years. Case of the petitioner in this regard is liable to be considered from the date she opted to approach this Court. Doctrine of legitimate expectation is fully attracted in the instant matter.

13. Differently abled people are a special segment of society. Their special and recognized rights should be respected, protected and enforced by giving preferential edge.

14. Conscious of the Court is attracted. Petitioner who is admittedly a differently abled lady and possess the requisite qualification for the slot of Lecturer Statistics. Non adherence of quota against the posts of Lecturer Statistics is admitted fact. Reserved quota of 2% for the differently abled candidates is liable to be adhered to preferentially and priority basis in order to uplift and upgrade this special segment of society.

15. **It is admitted position that the petitioner after failing to get redressal of her grievance from departmental quarters as a last resort opted to knock the door of this Court by invoking extra-ordinary jurisdiction conferred under Article 44 of the Interim Constitution, 1974, thus, the time consumed/spent in adjudication of the instant lis is liable to be ignored/condoned and accordingly shall be excluded at the time of computing the prescribed age limit for the purpose of applying against the aforesaid post keeping in view the special circumstances of the case. However, this direction is specific and cannot be made an example for any other case.**



15. In light of what has been discussed above, the writ petition is accepted and respondents are directed to mull over the matter in a judicious manner and take up the same by considering the quota of differently abled candidates (for the post of Statistics) and do needful for the purpose in this regard as a special case and send de-novo requisition to the PSC for the purpose accordingly within 02 months.

Order was announced in the open Court on 13.12.2023, after hearing arguments of both parties.

Circuit Mirpur.  
14.12.2023.

**JUDGE**