

HIGH COURT OF AZAD JAMMU AND KASHMIR

*Writ Petition No.1320/2019;*  
*Date of Institution 10.08.2019;*  
*Date of Decision 01.09.2022.*

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Sarfraz Ahmed Filed Officer B-11  
Department of Mineral Resources Azad  
Jammu and Kashmir, Presently Posted as  
Legal Officer Secretariat of Industry  
Department Azad Jammu and Kashmir.

*Petitioner*

*VERSUS*

1. Azad Government through Chief Secretary of Azad Jammu and Kashmir having his office at New Secretariat Muzaffarabad;
2. Finance Department through Secretary Finance having his office at New Secretariat Muzaffarabad;
3. Services & General Administration Department through Secretary Services and General Administration Department Azad Jammu and Kashmir having its Office at New Secretariat Muzaffarabad.
4. Industry Department through Secretary Industry Department having his office at New Secretariat Muzaffarabad;
5. Director Mineral Resources Azad Jammu and Kashmir having his office at New District Complex Muzaffarabad;
6. Accountant General of Azad Jammu and Kashmir Muzaffarabad having his office at Sathra Muzaffarabad.

*Respondents*

WRIT PETITION UNDER ARTICLE 44 OF  
THE AJ&K INTERIM CONSTITUTION, 1974

**Before:- Justice Sardar Muhammad Ejaz Khan, J.**

PRESENT:

Mr. Amjad Hameed Siddique, Advocate for the petitioner.

Mir. Sajid Ashraf, Advocate for respondent No.2.  
Raja Muhammad Nadeem Legal Advisor  
Industries Department.

JUDGMENT:

The captioned writ petition has been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution 1974, whereby, following relief has been claimed by the petitioner:-

*“It is therefore, very humbly prayed that an appropriate writ may kindly be issued in the below stated manner:-*

*i. Directing the respondents to mull over the genuine grievance of the petitioner by up grading the post of filed officer B-11 into B-16 held by the petitioner without any further delay as well as to deal of the service matter of the petitioner in judicious manner.*

*ii. Directing the respondent to implement the specific direction of worthy Prime Minister of AJ&K*

*dated 30.07.2019 in its pros and cons.*

*iii. Any other relief which the petitioner is entitled may kindly be granted in the interest of justice. ”*

2. Synthesized facts forming background of the instant writ petition are that the petitioner is permanent employee of Department of Mineral Resources and is still discharging his duties against the post of Field Officer BPS-11. It has been stated that for the last 18 years, the post of Field Officer is in the same grade i.e. BPS-11 while the post of Junior Clerk was upgraded from BPS-5 to BPS-11 in the Department and other Departments already upgraded the posts of similar nature to BPS-16 and upward. It has further been stated that during the last 6 to 7 years the Govt. upgraded various posts of different Departments for which the petitioner also submitted an application to respondent No.5 for redressal of his grievance who processed the case and referred the matter to respondent No.4 for up-gradation of post

occupied by the petitioner upon which the matter pertaining to up-gradation of post in question was initiated with Finance Department by sending a detailed summary on 29.09.2016 but the Finance Department denied to give concurrence for up-gradation of the post occupied by the petitioner vide letter dated 06.02.2017. It has been maintained that in 2018 the petitioner once again submitted an application to respondent No.4 who forwarded the same to the Finance Department but again the said Department denied with the pretexts that the Govt. imposed a complete ban on up-gradation of posts. It has further been craved that on refusal of legal right of up-gradation from the Finance Department, the petitioner approached the worthy Prime Minister by filing an application, which was allowed and the respondents were directed to do the needful but the Finance Department did not bother to implement the said order, hence, the petitioner

constrained to file the instant writ petition for implementation the legal order of the worthy Prime Minister dated 30.07.2019 and it has been contended that the respondents may be directed to up-grade the post in question without any further delay. It has been craved that the petitioner has no alternate and efficacious remedy except to invoke the jurisdiction of this Court, hence, this writ petition.

3. Writ petition was admitted for regular hearing vide order dated 12.08.2020 and notices were issued to the respondents for filing written statement while comments filed on behalf of respondents No.1 to 3 & 4 & 5 were treated as written statement vide orders dated 28.09.2020 and 03.03.2021 respectively. Respondent No.6 was proceeded *ex-parte*.

4. Heard. Record perused.

5. A bare reading of record shows that the petitioner is holding the post of Field Officer

BPS-11 in the Department of Mineral Resources Azad Jammu and Kashmir, Muzaffarabad, since his appointment i.e. 18.07.216 (*annexure "PA"*) while the other lower grade posts of different grades of the said Department as well as the other Departments of Azad Jammu and Kashmir were upgraded but after pretty long time, the post occupied by the petitioner has not been upgraded despite making efforts at his level best.

6. It depicts from record that the petitioner filed an application before Director Mineral Resources stating therein that he being Field Officer BPS-11 is performing extra duties of legal officer by fulfilling the requisite qualification rather in other Govt. Departments of Azad Jammu and Kashmir, the post of legal officer is of BPS-16 and above, hence, it has been claimed that by upgrading the post in question, the matter may be initiated with the Finance Department on which a letter dated

29.11.2016 (*annexure "PA/7"*) was addressed to Finance Department by which the claim of the petitioner was refused vide letter dated 06.02.2017. According to the petitioner, the matter was again sent to the Finance Department for giving its concurrence for up-gradation of the post in question vide letter dated 13.09.2018 but Finance Department one way or the other bureaucratic tactics refused the same due to ban on up-gradation of posts but this refusal is not on file, however, record shows that an application was submitted on behalf of the petitioner before the worthy Prime Minister for up-gradation pertaining to post of Field Officer BPS-11 to PBS-16 (*annexure "PA/18"*) on 30.07.2019, which was allowed with the direction to Finance Department to do the needful and the expenses incurred will be borne by the concerned Department itself, which directive has not yet been implemented in letter and spirit.

7. It is pertinent to mention here that as per Departmental Statutory Rules promulgated vide Government notification dated 22.10.2004, posts of Head Clerk, Accountant, Field Officer and Surveyor are of BPS-11 and according to record brought on the surface of file, some posts were stated to have been upgraded but rules to that effect have not yet been amended rather it is an admitted fact that the post of Field Officer BPS-11 occupied by the petitioner has not been upgraded vis-à-vis to the other posts and the Finance Department refused to give concurrence with the pretext of ban imposed upon up-gradation of posts as such the proposed up-gradation was refused by Finance Department without any legal justification vide letter dated 06.02.2017, which is not warranted by law.

8. It is well established principle of law that all state subjects are equal before law and unequal treatment with regard to particular



individual is condemnable rather fundamental right No.15 of the Azad Jammu and Kashmir Interim Constitution guarantees that all citizens are equal before law and are entitled to equal protection of law and no state subject shall be discriminated on the basis of race, religion, caste, sect and class, hence, it is the prior duty of the concerned Department to make endeavour and initiate the matter with the Government to re-examine the rules by providing an avenue of up-gradation as has been provided to the other employees of the Department. Definitely, when the post of junior employee was up-graded and senior is kept in same grade for an indefinite period, ultimately, junior becomes senior, it is heartburning of the senior employees of the Department and if any post of lower grade is up-graded and later on higher post is also up-graded, it is for the Government to keep in mind to remove the anomaly that those employees of the

Department who are senior and holding higher posts could not be placed inferior to juniors at the time of up-gradation by any means. Equal protection of law means that no person of or class of person shall be denied the same protection of law which is enjoyed by other person or other class of person in like circumstances. Similarly, reasonable classification amongst different groups of person is admissible, however, to justify the validity of a classification, it must be shown that it is based on reasonable distinction or that it is on reasonable basis or rest on real or substantial difference of distinction.

9. It is worthwhile to mention here that the directive of the worthy Prime Minister is binding on the official respondents (*annexure "PA/18"*) because legal order passed, under the relevant provisions of the Constitution and Rules of Business, by the Prime Minister of Azad Jammu and Kashmir being executive head

of the Government is mandatory on the Finance Department to comply with the same but the same was not implemented in letter and spirit. It is well settled principle of law that while exercising writ jurisdiction this Court only enforces an order which is legal and valid and it also qualifies the test of being in consonance with justice and equity. Similar proposition has been resolved by this Court in an unreported case decided in writ petition No.1397/2009 titled *Khalil Ahmed Sehrai and others vs. Secretary Finance & 3 others* on 17.12.2012 wherein it has been observed as under:-

*“As stated above that respondents have not denied the orders of the Prime Minister dated 15.02.2007 and 18.02.2009. they have also not complied with direction of the Court regarding disposal of the controversy vide order dated 28.01.2010, therefore, this Court has no alternative except to issue direction to the respondents for implementation of orders of the Prime Minister, whereby up-gradation of the posts of Calligraphists have ordered to be implemented.”*

10. Be that as it may, the instant writ petition is accepted and Department concerned is directed to send the matter in view of directive of the worthy Prime Minister dated 30.07.2019 to Finance Department and the concerned respondents are directed to issue formal notification of up-gradation of the post of Field Officer, from BPS-11 to BPS-16, with immediate effect and amend the rules to that effect but the period in doing needful shall not exceed more than two months from the date of intimation of this judgment.

Muzaffarabad.  
01.09.2022(J.ZEB)

-Sd-  
**JUDGE**

APPROVED FOR REPORTING

-Sd-  
**JUDGE**