

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No. 771/2013;

Date of Institution. 27.05.2013;

Date of Decision. 06.05.2017.

1. Muhammad Saleem, Officiating Assistant, Ministry of Finance Azad Jammu & Kashmir, Muzaffarabad,
2. Muhammad Bashir Awan, Officiating Assistant, Ministry of Social Welfare Department, Azad Jammu & Kashmir, Muzaffarabad,
3. Muhammad Taj, Officiating Assistant, Office of Chief Secretary, Azad Jammu & Kashmir, Muzaffarabad,
4. Arshad Hussain, Officiating Assistant, Education Secretariat (Schools), Azad Jammu & Kashmir, Muzaffarabad,
5. Manzoor Ahmed, Officiating Assistant, Inspection Commission, Azad Jammu & Kashmir, Muzaffarabad,
6. Naeem Ahmed Qureshi, Officiating Assistant, Ministry of Forests, Azad Jammu & Kashmir, Muzaffarabad,
7. Muhammad Amin, Officiating Assistant, Finance Department, Azad Jammu & Kashmir, Muzaffarabad,
8. Liaqat Ali, Officiating Assistant, Planning & Development Department, Azad Jammu & Kashmir, Muzaffarabad,
9. Muhammad Afzal, Officiating Assistant, Prime Minister Inspection & Implementation Commission, Azad Jammu & Kashmir, Muzaffarabad,
10. Syed Tahir Hussain, Officiating Assistant, Local Government & Rural Development Department, Azad Jammu & Kashmir, Muzaffarabad,
11. Dawood Khan, Officiating Assistant, Secretariat Sports, Azad Jammu & Kashmir, Muzaffarabad,
12. Ahsan Rashid Dar, Ministry of Transport, Azad Jammu & Kashmir, Muzaffarabad,
13. Zulfiqar Ahmed, Prime Minister Secretariat, Azad Jammu & Kashmir, Muzaffarabad,
14. Muhammad Jameel, Officiating Assistant, Services and General Administration Department, Azad Jammu & Kashmir, Muzaffarabad,
15. Ejaz Latif, Officiating Assistant, Home Department, Azad Jammu & Kashmir, Muzaffarabad,
16. Zakir Hussain, Officiating Assistant, Kashmir House, Islamabad,
17. Muhammad Yousaf, Officiating Assistant, Services & General Administration Department, Azad Jammu & Kashmir, Muzaffarabad,

18. Najam-ul-Hassan Naqvi, Education Secretariat (colleges), Azad Jammu & Kashmir, Muzaffarabad,
19. Muhammad Rafique, Officiating Assistant, Services & General Administration Department, Azad Jammu & Kashmir, Muzaffarabad,
20. Muhammad Shabir, Secretariat Local Government, Azad Jammu & Kashmir, Muzaffarabad,
21. Muhammad Sajid Awan, Officiating Assistant, Prime Minister Secretariat, Azad Jammu & Kashmir, Muzaffarabad,
22. Muhammad Aslam, Officiating Assistant, Services & General Administration Department, Azad Jammu & Kashmir, Muzaffarabad.

.....Petitioners

Versus

1. Azad Government of the State of Jammu & Kashmir through its Chief Secretary New Secretariat, Muzaffarabad,
2. Secretary Services & General Administration Department/ Chairman Secretariat Selection Committee, Azad Government of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad,
3. Departmental Selection Committee through its Secretary C/o Chairman Selection Committee/ Secretary Services & General Administration Department, Azad Government of the State of Jammu & Kashmir, Muzaffarabad,
4. Shazia Siddique, Assistant, Services & General Administration Department Azad Jammu & Kashmir, Muzaffarabad,
5. Qaisar Latif, Assistant, Finance Department, Azad Jammu & Kashmir, Muzaffarabad,
6. Iqbal Hussain, Assistant, Planning & Development Department, Azad Jammu & Kashmir, Muzaffarabad,
7. Ahmed Nawaz, Assistant Home Department, Azad Jammu & Kashmir, Muzaffarabad,
8. Qaisar Rasheed, Assistant, Law Department, Azad Jammu & Kashmir, Muzaffarabad,
9. Farhat Qureshi, Assistant, Prime Minister Secretariat, Azad Jammu & Kashmir, Muzaffarabad,
10. Javaid Saifullah, Assistant, Law Department, Azad Jammu & Kashmir, Muzaffarabad,
11. Adeeb-ur-Rehman, Assistant, Education Secretariat (Schools), Azad Jammu & Kashmir, Muzaffarabad,

12. Shujat Sayyad Abbasi, Assistant, Services & General Administration Department, Azad Jammu & Kashmir, Muzaffarabad,
13. Tariq Ayub, Assistant, Services & General Administration Department, Azad Jammu & Kashmir, Muzaffarabad,
14. Qaisar Kabeer, Assistant, Services & General Administration Department, Azad Jammu & Kashmir, Muzaffarabad,
15. Muhammad Rizwan Malik, Assistant, Board of Revenue Department, Azad Jammu & Kashmir, Muzaffarabad.

....Non-Petitioners

WRIT PETITION

Before: Justice Azhar Saleem Babar, J.

PRESENT:

Sardar Muhammad Habib Zia, Advocate for the petitioners.
Mr. Abdul Rasheed Abbasi, Advocate for non-petitioner No.8.
Representative for Education Department.

ORDER:

Arguments heard. The petitioners in the supra titled writ petition were appointed as Section Clerks in Services and General Administration Department (S&GAD) of Azad Jammu & Kashmir, vide different orders. They were later on promoted as Assistants B-14 on officiating basis, vide different orders attached with the writ petition as annexure A/1 to A/8. The petitioners claim that they have been promoted as Assistants B-14 on the basis of seniority, which has been attached as annexure "A" with the writ petition. Secretary S&GAD advertised some posts of Assistants B-14 for direct recruitment on temporary basis, vide advertisement in Daily Jinnah dated 21.01.2010. It has

been explained that advertised posts fell vacant on temporary basis because of some officials having been posted ex-cadre. It is the claim of the petitioners that private non-petitioners were appointed on temporary basis against lien of some Assistants and it was clearly mentioned in the orders of their appointment that their orders are temporary in nature. Grievance of the petitioners commenced when an application by some of the non-petitioners was moved to Chief Secretary for their confirmation against 33% quota reserved for initial recruitment. The applicants contended that they have been appointed after advertising the posts and were recruited through the same batch. It was further contended that senior most Assistants have been promoted as Superintendent B-16 and some of them have been promoted as Section Officer on officiating basis as well. The petitioners are of the view that appointments of the private non-petitioners are not in accordance with law and they have no right to be confirmed against the posts of Assistants B-14. On the other hand, the petitioners have contended that they are regular employees of the S&GAD who have already been promoted as Assistants B-14 on officiating basis in accordance with the seniority list. The petitioners claim that they have a right to be considered for further promotion on the basis of their seniority. It is the apprehension of the petitioners that if the private non-petitioners are confirmed against the same posts, their rights would be violated.

2. Official non-petitioners have filed written comments, which were treated as written statement on request of Additional Advocate General. It has been contended that the petitioners have no locus standi to file the instant writ petition and they are not aggrieved persons to invoke the jurisdiction of the High Court.

3. The private non-petitioners No.4 and 9 have filed separate written statement, whereas rest of the private non-petitioners have also filed written statement. A cumulative study of the written statements transpires that matter of promotion falls in terms and conditions of civil service, so, the writ petition is not competent in view of prayer clause. It has been explained that through prayer clause it has been requested to direct non-petitioners No.1 and 2 to confirm the petitioners against the posts held by them and to restrain the official non-petitioners from taking proceedings for confirmation of the private non-petitioners. It has further been objected that Section Clerks falling at serial No.1 to 17 have not been impleaded as party, so, the writ petition is not maintainable. It is the claim of non-petitioners that they have been appointed as Assistants B-14 against 33% quota reserved for initial recruitment. It has further been contended that officials in lieu of whom, the non-petitioners were appointed have already been promoted, so, the non-petitioners have a right of confirmation of their orders of appointment. It is also the argument of the private non-petitioners that the petitioners have

been promoted as Assistant B-14 on officiating basis, whereas there were no posts available for promotion against departmental quota. In their view, the posts occupied by the petitioners fall in quota reserved for initial recruitment. It may be explained here that 33% quota has been reserved for initial recruitment as Assistants B-14 and 67 % has been reserved for departmental promotion from amongst Section Clerks.

4. Point for resolution of controversy in the writ petition is that whether the petitioners have been promoted on officiating basis against the quota reserved for initial recruitment and that whether the private non-petitioners have a right of confirmation of their appointment as Assistants B-14.

5. The official or private non-petitioners have failed to point out total number of posts of Assistants B-14 in the S&GAD and have further failed to point out that how many of the Section Clerks have already been promoted against the quota reserved for departmental promotion and how many of the Assistants B-14 have been appointed against quota reserved for initial recruitment? So, in my view argument advanced on behalf of private non-petitioner is not worth consideration that the petitioners have been appointed in violation of quota reserved for initial recruitment.

the officials against whose lien they were appointed have already been promoted to the next higher grade. So, in their view, the non-petitioners have a right to be confirmed as Assistants B-14 and have a right to be considered for further promotion. Learned counsel for the petitioners has argued that orders of appointment of private non-petitioners are not lawful and do not create a right for their permanent induction. He has relied on 1999 SCR 282, 1993 SCR208 and 2008 SCR 417. On the other hand learned counsel for private non-petitioners has relied on 1999 SCR 204 by explaining that the posts held by the non-petitioners have become available for permanent induction because the concerned officials have already been promoted to the next higher grade.

8. As mentioned earlier, the private non-petitioners have been appointed as Assistants B-14 on temporary basis. Advertisement inviting applications for recruitment of Assistants B-14 also mentions that temporary posts of Assistants have to be filled in. It is strange to observe that S&GAD has defended the orders of appointment of private non-petitioners by contending that they have been appointed against quota reserved for initial recruitment and have been appointed on recommendations of concerned Selection Committee, so, they are regular employees. It is regretted that Secretariat of S&GAD has treated the orders of appointment of private non-petitioners as on probation. It has not been denied by the department that the posts held by the private

non-petitioners were advertised for recruitment on temporary basis because the posts had fallen vacant temporarily because of some officials having been posted ex-cadre. It is, therefore, admitted that at the time of issuance of orders of appointment of private non-petitioners, the advertised posts were available on temporary basis. A temporary appointment, whether in a project or in a regular department, does not create right for permanent induction. Famous case of Waqas Latif reported as PLJ 2013 SC (AJ&K) 140 may be referred in this regard. It has been admitted by the department that the petitioners have been promoted as Assistants B-14 on officiating basis. Officiating appointment may be ordered under Rule 13 of Azad Jammu & Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977. It has been misconceived by the private non-petitioners that an appointment on officiating basis has a life of six months only. Rule 13 referred above does not contain any such limitation. The department has impliedly admitted that the petitioners fall at seniority of Section Clerks for promotion to the posts of Assistants B-14, however, it is still for the relevant Selection Committee to examine that whether the petitioners are entitled to further promotion in accordance with departmental rules?

Nutshell of the above discussion is that orders of appointments of the private non-petitioners are temporary in nature. The private non-petitioners cannot claim confirmation on

the basis of their orders of appointment. The petitioners are regular employees of the Services and General Administration Department who have been promoted on officiating basis as Assistants B-14. It is the right of the petitioners that their cases for regular promotion should be presented before the relevant Selection Committee for consideration. Obviously, it is the job of the Selection Committee to examine that whether the petitioners are entitled to confirmation as Assistants B-14 on the basis of their seniority and fitness in accordance with the departmental rules. The S&GAD is further directed to advertise the posts held by the private non-petitioners against the quota reserved for initial recruitment within a period of sixty days.

Muzaffarabad
06.05.2017. (M)

JUDGE