SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No. 191 of 2015.

(PLA filed on 13.5.2015)

1. Professor Malik Arshad Aziz (Economics), Government Post Graduate College Muzaffarabad.
2. Professor Naeem Afsar Khan Mughal (History), Government Post Graduate College, Muzaffarabad.
3. Professor Muhammad Zubair Sajid, presently posted as Deputy Director Colleges.
4. Professor Qazi Muhammad Ibrahim (Islamiat) presently posted as Secretary Public Service Commission, Muzaffarabad.
5. Professor Shoukat Rasool Pandit (Economics), Government Post Graduate College, Muzaffarabad.
6. Professor Syed Abdul Rasheed Shah (Commerce), Government Post Graduate College, Muzaffarabad.
7. Professor Nazeer Ahmed Malik (Arabic), Government Post Graduate College, Muzaffarabad.
8. Professor Syed Nasim Ahmed Gillani (Economics), Government Post Graduate College, Muzaffarabad.
9. Professor Muhammad Riaz Malik (Political Schence), Government Post Graduate College, Bhimber.
10. Muhammad Feroz Mughal, Senior Chief Commerce Instructor, Government Post Graduate College, Muzaffarabad.
11. Professor Shahid Sharif Silimi (Islamic Studies/Arabic), Government Post Graduate College, Bhimber.
12. Professor Tasneem Ullah Sheik (Chemistry), College of Education Afzalpur.

13. Professor Ch. Ghulam Abbas (History), Govt. Degree College Barnala.
14. Professor Robina Aziz (Chemistry), presently posted as Deputy Director Colleges, Muzaffarabad.
15. Professor Farzana Rasool, presently posted as Deputy Director, Directorate of Colleges, Muzaffarabad.
16. Professor Ghulam Kulsoom Butt (Chemistry), presently posted as Assistant Director Colleges, Muzaffarabad.
17. Professor Naheed Abbasi (English), presently posted as Additional Secretary Planning and Development Department, Muzaffarabad.
18. Basharat Nabi, Associate Professor (Economics), Government Post Graduate College, Muzaffarabad.
19. Syed Arif Ali Gillani, Associate Professor (History), Government Post Graduate College, Muzaffarabad.
20. Babar Hussain Mir, Associate Professor (Physic), Government Post Graduate College, Muzaffarabad.
21. Muzamil Hassan Butt, Associate Professor (English), Government Post Graduate College, Muzaffarabad.
22. Abdul Majeed Dar, Associate Professor (Political) Science), Government Post Graduate College, Muzaffarabad.
23. Raja Muhammad Rafaqat Khan, Associate Profesor (Zoology), Government Post Graduate College, Muzaffarabad.
24. Professor Muhammad Afsar Khan (Chemistry), presently posted as Principal Model Science College, Muzaffarabad.
25. Professor Nagina Kousar, Government Girls College, Islam Garh.
26. Zeeba Khanum, Assistant Professor (Physical Education), Girls College, Kharick.
27. Nighat Azam, Assistant Professor (English), Government Girls Degree College, Hajira.
28. Tahira Talib, Assistant Professor (History), Government Girls College Islam Garh.

29. Imtiaz Qadir, Associate Professor (Ecomonics), Government Post Graduate College, Muzaffarabad.
30. Sardar Muhammad Raza Khan, Associate Professor (Geography), Government Post Graduate College, Muzaffarabad.
31. Israr Ahmed Butt, Associate Professor (Zoology), Government Post Graduate College, Muzaffarabad.
32. Raja Abdul Rehman, Associate Professor (Urdu), Government Post Graduate College, Muzaffarabad.
33. Khawaja Ejaz Ahmed, Associate Professor (Physical Education), Government Post Graduate College, Muzaffarabad.
34. Khawaja Abdul Waheed, Associate Professor (Chemistry), Government Post Graduate College, Muzaffarabad.
35. Shahista Noreen, Assitant Professor (English), Fatima Jinnah Government Girls College, Muzaffarabad.
36. Professor Altaf Hussain Awan, Principal Degree College, Chikar.
37. Professor Zafar Iqbal (Rtd.) Principal Degree College, Chikar.
38. Professor Riaz Akhter Chaudhary, College of Education Afzalpur, Mirpur.
39. Sarfraz Ahmed, Associate Professor, presently posted as Principal Inter College Krela Majhan Nakyal.
40. Muhammad Shafique, Associate Professor, Degree College, Fatehpur, Kotli.
41. Professor Muhammad Tufail Malik, Principal Degree College, Mirpur.
42. Iman Bukhsh, Associate Professor.
43. Raja Muhamamd Ayaz, Associate Professor.
43. Raja Muhammad Ayaz, Associate Professor.
44. Muhammad Hussain Chaudhary, Associate Professor.
45. Sabir Hussain Malik, Associate Professor.
46. Muhammad Akbar, Associate Professor.
47. Abdul Wahid, Associate Professor.

48. Professor Shahid Mumir Jarral, Principal, Government Model Science College, Mirpur.
49. Professor Abdul Rehman Abbasi, Principal Degree College, Leepa.
50. Muhammad Iqbal Nisar, Associate Professor.
51. Professor Muhammad Riaz Khan, Governent Post Graduate College, Pallandri.
52. Professor Muhammad Nasim Khan, Government Post Graduate College, Pallandri.
53. Professor Farman Shah, Government College Khui Ratta, Kotli.
54. Muhammad Suleman Mughal, Associate Professor, Principal Girls College, Leepa.
55. Tasneem Ullah Sheikh, Associate Professor.
56. Abdul Ghani Chaudhary, Associate Professor.
57. Ch. Muhjammad Awais, Associate Professor.
58. Masood Qamar, Associate Professor.
59. Ch. Tariq Mehmood, Associate Professor.
60. Professor Sumandar Khan, Principal Inter College, Kel.
61. Professor Khawaja Siddique Ahmed, Government Degree College, Ghari Dupatta.
62. Qazi Abdul Abdul Rehman, Associate Professor, Principal Inter College Mirpura, Authmuqam.
63. Professor Zia-ud-Din, Principal Inter College Nagdar, Authmuqam.
64. Professor Shafique-ur-Rehman, Boys Degree College, Dudyal.
65. Mirza Naeem Iqbal, Associate Professor, Inter College Dhandar.
66. Mufti Khalid Manzoor, Associate Professor.
67. Zeba Khanum, Associate Professor, Girls College Khrick, Rawalakot.
68. Muhammad Ayub Rehman, Associate Professor.
69. Farhat Nasim, Assistant Professor, Model Science College, Muzaffarabad.
70. Professor Farkhanda Nazeer, Principal Girls College, Khaliqabad.

71. Umaira Khalid, Assitant Professor Model Science College, Muzaffarabad.
72. Professor Ashiq Hussain, Model Science College, Muzaffarabad.
73. FAhmida Sultana, Associate Professor Model Science College, Muzaffarabad.
74. Professor Farhat Butt, Model Science College, Muzaffarabad.
75. Nuzhat Mir Alam, Assistant Professor, Model Science College, Muzaffarabad.
76. Nighat Jabeen, Associate Professor, Model Science College, Muzaffarabad.
77. Naheed Ali Zaman, Assistant Professor Model Science College, Muzaffarabad.
78. Nelofer Qayyum, Assistant Professor, Model Science College, Muzaffarabad.
79. Muhammad BAha-ud-Din Sajid, Assistant Professor, Principal Degree College, Authmuqam.
80. Munir Iqbal, Assistant Professor, Degree College, Authmuqam.
81. Muhammad Shafi, Assistant Professor, Inter College, Kel.
82. Professor Dil Pazeer Ahmed, Principal Girls Inter College, Komikot.
83. Professor Hoshaba Rana, Girls Post Graduate College, Mirpur.
84. Profesor Naheed Murawat, Girls Post Graduate College, Mirpur.
85. Professor Musarrat Aziz, Girls Post Graduate College, Mirpur.
86. Professor Rashida Aziz, Girls Post Graduate College, Mirpur.
87. Profesor Musarrat Sabohi, Girls Post Graduate College, Mirpur.
88. Professor Saleem Sarfraz, Girls Post Graduate College, Mirpur.
89. Professor Abida Zubair, Girls Post Graduate College, Mirpur.

90. Professor Zubaida Naseeen, Girls Post Graduate College, Mirpur.
91. Professor Noreen Butt, Girls Post Graduate College, Mirpur.
92. Zafar Hussain Zafar, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
93. Zahida Ali Muhammad, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
94. Ghulam Shahnaz, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
95. Shamim Bakar, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
96. Nasreen Ayesha, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
97. Riffat Shafi, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
98. Naseem Akhter, Assistant Professor College of Education, Bagh.
99. Sardar Muhammad Akram, Associate Professor Degree College, Authmuqam.
100. Professor Dost Muhammad Khan, Muzaffarabad.
101. Professor Anjum Afshan Naqvi, presently posted as Divisional Director Colleges, Mirpur.
102. Irfana Rasheed, Associate Professor, Girls Post Graduate College, Muzaffarabad.
103. Nafees Akhter, Associate Professor, Girls Post Graduate College, Muzaffarabad.
104. Shabnum Huma, Associate Professor, Girls Post Graduate College, Muzaffarabad.
105. RAkshanda Sheikh, Associate Professor, Girls Post Graduate College, Muzaffarabad.
106. Sarwat Qadir, Associate Professor, Girls Post Graduate College, Muzaffarabad.
107. Naila Masawar, Associate Professor, Girls Post Graduate College, Muzaffarabad.
108. Iffat Shahad, Associate Professor, Girls Post Graduate College, Muzaffarabad.
109. TAhira-un-Nisa, Associate Professor, Girls Post Graduate College, Muzaffarabad.

110. Shams-un-Nisa, Associate Professor, Girls Post Graduate College, Muzaffarabad.
111. Zeenat-Un-Nisa, Associate Professor, Girls Post Graduate College, Muzaffarabad.
112. Zahida Razzaq, Associate Professor, Girls Post Graduate College, Muzaffarabad.
113. Yasmeen Bashir, Associate Professor, Girls Post Graduate College, Muzaffarabad.
114. Shahida Quresh, Associate Professor, Girls Post Graduate College, Muzaffarabad.
115. Shaheen Kousar, Associate Professor, Girls Post Graduate College, Muzaffarabad.
116. Perveen Akhter, Associate Professor, Girls Post Graduate College, Muzaffarabad.
117. Rashida Jabeen, Associate Professor, Girls Post Graduate College, Muzaffarabad.
118. Arifa Hashmi, Associate Professor, Girls Post Graduate College, Muzaffarabad.
119. Kousar Saleem, Associate Professor, Girls Post Graduate College, Muzaffarabad.
120. Shafqat Nasreen, Associate Professor, Girls Post Graduate College, Muzaffarabad.
121. Farah Shahzadi, Associate Professor, Girls Post Graduate College, Muzaffarabad.
122. Nargis Saeed, Associate Professor, Girls Post Graduate College, Muzaffarabad.
123. Yasmeen Ghulam Ahmed, Associate Professor, Girls Post Graduate College, Muzaffarabad.
124. Zahida Khawaja, Associate Professor, Girls Post Graduate College, Muzaffarabad.
125. Raja Nisar Ali Khan, Assistant Professor, Government College, Ghari Dupatta, Muzaffarabad.
126. Muhammad Suleman Saeedi, Associate Professor.
127. Muhammad Azeem, Associate Professor, Physical Education.
128. Abdul SAttar Khokhar, Associate Professor.
129. Zulfiqar Ali Rafique, Associate Professor.
130. Shahid Munir Jarral, Associate Professor.

131. Tahir Hussain Naqvi, Associate Professor.

132. Munir Ahmed Yazdani, Associate Professor.

133. Nadeem Akhter, Associate Professor.

134. Aziz-ur-Rehman, Associate Professor.

135. Zia ul Haq Anwar, Associate Professor, Post Graduate College, Pallandri.

136. Qazi Muhammad Zubair, Associate Professor, Principal Inter College, Darlian Jattan.

137. Professor Malik Muhammad Akhter, Post Graduate College, Pallandri.

138. Professor Ghazi Alam Din, Post Graduate College, Bhimber.

139. Professor Amin Mushtaq, Principal Inter College, Dhandar Kalan.

140. Dr. Muhamamd Toufeeq Khan, Principal Inter College, Datoot, Rawalakot.

141. Professor Muhammad Usman Kiani, Inter College Datoot, Rawalakot.

142. Iqbal Nisar, Associate Professor.

143. Qurban Ali Mohsin, Associate Professor.

144. Ibrar Hussain Naqvi, Professor.

145. Professor Muhammad Rafique Khan, Principal Inter College, Khairowal.

…. APPELLANTS

VERSUS

1. Finance Department, Azad Jammu and Kashmir Government through Secretary Finance, New Civil Secretariat, Muzaffarabad.

2. Accountant General, Azad Jammu and Kashmir, Muzaffarabad, Accountant General Office, Sathra, Muzaffarabad.

3. Azad Jammu and Kashmir Government through its Chief Secretary, New Civil Secretariat, Muzaffarabad.
4. Secretary, Services and General Administration Department, New Civil Secretariat, Muzaffarabad.

…. RESPONDENTS

5. Secretary, Higher Education, Azad Jammu and Kashmir, Muzaffarabad.
6. Director, Public Instructions (Colleges), Azad Jammu and Kashmir Government, Muzaffarabad.

….PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 5.5.2015 in writ petition No.1218 of 2014)

FOR THE APPELLANTS: Raja M. Hanif Khan, Advocate.

FOR THE RESPONDENTS: Mr. Asghar Ali Malik, Advocate.

2. Civil Appeal No. 324 of 2015.
(PLA filed on 7.7.2015)

1. Perviaz Akhtar, Assistant Professor (Political Science), Post Graduate College, Rawalakot.
2. Ch. Muhammad Rafique, Associate Professor (Political Science), Principal Degree College, Kahutta.
3. Syed Ali Hussain Kazmi, Assistant Professor (Economics), Government Boys Degree College, Dana.
4. Khani Zaman, Assitant Professor (History), Principal Degree College, Dana.
5. Muhammad Iqbal Khokhar, Assistant Professor (Urdu), Post Graduate College, Kotli.

6. Sardar Muhammad Farooq, Assisatnt Professor (Physical Education), Government Degree College, Sehnsa.
7. Ch. Maqbool Hussain, Assistant Professor (Physical Education), Principal Inter College, Balgran.
8. Shahbana Kousar d/o Raja Muhammad Afzal Khan, Lecturer (English) Government Girls College, Dhirkot.
9. Neelofar Qayyum d/o Raja Abdul Qayyum, Lecturer (English), Model Science College, Muzaffarabad.
10. Mubashra Ayaz d/o Ayaz Mehmood, Lecturer (Islamiat), Govt. Girls Degree College, Karla Majhan.
11. Faraqat Hussain, Assistant Professor (Political Science) Govt. Post Graduate College, Kotli.
12. Sardar Ali, Assitant Professor (Urdu), Govt. Boys Post Graduate College, Mirpur.
13. Masood Ahmed Khan, Assistant Professor (Urdu) Govt. Boys Post Graduate College, Pallandri.
14. Muhammad Rasheed Chaudhary, Assistant Professor Botany, Principal Govt. Inter College, Aghar, Kotli.
15. Abdul Haleem Butt, Associate Professor (History) Govt. Post Graduate College, Kotli.
16. Muhammad SAddique, Associate Professor (Islamiat) Govt. Post Graduate College, Kotli.
17. Razia Begum, Associate Professor, Government Girls College, Mirpur.
18. Jameela Chaudhary, Associate Professor (English), Principal Government College, Chehian, Mirpur.
19. Shakeela Sardar, Associate Professor (Islamiat), Principal Government Girls College, Afzalpur, Mirpur.

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through its Chief Secretary, Muzaffarabad.

2. Chief Secretary of the Azad Jammu and Kashmir through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.
3. Secretary, Finance Department of Azad Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
4. Secretary, Services & General Administration Department, Azad Govt. of the State of Jammu and Kashmir, Muzaffarabad.
5. Secretary, Higher Education of Azad Jammu & Kashmir, having his office at New Secretariat, Muzaffarabad.
6. Accountant General of Azad Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
7. District Accounts Officer, District Neelum.
8. District Accounts Officer, District Hattian Bala.
9. District Accounts Officer, District Mirpur.
10. District Accounts Officer, District Poonch.
11. District Accounts Officer, District Bagh.
12. District Accounts Officer, District Bhimber.
13. District Accounts Officer, District Haveli, Kahutta.
14. District Accounts Officer, District Pallandri.

…. RESPONDENTS

(On appeal from the judgment of the High Court dated 5.5.2015 in writ petition No.1218 of 2014)

FOR THE APPELLANTS: Raja Khalid Mehmood Khan, Advocate.

FOR THE RESPONDENTS: Mr. Asghar Ali Malik, Advocate.

Date of hearing: 09.12.2015.

JUDGMENT:

***Raja Saeed Akram Khan, J.*—** The captioned appeals by leave of the Court have been directed against the judgment passed by the High Court on 05.05.2015, whereby the writ petitions filed by the appellants, herein, have been dismissed. Both the appeals arise out of the same judgment; therefore, these are being decided through this single judgment.

2. The facts necessary for disposal of these appeals are that the appellants, herein, filed separate writ petitions before the High Court, alleging therein, that they were appointed as Lecturers, B-17, on recommendations of the Public Service Commission, at different times. For promotion of Lecturers, Assistant Professors and Associate Professors, 4-tier formula was introduced. Later on, the process for adaptation of time-scale policy was initiated. The Finance Department issued a letter on 26.09.2011, to

the Secretary Education Colleges in which condition of withdrawal of 4-tier promotion structure was imposed for adaptation of time-scale policy. In compliance of the said letter, the Secretary Education Colleges issued a notification on 07.05.2012, through which 4-tier formula was withdrawn and replaced by time-scale policy. Now, the Lecturers, Assistant and Associate Professors are being promoted according to the time-scale promotion structure notified on 07.05.2012, followed by notification dated 03.12.2010. The criteria for promotion in higher grade was fixed in the notification dated 07.05.2012 and the Lecturers, Assistant and Associate Professors including appellants had been promoted through different notifications on the recommendations of relevant Selection Boards. It was further averred that the office of the Accountant General issued a letter on 31.12.2013, to the Finance Department as well

as to the Secretariat Higher Education, regarding assistance for fixation of pay on time-scale promotions. In response to the said letter, the Secretary Higher Education issued a letter dated 06.03.2014, whereby detailed answer of the above letter was given. The office of the Accountant General, in response of queries, which were being put by the Finance Department, issued letter on 11.04.2014. After obtaining all the required assistance, the Finance Department in contradiction of all the above mentioned correspondence, issued the proposal on 27.05.2014, to the Secretary Higher Education, Secretary Services & General Administration and Accountant General, whereby it was proposed to amend the time-scale promotion structure notification dated 07.05.2012 and also proposed to omit the word "promotion", occurred in the time-scale promotion notifications of college teachers. The

appellants, herein, challenged the vires of the memorandum of Accountant General dated 05.12.2013 and proposal of Finance Department dated 27.05.2014 before the High Court. The learned High Court vide impugned judgment dated 05.05.2015, dismissed both the writ petitions filed by the appellants, herein. Hence, these appeals by leave of the Court.

3. Raja Muhammad Hanif Khan, Advocate, the learned counsel for the appellants in appeal titled *Professor Malik Arshad Aziz & others v. Finance Department & others* submitted that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that the learned High Court while passing the impugned judgment has relied upon different rules which have no bearing upon the case in hand. He added that the learned High Court fell in error while not taking into account that time-scale policy was formulated

after concurrence of the Finance Department. The Finance Department remained associated in all the process/proceedings conducted in this regard, therefore, the Finance Department cannot be allowed to take U-turn after giving the consent. He further submitted that the learned High Court has not taken into account the written statement submitted by the respondents wherein they categorically admitted that the promotions of the appellants were made on the basis of time-scale promotion policy. Thus, after admitting the factual position there was no occasion to make proposal for deletion of the word "promotion" in the time-scale policy. He forcefully submitted that 4-tier formula through which the promotions of the Lecturers, Assistant or Associate Professors were made, has already been withdrawn on the recommendations of the Finance Department, therefore, if the word "Promotion" is deleted in the time-scale policy

then there is no other mode available to the appellants for promotion, but the learned High Court has not considered this important aspect of the case. He added that the findings recorded by the learned High Court on the strength of rule 10 of Pay Revision Rules, 1977, has no nexus with the case in hand. No doubt until framing of Revision of Pay Scale (Gazetted) Rules, 1991, the fixation of pay was made in a case when a civil servant was promoted from lower to a higher post, but concept of fixation of pay from lower to higher post was totally altered by framing of Rule 4 of Revision of Pay Scale (Gazetted) Rules, 1991, but the said rule has not taken into account by the High Court while passing the impugned judgment. He lastly submitted that although the learned High Court reproduced section 8 of the Civil Servants Act, 1976 in the impugned judgment but has not appreciated the same according to its spirit. He

has relied upon the cases reported as *Muhammad Riaz Khan v. Inspector General of Police and 19 others* [2010 SCR 131], *Secretary to the Government of the Punjab, Irrigation and Power Department, Irrigation Secretariat, Lahore v. Abdul Hamid Arif and others* [1991 SCMR 628], *Abdul Matin Khan and 2 others v. N.W.F.P through Chief Secretary and 2 others* [PLD 1993 S.C 187], *Imdad Khan v. Pakistan and another* [PLD 1986 S.C 349], *Government of the Punjab through Secretary Services, Punjab, Lahore and 4 others v. Muhammad Awais Shahid and 4 others* [1991 SCMR 696] and *Parveen Mushtaq, Principal, Government Girls Higher Secondary School Kohori, Muzaffarabad and others v. Kaneez Akhtar, Deputy Secretary Education Civil Secretariat, Muzaffarabad and others* [PLJ 2006 S.C (AJ&K) 34].

4. Raja Khalid Mehmood Khan, Advocate, the learned counsel for the appellants in appeal titled *Pervaiz Akhtar & others v. Azad Govt. & other*s has although adopted the arguments advanced by Raja Muhammad Hanif Khan, Advocate, however, while making addition, he submitted that earlier the 4-tier formula was holding the field which provided the mechanism for promotion of the teaching staff of the colleges. The 4-tier formula was withdrawn upon the demand of the Finance Department and the same was replaced by time-scale policy. The appellants along with others have been promoted on the basis of time-scale policy, thus, it is fundamental principle that once a benefit has given to a civil servant that cannot be revoked later on by any authority. He added that all the points involved in the matter have been agitated before the High Court in the memo of writ petition as well as during the

course of arguments but the learned High Court has not considered the same. He submitted that after obtaining all the requisite assistance the Finance Department vide letter dated 26.09.2011, has given its consent for adaptation of time-scale policy with the condition of withdrawal of 4-tier formula. Thus, the proposal of the Finance Department dated 27.05.2014, for deletion of the word "promotion" is against its own correspondence as well as fundamental rights of the appellants. He also submitted that the learned High while passing the impugned judgment has heavily relied upon rule 10 of the Pay Revision Rules, 1977 which is no more on the statute book as the same is replaced by framing rule 4 of Revised Pay Scale (Gazetted) Rules, 1991.

5. On the other hand, Mr. Asghar Ali Malik, Advocate, the learned counsel for the respondents strongly opposed the arguments

advanced by the learned counsel for the appellants. He submitted that the impugned judgment is perfect and legal which does not warrant any interference by this Court. He added that as per rule 10 of Azad Jammu and Kashmir Pay Revision Rules, 1977, premature increment of higher post can be allowed when a civil servant is promoted from a lower to higher post and under section 8 of the civil Servants Act, 1976, the promotion can be made in higher grade against the available post, thus, it is evident that regular promotion can be made only against available higher post, whereas, for regular promotions of the appellants no posts are available. He added that time-scale policy is incentive for benefiting the college teachers having their long service and on the basis of performance. For regular promotion of the appellants, the departmental promotion rules dated 18.01.2001 are available, therefore, in

contravention of these rules no regular promotion can be made by following any policy. He contended that the learned High Court on application filed by the appellants passed order on 29.10.2014, through which the respondents were directed for fixation of the salary of the appellants subject to the condition that if the case is finally decided against the appellants they shall reimburse the amount in Government treasury. The said order was challenged by the respondents before this Court, however, at the time of hearing the case the present appellants submitted that they did not seek the implementation of said order. Thus, now when the writ petitions of the appellants have been dismissed they are not entitled to twist their earlier stand. He lastly submitted that all the points involved in the matter have been attended and resolved by the division bench of the High Court in accordance with law,

therefore, the appeals of the appellants are liable to be dismissed.

6. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. It is an admitted fact that prior to the enforcement of the time-scale policy, 4-tier formula was adopted since 1991, for promotion of Lecturers, Assistant Professors and Associate Professors. It is spelt out from the record that from the year 2008, different meetings were conducted by the Government regarding the adaptation of time-scale policy and the Finance Department also participated in the same. On 03.12.2010, the Secretariat Education Colleges issued notification No.(122)29 regarding enforcement of time-scale policy. The Finance Department vide letter dated 26.09.2011, informed the concerned authorities that the Finance Department can give the consent for

enforcement of time-scale policy, if 4-tier formula is withdrawn. For better appreciation it will be useful to reproduce here the letter supra which reads as under:-

"آزاد حکومت ریاست جموں و کشمیر مظفرآباد
(محکمہ مالیات)

نمبر مالیات/قواعد 2011/19990مورخہ26-9-11

بخدمت:
جناب سیکرٹری،
تعلیم (کالجز)،
آزاد حکومت ریاست جموں و کشمیر،
مظفرآباد۔

عنوان: ٹائم سکیل بحق کالج اساتذہ۔

السلام علیکم،

معاملہ عنوان الصدر میں بحوالہ آپکی سمری زیر نمبر س ت/پی ایس/کالجز/2011/200 مورخہ 06-08-2011 حسب ہدایت تحریر خدمت ہے کہ کالج اساتذہ کے حق میں بروئے نوٹیفکیشن نمبر 29(122) مورخہ03-12-2010 منظور شدہ ٹائم سکیل سے محکمہ مالیات کو بدیں شرط اتفاق ہے کہ کالج اساتذہ کے حق میں قبل ازیں نوٹیفکیشن نمبر/ایف۔ڈی/آر/4620-4520 مورخہ 12-05-1991 اورنوٹیفکیشن نمبر ایف۔ڈی/آر/298-23199 مورخہ 08-11-2004 کے تحت منظور شدہ چار درجاتی سٹرکچر withdraw کیا جائے اور یہ ٹائم سکیل مورخہ 01-07-2012 سے موثر ہو گا۔ نیز نوٹیفکیشن نمبر 29(122) مورخہ 03-12-2010 کے سیریل نمبر 1 کالم نمبر 4 میں درج آخری الفاظ "and above" حذف تصور ہونگے۔ علاوہ ازیں اس ٹائم سکیل کا مفاد پرفارمنس کی بنیاد پر دئیے جانے کے لئے سیکرٹریٹ تعلیم (کالجز) متذکرہ بالا ٹائم سکیل کے نفاذ سے قبل باقاعدہ ایک پالیسی مرتب کرے گا جس کی محکمہ مالیات سے vettingکروائی جانا ہو گی۔

والسلام

سیکشن مالیات (قواعد)"

It is also spelt out from the record that in response to the aforesaid letter, through

notification dated 05.07.2012, 4-tier formula was withdrawn and with full concurrence of the Finance Department the time-scale policy was adopted. Thereafter, many Lecturers, Assistant and Associate Professors were promoted according to the new time-scale policy. On 31.12.2013, the office of the Accountant General issued a letter to the Finance Department for providing assistance regarding the fixation of pay according to the time-scale policy. The Finance Department in this regard vide letter dated 25.03.2014, made some queries to the office of the Accountant General. The office of the Accountant General issued the letter on 11.04.2014. Thereafter, the Finance Department issued the proposal letter dated 27.05.2014, to the Secretary Higher Education, Secretary Services and General Administration Department and Accountant General through which it was

proposed to omit the word "promotion" from the time-scale policy.

7. After going through the aforementioned proceedings/facts of the case, it is crystal clear that prior to the enforcement of the time-scale-policy the Lecturer, Assistant and Associate Professors were promoted according to 4-tier formula. The 4-tier formula was withdrawn on the demand of the Finance Department and the same was replaced by the time-scale policy. Many Lecturers, Assistant and Associate Professors including appellants have been promoted through time-scale policy vide notification bearing No.Add.E-1 (61) 2014 dated 01.01.2014, notification bearing No. Add./E-1 (61) 2013 dated 20.11.2013, notification bearing No. Add./E-1 (61) 2014 dated 13.02.2014, notification bearing No. Add./E-1 (61) 2013 dated 20.11.2013, notification bearing No. S&GAD/E-1 (61) 2014 (Gazetted-1)

dated 13.02.2014, notification bearing No. Add./E-1 (29)/2014 dated 13.02.2014, notification bearing No. Add./A-1 (61) 2013 dated 20.11.2013, notification bearing No. SHE-III/330-40/2014 dated 14.03.2014. Now the Finance Department vide letter dated 27.05.2014, proposed to omit the word "promotion" from the time-scale policy. Keeping in view the circumstances of the case, in our estimation, the main points which require consideration are that: (i) the 4-tier formula which provided mechanism for promotion of the teaching staff of the colleges has been abolished on the recommendations of the Finance Department, if the word "promotion" is omitted from the time-scale policy then whether any other mode of promotion is left with the teaching staff of the colleges? (ii) whether the Finance Department was justified to issue the proposal letter dated 27.05.2014, when the

whole process of formulation/adaptation of time-scale policy was made with the full concurrence of the Finance Department? and (iii) after getting the promotion in the light of the time-scale policy valuable right has been accrued in favour of the appellants and other promotees; whether a right once accrued to a party subsequently can be taken away?

8. The perusal of impugned judgment shows that the aforementioned points have not been attended by the learned High Court while passing the impugned judgment, perhaps the proper assistance was not rendered at the time of hearing the writ petitions. It is also spelt out from the impugned judgment that the learned High Court while recording the findings that "promotion can be recommended and approved by the competent authority against a post and not against a grade, therefore, according to our considered view no any illegality was committed

by the Finance Department through the impugned supra proposal dated 27.05.2014" has mainly based upon section 8 of the Civil Servants Act, 1976 as well as rule 9 of the Civil Servants (Appointment & Conditions of Service) Rules, 1977, but has not taken into consideration the method of promotion provided in the 4-tier formula which was replaced by the time-scale policy. In this regard, the letter written by the Finance Department for assistance and letter of the office of the Accountant General dated 11.04.2014 in reply also need consideration. Moreover, the copies of the budget placed on record by the learned counsel for the appellants also require consideration that what was the object to enhance the budget amount. In such state of affairs, when the main points have not been attended and resolved by the High Court, in the interest of justice, it will be appropriate to

remand the case to get the wisdom of the High Court at first. The other point forcefully agitated by the learned counsel for the appellants that the learned High Court mainly relied upon rule 10 of Pay Revision Rules, 1977, whereas, the said rule is no more on the statute book as the same has been altered while framing Rule 4 of Revision of Pay Scale (Gazetted) Rules, 1991, is also left open for decision by the High Court at first.

Resultantly, the appeals are accepted and the cases are remanded to the High Court with the direction to decide the writ petitions afresh while taking into account the points discussed in the preceding paragraph after providing fair opportunity of hearing to the parties. No order as to costs.

Muzaffarabad
__.01.2016 **JUDGE** **CHIEF JUSTICE**

Professor Malik Arshad Aziz & others	v.	Finance Dept. & others
Pervaiz Akhtar & others	v.	Azad Govt. & others

ORDER:

Judgment has been signed. It shall be announced by the Registrar in presence of the learned counsel for the parties.

Muzaffarabad,
__.01.2016 **CHIEF JUSTICE** **JUDGE**