

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.

Civil Appeal No. 165 of 2014
(PLA filed on 13.5.2016)

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 (Islamiyat) 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 Science), 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 Razaqat 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.
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, Government 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. Abdul Ghani Chaudhary, Associate Professor.
56. Ch. Muhjammad Awais, Associate Professor.
57. Masood Qamar, Associate Professor.
58. Ch. Tariq Mehmood, Associate Professor.
59. Professor Sumandar Khan, Principal Inter College, Kel.
60. Professor Khawaja Siddique Ahmed, Government Degree College, Ghari Dupatta.
61. Qazi Abdul Rehman, Associate Professor, Principal Inter College Mirpura, Authmuqam.
62. Professor Zia-ud-Din, Principal Inter College Nagdar, Authmuqam.

63. Professor Shafique-ur-Rehman, Boys Degree College, Dudyal.
64. Mirza Naeem Iqbal, Associate Professor, Inter College Dhandar.
65. Mufti Khalid Manzoor, Associate Professor.
66. Zeba Khanum, Associate Professor, Girls College Khrick, Rawalakot.
67. Muhammad Ayub Rehman, Associate Professor.
68. Farhat Nasim, Assistant Professor, Model Science College, Muzaffarabad.
69. Professor Farkhanda Nazeer, Principal Girls College, Khaliqabad.
70. Umaira Khalid, Assistant Professor Model Science College, Muzaffarabad.
71. Professor Ashiq Hussain, Model Science College, Muzaffarabad.
72. Fahmida Sultana, Associate Professor Model Science College, Muzaffarabad.
73. Professor Farhat Butt, Model Science College, Muzaffarabad.
74. Nuzhat Mir Alam, Assistant Professor, Model Science College, Muzaffarabad.

75. Nighat Jabeen, Associate Professor, Model Science College, Muzaffarabad.
76. Naheed Ali Zaman, Assistant Professor Model Science College, Muzaffarabad.
77. Nelofer Qayyum, Assistant Professor, Model Science College, Muzaffarabad.
78. Muhammad Baha-ud-Din Sajid, Assistant Professor, Principal Degree College, Authmuqam.
79. Munir Iqbal, Assistant Professor, Degree College, Authmuqam.
80. Muhammad Shafi, Assistant Professor, Inter College, Kel.
81. Professor Dil Pazeer Ahmed, Principal Girls Inter College, Komikot.
82. Professor Noshaba Rana, Girls Post Graduate College, Mirpur.
83. Profesor Naheed Murawat, Girls Post Graduate College, Mirpur.
84. Professor Musarrat Aziz, Girls Post Graduate College, Mirpur.
85. Professor Rashida Aziz, Girls Post Graduate College, Mirpur.

86. Profesor Musarrat Sabohi, Girls Post Graduate College, Mirpur.
87. Professor Saleem Sarfraz, Girls Post Graduate College, Mirpur.
88. Professor Abida Zubair, Girls Post Graduate College, Mirpur.
89. Professor Zubaida Nasreen, Girls Post Graduate College, Mirpur.
90. Professor Noreen Butt, Girls Post Graduate College, Mirpur.
91. Zafar Hussain Zafar, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
92. Zahida Ali Muhammad, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
93. Ghulam Shahnaz, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
94. Shamim Bakar, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
95. Nasreen Ayesha, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.

96. Riffat Shafi, Associate Professor, Girls Post Graduate College, Khrick, Rawalakot.
97. Naseem Akhter, Assistant Professor College of Education, Bagh.
98. Sardar Muhammad Akram, Associate Professor Degree College, Authmuqam.
99. Professor Dost Muhammad Khan, Muzaffarabad.
100. Professor Anjum Afshan Naqvi, presently posted as Divisional Director Colleges, Mirpur.
101. Irfana Rasheed, Associate Professor, Girls Post Graduate College, Muzaffarabad.
102. Nafees Akhter, Associate Professor, Girls Post Graduate College, Muzaffarabad.
103. Shabnum Huma, Associate Professor, Girls Post Graduate College, Muzaffarabad.
104. Rakshanda Sheikh, Associate Professor, Girls Post Graduate College, Muzaffarabad.
105. Sarwat Qadir, Associate Professor, Girls Post Graduate College, Muzaffarabad.
106. Naila Masawar, Associate Professor, Girls Post Graduate College, Muzaffarabad.

107. Iffat Shahad, Associate Professor, Girls Post Graduate College, Muzaffarabad.
108. Tahira-un-Nisa, Associate Professor, Girls Post Graduate College, Muzaffarabad.
109. Shams-un-Nisa, Associate Professor, Girls Post Graduate College, Muzaffarabad.
110. Zeenat-Un-Nisa, Associate Professor, Girls Post Graduate College, Muzaffarabad.
111. Zahida Razzaq, Associate Professor, Girls Post Graduate College, Muzaffarabad.
112. Yasmeen Bashir, Associate Professor, Girls Post Graduate College, Muzaffarabad.
113. Shahida Quresh, Associate Professor, Girls Post Graduate College, Muzaffarabad.
114. Shaheen Kousar, Associate Professor, Girls Post Graduate College, Muzaffarabad.
115. Perveen Akhter, Associate Professor, Girls Post Graduate College, Muzaffarabad.
116. Rashida Jabeen, Associate Professor, Girls Post Graduate College, Muzaffarabad.
117. Arifa Hashmi, Associate Professor, Girls Post Graduate College, Muzaffarabad.

- 118.Kousar Saleem, Associate Professor, Girls Post Graduate College, Muzaffarabad.
- 119.Shafqat Nasreen, Associate Professor, Girls Post Graduate College, Muzaffarabad.
- 120.Farah Shahzadi, Associate Professor, Girls Post Graduate College, Muzaffarabad.
- 121.Nargis Saeed, Associate Professor, Girls Post Graduate College, Muzaffarabad.
- 122.Yasmeen Ghulam Ahmed, Associate Professor, Girls Post Graduate College, Muzaffarabad.
- 123.Zahida Khawaja, Associate Professor, Girls Post Graduate College, Muzaffarabad.
- 124.Raja Nisar Ali Khan, Assistant Professor, Government College, Ghari Dupatta, Muzaffarabad.
- 125.Muhammad Suleman Saeedi, Associate Professor.
- 126.Muhammad Azeem, Associate Professor, Physical Education.
- 127.Abdul Sattar Khokhar, Associate Professor.
- 128.Zulfiqar Ali Rafique, Associate Professor.

129. Shahid Munir Jarral, Associate Professor.
130. Tahir Hussain Naqvi, Associate Professor.
131. Munir Ahmed Yazdani, Associate Professor.
132. Nadeem Akhter, Associate Professor.
133. Aziz-ur-Rehman, Associate Professor.
134. Zia ul Haq Anwar, Associate Professor, Post Graduate College, Pallandri.
135. Qazi Muhammad Zubair, Associate Professor, Principal Inter College, Darlian Jattan.
136. Professor Malik Muhammad Akhter, Post Graduate College, Pallandri.
137. Professor Ghazi Alam Din, Post Graduate College, Bhimber.
138. Professor Amin Mushtaq, Principal Inter College, Dhandar Kalan.
139. Dr. Muhamamd Toufeeq Khan, Principal Inter College, Datoot, Rawalakot.
140. Professor Muhammad Usman Kiani, Inter College Datoot, Rawalakot.
141. Qurban Ali Mohsin, Associate Professor.
142. Ibrar Hussain Naqvi, Professor.

143. Professor Muhammad Rafique Khan,
Principal Inter College, Khairawal.

.... 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 04.05.2016 in writ petition
Nos.1218 and 1307 of 2014)

FOR THE APPELLANTS:	Raja M. Hanif Khan, Advocate.
FOR THE FINANCE- DEPARTMENT:	Mr. Asghar Ali Malik, Advocate.
FOR THE AZAD GOVT.:	Mr. Raza Ali Khan, Advocate-General.

2. Civil Appeal No. 204 of 2016
(PLA filed on 02.07.2016)

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, Assistant 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.

....APPELLANTS

VERSUS

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

12. District Accounts Officer, District Sudhnoti.
 13. District Accounts Officer, District Haveli,
 Kahutta.

.... RESPONDENTS

(On appeal from the judgment of the High
 Court dated 04.05.2016 in writ petition
 Nos.1218 and 1307 of 2014)

FOR THE APPELLANTS:	Mr.Abdul Salam Ch., Advocate.
FOR THE FINANCE- DEPARTMENT:	Mr. Asghar Ali Malik, Advocate.
FOR THE AZAD GOVT.:	Mr. Raza Ali Khan, Advocate-General.
<i>Date of hearing:</i>	08.11.2016

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeals by leave of the Court have been preferred against the common judgment of the High Court dated 04.05.2016, whereby the writ petitions filed by the appellants, herein, (in both the appeals), have been dismissed. As both the appeals arise out of the same judgment; therefore, these are being disposed of 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 at difference times on the recommendations of the Public Service Commission. For promotion of Lecturers, Assistant Professors and Associate Professors, a promotion formula known as 4-tier formula was introduced, by the Government. Later on, time-scale policy was adapted and introduced in the Education Department. The Finance Department issued a letter on 26.09.2011, to the Secretary Education Colleges in which the condition for 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 promotion

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 the 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 furnished. The office of the Accountant General, in response to the queries made by the Finance Department in consequence thereof issued a 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 a proposal for amendment of the time-scale promotion notification dated 07.05.2012 and omission of the word 'promotion' occurred in the time-scale policy of the college teachers was made. 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 judgment dated 05.05.2015, dismissed both the writ petitions filed by the appellants, herein. The said judgment of the High Court was challenged before this Court. This Court vide judgment dated 13.01.2016, while accepting the appeals set aside the judgment of the High Court and remanded the case to the High Court with the direction to decide the writ petitions afresh. The learned High Court in the light of the direction issued by this Court in the earlier judgment after hearing the parties passed the impugned judgment dated 04.05.2016, through which again both the writ petitions have been dismissed. Hence, these appeals by leave of the Court.

3. Raja Muhammad Hanif Khan, Advocate, the learned counsel for the appellants, in appeal No. 165 of 2016, titled *Professor Malik Arshad Aziz & others v.*

Finance Department & others submitted that the points formulated by this Court while remanding the case to the High Court have not been attended properly by the High Court. He contended that the learned High Court failed to examine the controversy involved in the matter as on the strength of time-scale policy the appellants were promoted on regular basis and in this way a valuable right had accrued to the appellants which cannot be denied later on by omitting the word 'promotion' from the relevant time-scale policy. He further contended that the learned High Court also fell in error of law while not taking into account that the time-scale policy provides the mechanism for the promotion with some conditions and without fulfilling the conditions attached no one can be promoted. For promotion under time-scale policy, the teachers have to go through a difficult process

while showing their performance; on the basis of that the case of the appellants was placed before the Selection Board. The Selection Board duly recommended the appellants for further promotion and in pursuance of the recommendations of the Selection Board the appellants were promoted in higher grade. He drew the attention of the Court towards the time-scale policy notification dated 07.05.2012, in which the word 'promotion' has categorically been mentioned. He forcefully argued that increased budget was allocated to meet the financial requirements, i.e. payment of salaries and other emoluments arising out due to the promotion in the higher grade, therefore, there was no hurdle in the way of the respondents to treat the promotions of the appellants as regular promotions. He added that the learned High Court also failed to examine that 4-tier promotion formula was

abolished by substituting the same with time-scale policy as both are at-par with each other. He contended that promotion on the strength of 4-tier formula was affirmed by this Court in a case reported as *Parveen Mushtaq, Principal, Government Girls Higher Secondary School Kahori, Muzaffarabad & others v. Kaneez Akhtar, Deputy Secretary Education Civil Secretariat, Muzaffarabad and others* [PLJ 2006 SC (AJ&K) 34], but the learned High Court failed to adhere to law enunciated by this Court in the referred judgment. He maintained that 4-tier promotion formula was abolished while adapting the time-scale policy to give an incentive to the teaching staff of the colleges who have been deprived of the right of promotion on substantive basis. He added that on the demand of teacher community after a long negotiation the Government agreed to formulate the time-scale policy. He

further added that the conditions in the time-scale policy to get the promotion in the higher grade are harder than the normal procedure of promotion. In this way, it cannot be given any other name except to substantive promotion. He lastly submitted that the appellants are fully eligible to get the benefit arising out of the regular promotion including premature increment etc. He has relied upon the cases reported as *Government of the Punjab through Secretary Services, Punjab, Lahore and 4 others v. Muhammad Awais Shahid and 4 others* [1991 SCMR 696], *Mubusher-ul-Haque, S.D.O., P.W.D., Muzaffarabad v. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Azad Government of the State of J&K, Muzaffarabad & 2 others* [1991 PLC (C.S) 426], *Abdul Matin Khan and 2 others v. N.W.F.P. through Chief Secretary and 2 others* [PLD 1993 S.C 187],

Parveen Mushtaq, Principal, Government Girls Higher Secondary School Kahori, Muzaffarabad & others v. Kaneez Akhtar, Deputy Secretary Education Civil Secretariat, Muzaffarabad and others [PLJ 2006 SC (AJ&K) 34], Muhammad Riaz Khan v. Inspector General of Police and 19 others [2010 SCR 131], Additional Accountant General Pakistan Revenue, Sub Office, Lahore v. M.M. Malik and others [2012 PLC (C.S.) 1370] and Kh. Abdul Hamid v. Azad Jammu and Kashmir Government through Chief Secretary and 5 others [2013 PLC (C.S.) 1264].

4. Mr. Abdul Salam Chaudhary, Advocate, the learned counsel for the appellants, in appeal No.204 of 2016, titled *Professor Pervaiz Akhtar & others v. Azad Government & others*, mostly adopted the arguments advanced by Raja Muhammad Hanif Khan, Advocate, however, while making

addition, he submitted that after lapse of a considerable time an amendment was made in the time-scale policy through which the word 'promotion' has been omitted which is not warranted under law. Through amendment the respondents tried to deprive the appellants of a valuable right which had already been accrued in their favour after their promotion.

5. On the other hand, M/s Asghar Ali Malik, Advocate and Raza Ali Khan, Advocate-General, while supporting the judgment of the High Court submitted that the same is perfect and legal which is not open for interference by this Court. While referring to different paragraphs of the impugned judgment they contended that the points formulated by this Court at the time of remand of the case, have fully been attended and answered by the High Court in a legal manner. They further contended that the word 'incentive' mentioned

in the time-scale policy itself shows that through the said policy only monetary benefits were extended to the appellants, thus, promotion made for such monetary benefits cannot be termed as regular or substantive promotion. They argued that according to the basic statute, i.e. Azad Jammu and Kashmir Civil Servants Act, 1976, the promotion can only be made against a post, whereas, admittedly no new posts were created or available, therefore, the promotions of the appellants made on the basis of time-scale policy cannot be termed as regular promotions. They relied upon the cases reported as *Ejaz Ahmed Awan and 5 others v. Syed Manzoor Ali Shah and another* [1999 SCR 204], *Rizwan Muzaffar v. Azad Government & 8 others* [2010 SCR 156], *Syed Rasheed Hussain Shah v. Azad Govt. & 6 others* [2014

SCR 883] and *Shaista Naqvi v. Public Service Commission & 3 others* [2015 SCR 996].

6. We have heard the arguments of the learned counsel for the parties and gone through the record made available along with the impugned judgment and also considered the case law referred to by the learned counsel for the parties. The perusal of the record reveals that the Government vide notification dated 07.05.2012, formulated time-scale policy for promotion of the teaching staff of the colleges while following the notification dated 03.12.2010. Later on, the Finance Department issued a proposal letter dated 27.05.2014, through which 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 policy. The appellants feeling aggrieved from the said

proposal, filed writ petitions before the High Court. Keeping in view the controversy involved in the matter, we have examined the original notification dated 03.12.2010. For better appreciation, we would like to refer here the relevant portion of the said notification which reads as under:-

Notification:

No. SEC (122) 29 2010, the President Azad Jammu & Kashmir is pleased to sanction the incentive of higher grades on the basis of time scale (performance based) to the college teacher of Education Department Colleges GoAJK subject to the availability of funds in the current or coming fiscal year with the following terms and conditions:

- a)
- | <u>S.#</u> | <u>BPS of teaching staff</u> | <u>Nos. of years service required for the next higher grade</u> |
|------------|------------------------------|---|
| 1. | for BPS-18 | Nine (09) years in BPS 17 & above |
| 2. | for BPS-19 | Sixteen (16) years in BPS-17 & above |
| 3. | for BPS-20 | Twenty two (22) years in BPS-17 & above |
- b) The Service rules, nomenclature/tiers of the posts and seniority of the college teachers shall remain intact.
- c) The benefits of time scale will be considered and allowed on the recommendations of concerned Selection Boards."

The original notification starts with the word 'incentive' and the language of the same reveals that the theme behind it was that a

large number of the teaching staff of the colleges had been deprived of the right of promotion to the higher grade due to the non-availability of the posts and most of them had been retired in the same cadre in spite of the fact that they were eligible to be promoted in the next grade on regular basis. There was apprehension that most of the teachers will not succeed to get the fruit of 4-tier promotion formula due to non-availability of the posts, that is way, the Government on this heartburning issue of the teaching staff of the colleges after a long negotiation with the representatives of the teaching staff agreed to formulate the policy to provide mechanism for promotion of the teaching staff in the higher grade for the purpose of monetary benefits while keeping their lien in substantive original grade. In this regard, clause B of the notification supra is self explanatory showing

that the service rules, nomenclature/tiers of the posts and seniority of the college teachers shall remain intact. It would not be out of place to mention here that when the time-scale policy was formulated the same was forwarded to the Finance Department and the Finance Department also imposed some conditions, thereafter, the policy was enforced subject to availability of the funds. In pursuance of the policy, the cases of the persons eligible to be promoted in the higher grade were forwarded to the Selection Boards and on the recommendations of the Selection Boards promotions were made. The controversy started when the appellants after getting the promotion in higher grades claimed the premature increments, entertainments and senior post allowances. The respondents refused to pay the same on the ground that the time-scale policy is an incentive to extend

the monetary benefits to the appellants and the promotions made under the said policy are not regular promotions. We have examined the matter in hand in the light of the relevant law dealing with the promotions of the civil servants, i.e. section 8 of the Azad Jammu and Kashmir Civil Servants Act, 1976. Although, the referred provision of law has already been reproduced by the learned High Court in the impugned judgment; however, for better appreciation it would be appropriate to reproduce the same again, which reads as under:-

“Promotion:- (1) A Civil Servant possessing such minimum qualification as may be prescribed shall be eligible for promotion to a post, for the time being, reserved under the rules for departmental promotion in any higher grade of the service or cadre to which he belongs.

- (2)
- (a)
- (b)"

From the perusal of the above provision of law, it appears that the same in unambiguous terms provides that the promotion shall be made against a post. Admittedly, the learned counsel for the appellants failed to substantiate that in pursuance of the time-scale policy the posts were created and the promotions of the appellants were made in consequence thereof. The learned counsel for the appellants has only established the case before the learned High Court and this Court that the appellants have gone through the process of selection and after recommendations of the selection board the respective promotions of the appellants were made, thus, it cannot be said that the promotions of the appellants are not regular

promotions. It may be observed here that the argument of the learned counsel for the appellants in this regard is not convincing in nature as no policy or rule can be given the preference over the basic statute or the policy/rules cannot be made or enacted in deviation of the relevant provisions of the basic statute. In the case in hand, section 8 of the Civil Servants Act, 1976, existing on the statute book is very much clear. As from the relevant provision of law it postulates that promotion shall only be made against a post, therefore, we agree with the findings recorded by the learned High Court in this regard. Reliance may be placed on a case reported as *Muhammad Siddique, Stenographer, FIA Headquarters, Islamabad and another v. Secretary, Establishment Division Islamabad and 5 others* [2001 SCMR 252], wherein, the apex Court of Pakistan has held as under:-

“6. The contentions raised by the learned counsel for the petitioners are devoid of force. No doubt the petitioners were granted selection grade (BPS-16) prior in point of time but they cannot claim seniority over the private respondents for the simple reason that they were not promoted from a lower to higher post. Grant of selection grade is not a promotion in strict sense of the word though it has overtones of promotions in view of the financial benefit involved. The expression selection grade is confined to revision of Basic Pay Scales and does not find mention in section 8 of the Civil Servants Act, 1973 and the Civil Servants (Seniority) Rules, 1993 under which seniority list of civil servants is required to be prepared with reference to a service, cadre or post and not grade.”

Similarly, in another case reported as *Muhammad Rafique and another v. Managing*

Director (WAPDA) and another [1995 SCMR 1549], it has been held that:-

“However, if any employee having moved-over to a particular scale, is subsequently promoted to a post carrying same scale, he may become eligible for further move-over. It is also pertinent to point out that move-over is not to be considered as a promotion to the post of higher basic pay scale, but the higher pay-scale is to be treated as extension of the existing basic pay-scale of the post held by an employee.”

The Federal Service Tribunal while dealing with the proposition in a case reported as *Prof. Ghazala Mahmud v. Secretary, Ministry of Health and 2 others* [PLJ 2008 Tr.C (Services) 195], has held as under:-

“11. Despite the aforementioned the nature of promotion on the basis of meritorious service has to

be looked into in the light of the provisions contained in the ESTACODE. The salient features of this promotion policy are that the beneficiaries of such promotion are to be limited to 12.5% of the total number of posts in BS-20 in any particular cadre. This coupled with the requirement that upon such promotion the incumbents are not required to move from their technical posts would imply that although the benefit of the higher scale is given as a reward to a meritorious incumbent the same does not correspond to the incidence of a regular promotion which is made to fill a higher vacant post in the manner provided under section 9 of the Civil Servants Act, 1973. The basis of promotion is provided in Section 9 *ibid*:

'9. Promotion:(1) A civil servant possessing such minimum qualifications as may be prescribed shall be eligible for

promotion to *[higher] post for the time being reserved under the rules for departmental promotion in **[] the service or cadre to which he belongs'

12. It is thus seen that promotion on meritorious grounds is neither made against a selection post nor indeed on the basis of seniority-cum-fitness. In the instant case there is also no provision for higher post against which a regular promotion could be made. The Selection Committee which is constituted for the award of meritorious promotions does not correspond to the Central Selection Board and is also not in accordance with the eligibility threshold provided by the ESTACODE for promotion from Bs-20 to BS-21. Particular reference is made to Serial No.74, 2(vi) page 781 of ESTACODE 2000 which provides that the grant of scale 21 or 22 to the officer is personal to him and

that there would be no need to upgrade the post. However such promoted officer would carry the higher scale with him in the event of his transfer to another post.

13. It is thus necessary to indicate the distinction between the promotion to a higher post and award of a higher scale of pay after selection and by way of meritorious promotion. In the latter case, it is actually a matter of conferring a reward of a higher pay scale in acknowledgement of the high meritorious services rendered by an officer and approved/selected by the competent Selection Committee. Such a promotion might display some superficial features akin to promotion but in reality cannot be equated to a regular promotion in the strict sense of the word."

In another case reported as *Muhammad Suleman, Personal Assistant (R), Mirpur Azad*

Kashmir v. Advocate General, (AJ&K) Government, Muzaffarabad and 6 others [2005 PLC (C.S) 1260], while referring section 8(1) of the Azad Jammu and Kashmir Civil Servants Act, 1976, it has been held that:

“ 8. The aforesaid provision clearly conveys that promotion means ‘promotion to a post of higher grade of the service’. Now in the instant case, the petitioner was not promoted to the post of higher grade. He remained on the same post but selection Grade B-16 was awarded to him which does not come within the ambit of ‘promotion’.”

It may also be observed here that the right of promotion of the appellants on the regular basis has not been curtailed as under section 8 of the Civil Servants Act, 1976, on the availability of the posts the eligible persons shall have a right to be promoted on regular

basis. The promotion which has been made in pursuance of the time-scale policy was not a promotion in strict sense of the word rather it is only an incentive for extending the monetary benefits.

7. The other point agitated by the learned counsel for the appellants on the strength of judgment of this Court reported as *Parveen Mushtaq, Principal, Government Girls Higher Secondary School Kahori, Muzaffarabad & others v. Kaneez Akhtar, Deputy Secretary Education Civil Secretariat, Muzaffarabad and others* [PLJ 2006 SC (AJ&K) 34], was that this Court declared in the referred judgment that the promotion arising out of the 4-tier formula is regular promotion. As time-scale policy is substituted the 4-tier formula, therefore, the judgment supra is fully applicable in the case in hand, but the learned High Court failed to adhere to the same. We have also examined

the said case law referred to by the learned counsel for the appellants. It may be observed here that in the judgment supra 4-tier promotion formula was under consideration and the policy on the basis of which the appellants have been promoted in the higher grades was not holding the field at that time, therefore, that judgment cannot be made precedent. Moreover, there is lot of difference between 4-tier promotion formula and the time-scale policy as in the 4-tier formula the posts in different cadres for promotion were reserved and it was specifically mentioned that the process of promotion in each cadre shall be governed by such and such recruitment rules as framed/shall be framed from time to time for filling up the posts by promotion or recruitment as prescribed in the said rules; whereas, in the time-scale policy the scope has been widen for the promotion in the higher

grade only for monetary benefits. In the said judgment this Court while referring to 4-tier formula which was under consideration, has specifically mentioned that it postulates that the promotion against the upgraded posts would be made strictly in accordance with the service rules. The promotions made under the said formula were not in contravention of the relevant rules; whereas, the promotions claimed by the appellants as regular promotions on the basis of time-scale policy, are totally in conflict with the relevant provision of the law, i.e. section 8 of the Civil Servants Act, 1976, as well as the relevant rules which is not permissible under law. It may also be stated that the word 'promotion' means taking of a further step on a ranking or change of grade to higher pay scale, however, the regular promotion means promotion against a post as has been defined

in section 8 of the Civil Servants Act, 1976. Thus, mere mentioning of word 'promotion' in the time-scale policy notification does not mean the regular promotion and only that promotion shall be treated as regular promotion which has been made against the available post in the light of section 8 of the Civil Servants Act, 1976. In this regard, we are not convinced that the supra judgment is relevant for the purpose. We have also examined the other case law referred to by the learned counsel for the appellants. In a case reported as *Mubusher-ul-Haque, S.D.O. P.W.D., Muzaffarabad v. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Azad Government of the State of J&K, Muzaffarabad and 2 others* [1991 PLC (C.S) 426], referred to by the learned counsel for the appellants this Court interpreted the regular promotion in the following terms:-

“Section 8 reproduced above clearly demonstrates that by ‘promotion’ a person is elevated to a post carrying a higher grade. ‘Promotion’ is basically not to a higher grade but to a higher post. That is why there are many cadres in which civil servants keep on working against the same posts but are given higher grades by way of selection grade or by move-over. In such cases the concerned civil servants are not said to have been promoted although they move in the higher grade.”.

The referred judgment supports the version of the respondents as this Court has held that the promotion is basically not to a higher grade but to a higher post. The examination of the other case law referred to by the learned counsel for the appellants transpires that the controversy involved in the said reports was altogether different, therefore, it can safely be

said that the same are not applicable in the case in hand.

8. The argument of the learned counsel for the appellants regarding the premature increment is also not convincing in nature. As we have observed earlier that the promotions made on the strength of time-scale policy are not regular or substantive promotions, therefore, the question of premature increment does not arise. Even otherwise, the time-scale policy is silent about the matter of increment; therefore at this stage no such benefits which do not come within the purview of that policy can be extended to the appellants. It may be observed here that time-scale policy was formulated after negotiation with the representatives of the appellants and if they ever raised plea for entitlement of premature increment and other benefits then such benefits might have been

the part of the time-scale policy. Thus, now the appellants cannot be allowed to claim premature increment and other benefits which relates to the regular promotion as at the time of formation of the policy all such claimed benefits were opened to be demanded. We would also like to observe here that the learned High Court has taken the pain while differentiating a lot of promotions, i.e. officiating promotion, proforma promotion etc. and after discussing the same has rightly observed that the promotion is not only a regular promotion rather there are also some other mode of promotions which cannot come within the definition of regular promotion, however, that can be made only for the welfare of the employees including the financial benefits. As the learned High Court attended and answered all the points

formulated by this Court in a comprehensive manner, according to law, therefore, we are of the considered view that no case of interference by this Court is made out.

In view of the above, these appeals being devoid of any force, are hereby dismissed with no order as to costs.

Mirpur,
 __.11.2016 **JUDGE CHIEF JUSTICE JUDGE**

Prof. Malik Arshad Aziz & others	v.	Finance Department & others
Prof. Pervaiz Akhtar & others	v.	Azad Govt. & others