

**S`UPREME COURT OF AZAD JAMMU AND KASHMIR**  
(APPELLATE JURISDICTION)

**PRESENT:**

**Ghulam Mustafa Mughal, J.**

Civil PLA No.182 of 2020  
(Filed on 27.08.2020)

1. Muhammad Rashad Sulehria, Student (2<sup>nd</sup> Year) L.L.B., Kashmir Law College, AJK, Muzaffarabad.
2. Syed Iftikhar Hussain Shah, Student (F.E.L), Kashmir Law College, Muzaffarabad.
3. Raja Zain Mehmood, Student, (2<sup>nd</sup> Year) L.L.B., Kashmir Law College, AJK, Muzaffarabad.
4. Tanveer Mughal, Student, (3<sup>rd</sup> Year) L.L.B., Kashmir Law College, AJK, Muzaffarabad.
5. Mohsan Qadeer, Student, (2<sup>nd</sup> Year) L.L.B., Kashmir Law College, AJK, Muzaffarabad.
6. Raja Shoaib Mehmood, Student, (1<sup>st</sup> Year) L.L.B., Kashmir Law College, AJK, Muzaffarabad.
7. Hameed Abbasi, Student, (3<sup>rd</sup> Year) L.L.B., Kashmir Law College, AJK, Muzaffarabad.
8. Shanawaz Chaudhry, Student (2<sup>nd</sup> Year) L.L.B., Kashmir Law College, AJK, Muzaffarabad.

....PETITIONERS

**VERSUS**

1. University of AJK through Vice Chancellor, City Campus, Muzaffarabad.
2. Registrar, University of AJK, Chehla Campus, Muzaffarabad.
3. Controller Examination, University of AJK, Muzaffarabad.

...RESPONDENTS

(On appeal from the judgment/order of the High Court dated 21.08.2020 in Writ Petition No.\_\_\_\_of 2020)

FOR THE PETITIONERS: Mr. Abdul Rasheed Abbasi,  
Advocate.

FOR THE RESPONDENTS: Raja Amjid Ali Khan,  
Advocate.

FOR THE INTERVENERS: Barrister Hamayun Nawaz  
Khan, Advocate.

Date of hearing: 01.09.2020

**ORDER:**

**Ghulam Mustafa Mughal, J.**— The captioned petition for leave to appeal has been directed against the judgment/order dated 21.08.2020, passed by the Azad Jammu & Kashmir High Court in writ petition No. \_\_\_ of 2020.

2. The brief facts forming the background of the captioned petition for leave to appeal are that the petitioners, herein, are the regular students of Kashmir Law College affiliated with the University of Azad Jammu & Kashmir and are studying under the external system. The examination of the L.L.B.

external system was scheduled before, however, in the wake of coronavirus (covid 19), the same was postponed through a press release. On 05.06.2020, another press release was issued by the University, whereby, it has been decided by the University Authorities to conduct the examination according to the prescribed schedule under the conventional method while following the SOPs issued by the Government. The petitioners, herein, challenged the act of the University authorities through writ petition before the Azad Jammu & Kashmir High Court on the ground that the examination of the students of the University (internal system) has been conducted online keeping in view the spread of coronavirus (covid 19) pandemic, whereas, their examination has been scheduled under the conventional method in the examination hall which is the clear violation of the current policy of the HEC, hence, they are discriminated. The learned High Court after hearing

the preliminary arguments has dismissed the writ petition in limine through the impugned judgment/order dated 21.08.2020.

3. Mr. Abdul Rasheed Abbasi, the learned Advocate appearing for the petitioners argued that as per the instructions of the Government as well as the policy guidelines issued by the Higher Education Commission (HEC), the University of Azad Jammu & Kashmir is bound to take the scheduled examination from the petitioners under the online system instead of conventional method keeping in view the safety of the students from coronavirus (coved 19). The learned Advocate further argued that the University is not only bound to carry out the mandatory instructions as well as the SOPs prescribed by the Government rather is also bound to take all the students in a like manner and refrain from treating the petitioners, herein, discriminately vis-à-vis the other students of the University who are being

examined under the online system. The learned Advocate further argued that under the command of the Constitution, right of equality before law is the guaranteed fundamental right of every State subject and discrimination in this regard is prohibited. The learned Advocate further argued that the learned High Court has not decided the case in view of the policy guidelines of the Higher Education Commission (HEC), instructions of the Government and the record of the case, rather has based its judgment on its judicial notice that the Government has relaxed the opening of the Colleges etc. The learned Advocate further argued that such type of the judgment is not permissible under law and cannot be termed as judicial order, hence, dismissal of the writ petition in limine without admitting the same for regular hearing and receiving the written arguments from the other side is not justified at all and is illegal.

4. Raja Amjid Ali Khan, the learned Advocate appearing for the University argued that neither any inequality nor indiscrimination has been committed to the petitioners, herein. He submitted that the examination is being conducted according to the SOPs prescribed by the Government and the fresh policy issued by the Higher Education Commission (HEC). He added that only the petitioners, herein, have challenged the manner of the examination with *mala fide* intention despite accepting the conditions of their admission. The learned Advocate further submitted that more than 2500 students studying in different law colleges of Azad Jammu & Kashmir are going to participate in the scheduled examination commencing from tomorrow onwards and neither any college nor the student has objected the same by filing any sort of application before the competent authority. The learned Advocate further submitted that selecting the mode of examination is the policy

decision of the University authorities which cannot be interfered with while exercising writ jurisdiction, hence, the impugned judgment/order is perfectly justified.

5. Barrister Hamayun Nawaz Khan, the learned Advocate appearing for the intervener-colleges of different districts of Azad Jammu & Kashmir argued that none of the colleges has any objection in the manner of conducting the examination by the university and round about 2400 students are appearing in the examination already scheduled. The learned Advocate further argued that examination is going to be held in same like manner in different institutions of Pakistan from the next month, hence, the stance of the petitioners, herein, cannot be given weight.

5. I have heard the learned counsel for the parties and have gone through the record of the case. admittedly, the petitioners, herein, were admitted in 3

years' program of L.L.B (external system) in the Kashmir Law College. They have only objected the mode of examination on the basis of policy issued by the Higher Education Commission (HEC). It is in the notice of the Court that the said policy was issued by the Higher Education Commission (HEC) much earlier when coronavirus (covid 19) was at its peak but now by the mercy of Almighty Allah the situation is quite better and the University has decided to take the examination from the students through conventional method while following the SOPs prescribed by the Government. The sole ground on which the impugned judgment of the learned High Court has been attacked by the learned counsel for the petitioners, is that, the petitioners, herein, have been discriminated. I am of the view that the petitioners, herein, are not similarly placed to the students of University as the petitioners, herein, have got admission in 3 years' program under the external

system and their examination is decided to be taken on annual basis, whereas, the students of University are studying under the semester system and their examination was conducted under the online system partly. The question of discrimination can be considered where the person or persons claiming discrimination are placed in similar situation. Moreover, selection of the mode of taking/conducting the examination is the policy decision of the university authorities, which cannot be interfered with ordinarily. The interference in the policy decision of any authority is only justified when it is against the relevant statute or is discriminatory. No such eventuality is available in the case in hand. In the case reported as *Film Festivals v. Gaurav Ashwin Jain* [AIR 2007 SC 1640], it was observed as under:-

“....Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts

advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of the judicial review...”

Similarly, in another case reported as *All India Council for Technical Education v. Surinder Kumar Dhawan* [AIR 2009 SC 2322], it was observed as under:-

“.....If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with the education, the courts will step in.”

In the case reported as *messers Al-Rehman Travels and Tours (Pvt.) Ltd. and others vs. Ministry of Religious Affairs, Hajj, Zakat and Ushr through Secretary and others* [2011 SCMR 1621], the learned

Apex Court of Pakistan at page 1642 of the report has observed as under:-

“50. As regards the contention of the learned counsel that the High Court cannot interfere with the policy matters in its jurisdiction, we have some reservations, as if the policy is in conflict with any provision of law or is violative of the fundamental rights of a citizen, the same can be called in question before the High Court in its writ jurisdiction.”

As stated above, making of the policy regarding mode of conducting the examination is the sole prerogative of the university authorities, therefore, the court cannot direct them to take examination under a particular manner. No violation of law or rules has been pointed out which is a condition prerequisite for interference of the Court in such like matters. No any legal question of public importance is involved in the case, therefore, leave cannot be granted as the same will hamper the functioning of the university and examination process.

In view of the above, finding no force in this petition, the same is, hereby, dismissed. No order as to costs.

Muzaffarabad,  
01.09.2020

**JUDGE**