

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Review Jurisdiction]

**PRESENT:**

Raja Saeed Akram Khan, C.J.

Raza Ali Khan, J.

Civil Review No.02 of 2021

(Filed on \_\_\_\_\_)

1. Kamran Ali, Superintendent of Police, Deputy Director FIA, Lahore.
2. Mir Muhammad Abid, Superintendent of Police, Director Investigation Ehtesab Bureau, Muzaffarabad.
3. Syed Riaz Haider Bukhari, Superintendent of Police, Assistant Inspector General of Police Security, Muzaffarabad.
4. Muhammad Amin, Superintendent of Police, Central Police,

.... PETITIONERS

VERSUS

1. Abdul Qudoos, Superintendent of Police, Assistant Inspector General Police Crimes Branch, Muzaffarabad.
2. Javid Yousaf, Superintendent of Police, Rangers Police, Muzaffarabad.
3. Fiaz Ahmed, Superintendent of Police, District Rawalakot, Azad Kashmir.
4. Ch. Zulqarnain, Senior Superintendent of Police, District Rawalakot.
5. Arfan Saleem, Senior Superintendent of Police, District Mirpur.
6. Muhammad Akmal, Superintendent of Police, District Kotli.
7. Azad Government of the State of Jammu and Kashmir through its Secretary Services and General Administration Department, having his office at New Secretariat, Muzaffarabad.

8. Services and General Administration Department through Secretary Services and General Administration Department, having his office at New Secretariat, Muzaffarabad.
9. Muhammad Adrees Abbasi, Secretary Kashmir Liberation Cell (Hearing Officer about Seniority), having his office at New Secretariat, Muzaffarabad.
10. Home Secretary, AJ&K, Muzaffarabad.
11. Inspector General of Police, AJ&K, Muzaffarabad.

.... RESPONDENTS

[In the matter of review of judgment of this Court dated 24.12.2020 in Civil Appeals No.52, 53, 54 and 122 of 2020]

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FOR THE PETITIONERS: Syed Nazir Hussain  
Shah Kazmi, Advocate.

FOR THE RESPONDENTS: Raja M. Waseem  
Younas, Addl. Advocate  
General, Asghar Ali  
Mallik, Sardar M. R.  
Khan and Raja Gul  
Majeed Khan, Advocates.

Date of hearing: 12.10.2021

### **JUDGMENT**

**Raza Ali Khan, J.**– The captioned petition has been filed for review of judgment of this Court dated 24.12.2020, whereby the appeal filed by the petitioners, herein, has been dismissed, whereas, the appeals filed by the private respondents have been accepted.

2. The brief facts of the case are that the petitioners, herein, filed an appeal before the Service Tribunal of Azad Jammu and Kashmir claiming therein, that they were appointed as the Assistant Superintendent of Police, B-17, on the recommendations of the Public Service Commission vide notification dated 10.09.2005, whereas, respondents No.1 to 4, were promoted as DSPs, PDSPs, B-17, vide notification dated 11.03.2008 and respondent No.5 was promoted as DSP, B-17, vide notification dated 29.10.2013. In this state of affairs, the petitioners were senior to the respondents in lower grade but through the notification dated 08.09.2017, the private respondents were illegally placed ahead to them in the seniority list of Superintendent of Police, BS-18. Another appeal was filed by one Mr. Javaid Yousaf, against the same notification. The learned Service Tribunal through consolidated judgment dated 24.06.2019, accepted the appeal filed by the petitioners, however, dismissed the appeal filed by Mr. Javaid Yousaf. Dissatisfied, the private respondents filed three

separate appeals before this Court, whereas, an appeal was also filed by petitioners No.2 to 4, against the judgment of the Service Tribunal, wherein, respondent No.1 was declared senior to them. Through the judgment under review, this Court accepted the appeals filed by the private respondents and dismissed that of petitioners No.2 to 4, hence, this review petition.

3. For admission of the review petition, the learned counsel for the petitioners, Syed Nazir Hussain Shah Kazmi, Advocate, raised the only point that the proviso to Rule 8(1)(b) of the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977 provides that if the date of continuous appointment in the case of two or more persons appointed to the grade is the same, the older if not junior to the younger in the next below grade, shall rank senior to the younger person. He laid stress on the point that in the aforesaid statutory provision the word “grade” has been used and not the “cadre”, hence, the findings of this Court in this regard are against the statutory provisions of law. On

this sole ground, the impugned judgment is liable to be reviewed.

4. On the other hand, the learned counsel for the respondents collectively submitted that the scope of review is very limited. No party can claim review on the ground that the impugned decision is not according to his wishes. The sole point raised by the learned counsel for the petitioners has already been dealt with in an authoritative manner. The petitioners have failed to point out any error or mistake apparent on the face of the record, which is pre-requisite for filing the review petition, hence, this review petition is liable to be dismissed.

5. We have heard the learned counsel for the parties and gone through the record made available. The Supreme Court of AJ&K has been conferred jurisdiction to review any judgement or order as passed by it under Article 42-D of the AJ&K Interim Constitution, 1974. It would be advantageous for us to reproduce here the said article, which is as under:

“42-D. The Supreme Court shall have powers, subject to the provisions of an Act of the Assembly and of any rules made by

the Supreme Court, to review any judgment pronounced or any order made by it.”

A cursory perusal of the above provision of the AJ&K Constitution, 1974, reflects that the Supreme Court has got powers to review any judgment or order passed or made by it, subject to the provision of an Act of Assembly and of any rules made by the Supreme Court. Article 42-A (4) of the AJK Interim Constitution, 1974, postulates that the Supreme Court may make rules for regulating the practice and procedure of the Court after making consultation with the Government. Article 42-A, which is as under:

“(4) Subject to the Constitution and Law, the Supreme Court may, in consultation with the Government, make rules regulating the practice and procedure of the Court.”

The Supreme Court of AJK, while exercising the powers so conferred to it under Article 42-A (4) of the Constitution has framed the rules for regulating its practice and procedure, namely, AJ&K Supreme Court Rules, 1978. Resorting back to Article 42-D of the Constitution whereby the Supreme Court has been given powers to review its any judgment or

order, subject to the provisions of an Act of the Assembly and the Rules made by the Supreme Court, the AJ&K Legislative Assembly has enacted an Act, namely AJK Supreme Court (power of Review) Act, 1980, the relevant provision is reproduced as under:

“Section 2. Supreme Court to have power to review Judgements and orders: The Supreme Court of Azad Jammu and Kashmir shall have power, subject to the provisions of any law and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it.”

Moreover, besides supra section 2 of the AJK Supreme Court (Powers of Review) Act, 1980, the powers of the Supreme Court to regulate and exercise the practice and procedure in context of its review jurisdiction, Order XLVI, has been framed in the Supreme Court Rules, 1978. For brevity, only rule 1 of Order XLVI, which is relevant in the instant matter is reproduced herein:

“1. Subject to the law and the practice of the Court, the Court may review its judgment or order in a civil proceeding on grounds similar to those mentioned in Order XLVII, rule 1 of the Code, and in a criminal proceeding on the ground of an error apparent on the face of the record.”

The aforementioned rule postulates that this Court may review its judgment or order in a civil review petition on grounds akin to the grounds as mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908, and in a criminal review petition on the ground of an error apparent on the face of the record. The relevant provisions of Code of Civil Procedure, 1908, are as follows:-

“1. Application for review of judgment.- (1)  
Any person considering himself aggrieved,—

(a) .....

(b) .....

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) .....

6. It appears that the learned counsel for the petitioner wants decision of the case according to his



wishes, which is not permissible under law. It has been held by this Court a number of times that a view formed by interpretation of law and elucidation of facts would not be deemed to be wrong simply for the reason that a view contrary to it could also be taken or it was possible to be taken. We are fortified in our view from the principle of law laid down by this Court in the case reported as *Muhammad Riaz & others vs. Pervaiz Mehendi & others* [2005 SCR 364], wherein it has been held that:-

5. It may be stated at the very outset that the review is not a regular remedy. However the Court has the power and is in fact obliged to review an order which suffers from patent error which is floating on the face of record. We admit that instead of being stuck to an error the Court should correct itself if it has gone wrong. However the errors or wrongs ought to be substantial and speaking. A view formed by the Court by interpretation of the law and elucidation of the facts according to its perceptions would not be deemed to be wrong simply for the reason that view contrary to it could also be taken or it was possible to be taken. As far as possible the Courts have to meet the ends of justice and carry out the purpose of all contemporary laws not by conceding to the contentions of the parties but according to due appreciation of law and facts. The contentions and view of the parties are to be considered compassionately but the

decision has to be in the light of law which Court perceives.”

Further reliance in this regard may be placed on the case reported as *Muhammad Saleem Khan vs. Mst. Muqarab Jan & others* [2013 SCR 777], wherein it has been held that:-

5. At the very outset we may observe that this Court has the power to review its own judgment under Order XLVI, rule 1 of the Azad Jammu and Kashmir Supreme Court Rules, 1978 in criminal cases on the ground of error apparent on the face of record and in civil matters on the grounds similar to those mentioned in Order XLVII, rule 1 of C.P.C., when there is an error apparent on the face of the record, on discovery of some new evidence or new fact. The review cannot be granted on the ground that a party interprets the law in a different manner or a party is not satisfied from the judgment of the Court or a different view is possible. The remedy by way of review petition is different from the one by way of appeal. A party cannot be allowed to re-argue the whole case in the guise of review petition. In case titled *State through Advocate General v. Hakam Deen & 15 others* [2005 SCR 374] wherein it has been observed as under:-

“..... The scope of review on a point of law unless it is prima facie in violation of any provision of Constitution or law is negligible. Consistent with this Court’s earlier view on the point of review that the points finally resolved one way or the other cannot be reopened, unless there is a mistake apparent on the face

of record. Even incorrectness of a decision on a particular issue or question falling for determination in a case can never be a ground for review nor can the review be allowed merely on the ground that a party to it conceives himself to be dissatisfied with the decision. It is the prerogative of the Court to pronounce what the law is or what does it mean, not for a party to expect in the way it wants.”

In another case titled *Malik Zafar Ali Awan and 3 others v. Muhammad Riaz Khan and 7 others* [2001 SCR 96], it was observed as under:-

“.....The petitioners want a different conclusion, one of their own choice and a new result to the effect that appeal before the Service Tribunal was time barred, which is not permissible in review jurisdiction.”

It was further held in the above referred case in paragraph 7 as under:-

“..... It may be observed that the Court may review its judgment on the ground of an error apparent on the face of record or in civil proceeding on any ground similar to those mentioned in Order XLVI, rule 1, of the Civil Procedure Code. This Court in a number of cases has held that the review is not permissible on the ground that a party is not satisfied from the judgment or wants a different conclusion than the one reached by the Court, is not permissible, in review jurisdiction.”

Similarly in the case reported as *Syeda Tasneem Kazmi v. Education Department and 8 others* [2011 SCR 155}, it was held as under:-

“5. The petitioner wants the decision from this Court of her own choice which is not permissible under law.

6. It may be observed that the Court is competent under Order XLVI of the Supreme Court Rules to review its judgment on the grounds similar to rule 1 of Order XLVII of the C.P.C. The Court can review its judgment if there is an error apparent on the face of record or some new evidence is brought on record. The petitioner failed to pointed out any error apparent on the face of record. She wants only fresh judgment by this Court which is not permissible.”

In view of the principle of law laid down by this Court in the aforesaid referred judgments, the review is not permissible on the ground that a party interprets the law in a different manner or a party is not satisfied from the judgment of the Court or a different view is possible, hence, we cannot allow the learned counsel for the petitioners to argue the case in this manner.

7. The sole argument advanced by the learned counsel for the petitioners is that the proviso to Rule

8(1)(b) of the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1997 provides that if the date of continuous appointment in the case of two or more persons appointed to the grade is the same, the older if not junior to the younger in the next below grade, shall rank senior to the younger person. According to his estimation, the word “grade” has been used and not the “cadre”, hence, this Court erred while recording findings in this record. As stated, hereinabove, that in the review petition the petitioner is not allowed to argue the case like an appeal. This question was under consideration of this Court and has been answered in the impugned judgment in the following manner:-

“....Both the contesting parties in support of their respective claims mainly relied upon the provisions of law dealing with the issue of seniority in such like matter, i.e. Rule 8(1)(b) of the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977. The perusal of the impugned judgment shows that the learned Service Tribunal has declared the respondents senior to the appellants on the ground that the respondents were senior to the appellants in the next below rank. In our view, the criteria provided in the statutory provision that the person senior in the next below grade shall rank senior, is not

applicable in the instant case as the proposition involved in this case is quite different. The question of seniority in the next below rank could only arise if the seniority of the contestants was common or no quota was fixed for promotion as Superintendent of Police from different cadres....”

At the latter part of the judgment under review, this Court held that:-

“....So, in view of the controversy involved in the matter there is no ambiguity in our mind that the criteria provided in Rule 8 of the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service), Rules, 1977, that in case of continuous appointment or two or more persons in the same grade the older shall rank senior to the younger, shall be applied. As in the next below rank the seniority of the contestants was not common; they were serving in different cadres and they were entered in the same scale through notification dated 18.08.2015, therefore, seniority shall take effect from the said date. We, therefore, hold that the departmental authority had decided the issue of seniority in accordance with law and the learned Service Tribunal was not justified to disturb the same....”

It is obvious that in the next below rank the seniority of the contesting parties was not common, hence, the question of seniority in the next below does not arise. This Court after detailed discussion has reached to the conclusion that the criteria provided in Rule 8 that in case of continuous appointment of two or more persons in the same

grade the older shall rank senior to the younger, shall be applied. In our estimation, no error or mistake apparent on the face of the record has been pointed out by the learned counsel for the parties. In fact, the learned counsel for the petitioner wants decision of the case according to his wishes, which is not permissible in view of the case law cited hereinabove.

For the foregoing reasons, finding no force, this review petition is dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad,  
12.10.2021