

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, CJ.

Raza Ali Khan, J.

Muhammad Younas Tahir, J.

1. Civil Appeal No.19 of 2020
(PLA filed on 23.7.2019)

- 1 Raja Kamran Khan, Junior Clerk, Government Boys High School Kanili, Mirpur.
2. Muhammad Luqman, Junior Clerk, Government Girls High School Palak, Mirpur.
3. Saad Ahmed, Junior Clerk, Government Girls High School Sahaar, Mirpur.
4. Muhammad Saqib Raza, Junior Clerk, Government Boys High School Dangri Bahadur, Mirpur.
- 5 Shahzad, Junior Clerk, Government Boys High School Dangri Bala, Mirpur.
- 6 Babar Ikram, Junior Clerk, Government Girls High School Panyam, Mirpur.
- 7 Kashif Ali, Junior Clerk, Government Girls High School Chaksawari, District Mirpur.
8. Hamza Taimoor-ul-Hassan, Junior Clerk, in the office of Assistant Education Officer (Male) Chaksawari.

9. Iftikhar Akram, Junior, Clerk, Government High School Bowa Chaksawari, Mirpur.
10. Muhammad Waris S/o Muhammad Sabir, Rio Home No.1513 Sector `F', New City, Mirpur, Junior Clerk, Government Boys High School Sangoot Mirpur.
11. Raja Majid Ali, Junior Clerk, Government Boys High School Thothal, Mirpur.
12. Mazhar Hussain, Junior Clerk, Government Girls High School Thothal, Mirpur.
13. Danyal Dawood, Junior Clerk, Government Girls High School Sangoot, Mirpur.
14. Nabeel Rasheed, Junior Clerk, in the office of District Education Officer (Male) Mirpur.
15. Bilal Maqsood, Junior Clerk, Government Girls High School Khanaabad Chaksawari, Tehsil and District Mirpur.
16. Tasawar Iqbal s/o Iqbal Ahmed, Junior Clerk, BPS-11, Government Boys High School Baridala.
17. Kashif Shamoan, Junior Clerk, office of AEO Female Bhimber.
18. Tahir Mehmood, Junior Clerk, B11, Government Boys High School Pothi Chaprian, District Poonch, Azad Kashmir.
19. Sheraz Ashraf S/o Muhammad Ashraf Khan, Junior Clerk, BPS-11, Government Boys School Broh, Tehsil Samahni, District Bhimber.
20. Mehran Qamar S/o Raja Qamar Zaman, Junior Clerk, BPS-11, Government Girls School Toneen, Tehsil Samahni, District Bhimber.

21. All Zeb Sabar S/o Muhammad Sabar Khan, Junior Clerk, BPS-11, Government Boys High School Jandi Chontra.
22. Zohaib Farooq, Junior Clerk, Government Boys High School Dab.
23. Faisal Latif S/o Muhammad Latif, Junior Clerk, BPS-11, Government Boys Inter College Chowki, Tehsil Smahni, District Bhimber.
24. Naveed Aslam S/o Muhammad Aslam, Junior Clerk, BPS-11, Government Boys High School Pelan, Tehsil Smahni, District Bhimber.
25. Muhammad Adeel S/o Muhammad Mushtaq, Junior Clerk, BPS-11, Government Girls High School Jandi Chontra, Tehsil Smahni, District Bhimber.
26. Muhammad Junaid Jabbar S/o Abdul Jabbar Khan, Junior Clerk, BPS-11, Government Girls High School Nahala, Tehsil Samahni, District Bhimber.
27. Muhammad Asif S/c, Muhammad Younis, Junior Clerk, BPS-11, Government Boys High School Nali, Tehsil Samahni, District Bhimber.
28. Muhammad Irfan Shahid S/o Allah Ditta, Junior Clerk, BPS-11, Government Girls High School Kadyala, Tehsil Samahni, District Bhimber.
29. Umair Munir S/o Muhammad Munir, Junior Clerk, BPS-11, Government Girls High School Behmla Ganora, Tehsil Samahni, District Bhimber.

..... APPELLANTS

versus

1. Azad Government of the State of Jammu & Kashmir through Secretary Elementary and Secondary Education (Schools), Civil Secretariat, Muzaffarabad.
2. Education Department, Azad Government of the State of Jammu & Kashmir through Secretary Elementary and Secondary Education, Civil Secretariat, Muzaffarabad.
3. Secretary, Elementary and Secondary Education, Azad Government of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.
4. Director Public Instructions, Elementary and Secondary Education Schools, (Male), New District Complex, Muzaffarabad.
5. Director Public Instructions, Elementary and Secondary Education Schools (Female) New District Complex, Muzaffarabad.
6. Divisional Director, Elementary and Secondary Education Schools, (Male), Muzaffarabad Division, New District Complex, Muzaffarabad.
7. Divisional Director, Elementary and Secondary Education Schools, (Female), Muzaffarabad Division, New District Complex, Muzaffarabad.
8. Divisional Director, Poonch Division, Poonch, Rawalakot.
9. Divisional Director Elementary and Secondary Education (Male), Mirpur Division, Mirpur.
10. Divisional Director Elementary and Secondary Education (Female), Mirpur Division, Mirpur.

11. District Education Officer, Elementary and Secondary Education (Male) District Muzaffarabad.
12. District Education Officer, Elementary and Secondary Education (Female) District Muzaffarabad.
13. District Education Officer (Male) Bagh.
14. District Education Officer (Female) Bagh.
15. District Education Officer, (Male) District Poonch, Azad Kashmir.
16. District Education Officer, (Female) District Poonch, Azad Kashmir.
17. District Education Officer, Elementary and Secondary Education (Male) Mirpur.
18. District Education Officer, Elementary and Secondary Education (Female) Mirpur.
19. District Education Officer, Elementary and Secondary Education (Male) Bhimber.
20. Assistant Education Officer (Male), Halqa Chaksawari, Mirpur.
21. Dr. Maqbool Hussain Tahir, Chairman Inquiry Committee/Director Research & Development of Syllabus, Muzaffarabad.
22. Sardar Abdul Shakoor Siddiqui, Member Inquiry Committee/Director Elementary & Secondary Education Poonch Division.
23. Javaid Iqbal Khawaja, Member/Secretary Inquiry Committee, Deputy Secretary, Elementary & Secondary Education, Muzaffarabad.

24. Headmaster, Government Boys High School Panjkot, Union Council Panjkot, Tehsil Naseerabad, District Muzaffarabad.
25. Headmaster, Government Boys High School Seri Dara, Tehsil and District Muzaffarabad.
26. Headmaster, Government Boys High School Kanoor, Tehsil and District Muzaffarabad.
27. Headmaster, Government Boys High School Daban, Tehsil and District Muzaffarabad.
28. Headmaster, Government Boys High School Tandali, Tehsil and District Muzaffarabad.
29. Headmaster, Government Boys High School Khun Bandway, District Muzaffarabad, Azad Kashmir.
30. Headmaster, Government Boys High School Awaira, Tehsil and District Bagh.
31. Headmistress, Government Girls High School Rerha, Tehsil and District Bagh.
32. Headmaster, Government Boys Middle School Dhar Samni, District Bagh.
33. Headmaster, Government Boys High School Hatala Topi, District Bagh.
34. Headmaster, Government Girls High School Keri Charon, District Poonch, Azad Kashmir.
35. Headmaster, Government Boys High School Pothi Chaprian, District Poonch, Azad Kashmir. ,t
36. Headmaster, Government High School Kethyara, District Poonch, Azad Kashmir.
37. Headmistress, Government Girls High School Sangoot, Mirpur.

38. Headmistress, Government Girls High School Thothal, Mirpur.
39. Headmaster, Government Boys High School Thothal, Mirpur.
40. Headmaster, Government Boys High School Sangoot, Mirpur.
41. Headmistress, Government Girls High School Bowa Chaksawari, Mirpur.
42. Headmaster, Government Boys High School Dhangri Bala, Mirpur.
43. Headmaster, Government Boys High School Dhangri Bahadur, Mirpur
44. Headmistress, Government Girls High School Palak, Mirpur.
45. Headmistress, Government Girls High School Sahaar, Mirpur.
46. Headmistress, Government Girls High School Chaksawari Mirpur.
47. Headmistress, Government Girls High School Panyam, Mirpur.
48. Headmaster, Government Boys High School Kanali, Mirpur.
49. District Accounts Officer, District Bagh.
50. District Accounts Officer, Mirpur.
51. Headmistress, Government Girls High School Khanaabad Chaksawari, District Mirpur.
52. District Accounts Officer, District Bhimber.
53. Muhammad Mumtaz S/o Muhammad Hussain, R/o Cheerban, Constituency No.2, Muzaffarabad.

54. Ch. Fayyaz Ahmed S/o Muhammad Lai Din, R/o Panjkot, Constituency No.2, Muzaffarabad.
55. Abdul Kareem S/o Alaf Din, R/o Kalar, Constituency No.2, Muzaffarabad.
56. Waseem Jameel S/o Muhammad Jameel, R/o Tandali, Muzaffarabad.
57. Rifaqat Fareed S/o Muhammad Fareed, R/o Seri Dara, Constituency No.2, Muzaffarabad.

..... RESPONDENTS

58. Minister for Elementary & Secondary Education, Azad Government of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.
59. Forest Minister, Wildlife, Fisheries, and Bagh City Development Project, Azad Government of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.
60. Accountant General of Azad Jammu Kashmir, Sathra Hills, Muzaffarabad.
61. Selection Committee, through Chairman Director Public Instructions, Elementary and Secondary Education Schools (Male), New District Complex, Muzaffarabad.
62. Additional Director Public Instructions, Elementary and Secondary Education/Member Selection Committee for Junior Clerks, Constituency No.5, District Jhelum Valley.
63. Representative of the Secretariat/Member Selection Committee, Constituency No.5, District Jhelum Valley.
64. Inquiry Committee, through Chairman Director Research, Curriculum and Development Department, Muzaffarabad.

65. Sardar Muhammad Irshad Khan, Member Selection Committee, Additional Director, Elementary & Secondary Education (Male), Muzaffarabad.
66. Muhammad Iqbal Butt, Member Selection Committee, Representative of the Secretariat, New Secretariat, Muzaffarabad.
67. District Education Officer (Male), District Neelum.
68. District Education Officer, Elementary & Secondary Education (Male) District Jhelum Valley.
69. District Accounts Officer, District Neelum.
70. Principal, Government Boys Higher Secondary School Dawarian, District Neelum.
71. Headmaster, Government Boys High School Andra Seri, District Jhelum Valley.
72. Headmaster, Government Boys High School Bani Langerial, District Jhelum Valley.
73. Khuram Jameel S/o Tallat Jameel, R/o Andra Seri, presently under posting as Junior Clerk in Boys High School Andra Seri, District Jhelum Valley.
74. Aqib Latif S/o Abdul Latif, R/o Mahotar, presently under posting as Junior Clerk, Boys Middle School Bani Langrial, District Jhelum Valley.
75. Raja Junaid Mansoor S/o Raja Mansoor Ahmed, r/o Nali, presently posting as Junior Clerk in the office of District Education Officer Jhelum Valley, District Jhelum Valley.
76. Muhammad Aqeel Khan, Junior Clerk B-1, Government Girls High School Keri Charon, District Poonch, Azad Kashmir.

77. Raja Imran Shakoor, Junior Clerk, Government Boys High School Awaira, Tehsil and District Bagh.
78. Muhammad Shafique Khan, Junior Clerk B-11, Government Girls High School Rerha, Bagh, Azad Kashmir.
79. Muhammad Fazal S/o Muhammad Yaqoob, Naib Qasid B-1, Government Boys Middle School Dhar Samni, Tehsil and District Bagh, Azad Kashmir.
80. Rizwan Ahmed Shabbir, Chowkidar B-1, Government Boys High School Hatala Topi, District Bagh, Azad Kashmir.
81. Muhammad Shahzad Khan S/o Kareem Dad Khan, Chowkidar B-1, Boys High School Awaira, District Bagh, Azad Kashmir.
82. Anees Muzaffar Khan S/o Raja Muhammad Muzaffar Khan, Junior Clerk B-11, Government Boys High School Khun Bundway, District Muzaffarabad, Azad Kashmir.
83. Shahid Irshad, Junior Clerk B-11, Government Boys High School Kathyara, Poonch, District Poonch, Azad Kashmir.
84. Rizwan Ali Tamoori, Junior Clerk B-11, Government Boys High School Panjkot, Muzaffarabad, Azad Kashmir.
85. Syed Bilal Hussain Naqvi, Junior Clerk B-11, Government Boys High School Seri Dara, Tehsil and District Muzaffarabad, Azad Kashmir.
86. Naeem-ul-Din, Junior Clerk B-11, Government Girls High School Tandali, Tehsil and District Muzaffarabad, Azad Kashmir, attached with the office of District Education Officer (Female) Muzaffarabad.

87. Syed Abid Hussain Kazmi, Junior Clerk B-11, Government Boys High School Kanoor, Tehsil and District Muzaffarabad, Azad Kashmir.
88. Chaudhary Kamran Danish, Junior Clerk B-11, Government Boys High School Daban, Tehsil and District Muzaffarabad, Azad Kashmir.
89. Rab Nawaz Malik SA) Muhammad Khurshid Malik Rio Changan, District Neelum, Junior Clerk, Government Boys Higher Secondary School Dawarian, District Neelum, Azad Kashmir.
90. Ghulam Mustafa Tahir, Naib Qasid, Government Middle School Banni Hafiz, District Jhelum Valley.

..... PROFORMA RESPONDENTS

[On appeal from the judgment of the Service Tribunal, dated 29.6.2019, delivered in Service Appeals No.35, 57, 828, 829, 831, 841, 856, 899 and 907 of 2018; and Civil Appeals No. 39, 40, 41, 101 and 117 of 2019]

FOR THE APPELLANT: Mr. Abdul Rasheed Abbasi, advocate.

FOR THE RESPONDENTS: Mr. Mansoor Pervaiz Khan, advocate.

FOR PROFORMA RESPONDENTS: Kh. Muhammad Maqbool War, Advocate-General.

2. Civil Appeal No.20 of 2020
(PLA filed on 24.7.2019)

1. Rizwan All Tamoori, Junior Clerk B-11, Government Boys High School Panjkot, Muzaffarabad, Azad Kashmir.
2. Syed Bilal Hussain Naqvi, Junior Clerk B-11, Government Boys High School Seri Dara, Tehsil and District Muzaffarabad, Azad Kashmir.
3. Anees Muzaffar Khan S/o Raja Muhammad Muzaffar Khan, Junior Clerk B-11, Government Boys High School Khun Bundway, District Muzaffarabad, Azad Kashmir.
4. Naeem-ul-Din, Junior Clerk B-11, Government Girls High School Tandali, Tehsil and District Muzaffarabad, Azad Kashmir, attached with the office of District Education Officer (Female) Muzaffarabad.
5. Syed Abid Hussain Kazmi, Junior Clerk B-11, Government Boys High School Kanoor, Tehsil and District Muzaffarabad, Azad Kashmir.
6. Chaudhary Kamran Danish, Junior Clerk B-11, Government Boys High School Daban, Tehsil and District Muzaffarabad, Azad Kashmir.

..... APPELLANTS

versus

1. Azad Government of the State of Jammu & Kashmir through Secretary Elementary and Secondary Education (Schools), Civil Secretariat, Muzaffarabad.

2. Secretary, Elementary and Secondary Education, Azad Government of the State of Jammu & Kashmir, Civil Secretariat, Muzaffarabad.
3. Director Public Instructions, Elementary and Secondary Education Schools, (Male), New District Complex, Muzaffarabad.
4. Director Public Instructions, Elementary and Secondary Education Schools (Female) New District Complex, Muzaffarabad.
5. Divisional Director, Elementary and Secondary Education Schools, (Male), Muzaffarabad Division, New District Complex, Muzaffarabad.
6. Divisional Director, Elementary and Secondary Education Schools, (Female), Muzaffarabad Division, New District Complex, Muzaffarabad.
7. District Education Officer, Elementary and Secondary Education (Male) District Muzaffarabad.
8. District Education Officer, Elementary and Secondary Education (Female) District Muzaffarabad.
9. Headmaster, Government Boys High School Panjkot, Union Council Panjkot, Tehsil Naseerabad, District Muzaffarabad.
10. Headmaster, Government Boys High School Seri Dara, Tehsil and District Muzaffarabad.
11. Headmaster, Government Boys High School Kanoor, Tehsil and District Muzaffarabad.
12. Headmaster, Government Boys High School Daban, Tehsil and District Muzaffarabad.

13. Headmaster, Government Boys High School Tandali, Tehsil and District Muzaffarabad.
14. Muhammad Mumtaz S/o Muhammad Hussain, R/o Cheerban, Constituency No.2, Muzaffarabad.
15. Ch. Fayyaz Ahmed S/o Muhammad Lai Din, R/o Panjkot, Constituency No.2, Muzaffarabad.
16. Abdul Kareem S/o Alaf Din, R/o Kalar, Constituency No.2, Muzaffarabad.
17. Waseem Jameel S/o Muhammad Jameel, R/o Tandali, Muzaffarabad.
18. Rifaqat Fareed S/o Muhammad Fareed, R/o Seri Dara, Constituency No.2, Muzaffarabad.
19. headmaster Government Boys High School Khun Bandway, Tehsil and District Muzaffarabad.
20. Accountant General of Azad Jammu and Kashmir, having his office at Sathera Hills, Muzaffarabad.

..... RESPONDENTS

21. Selection Committee through its Chairman, Director Public Instruction (DPI) Elementary and Secondary Education, Schools, Male, Old Secretariat, Muzaffarabad.

..... PROFORMA RESPONDENT

[On appeal from the judgment of the Service Tribunal, dated 29.6.2019, delivered in Service Appeals No.55, 57, 828, 829, 831, 841, 856, 899 and 907 of 2018; and Civil Appeals No. 39, 40, 41, 101 and 117 of 2019]

FOR THE APPELLANTS: Mr. Muhammad
Yaqoob Khan Mughal,
advocate.

FOR THE RESPONDENTS: Kh. Muhammad
Maqbool War,
Advocate-General.

3. Civil Appeal No.21 of 2020
(PLA filed on 28.9.2019)

Raja Imran Shakoor, Junior Clerk, Government Boys
High School Awaira, Tehsil and District Bagh.

..... APPELLANTS

versus

1. Secretary, Elementary and Secondary Education,
Azad Government of the State of Jammu &
Kashmir, Civil Secretariat, Muzaffarabad.
2. Director Public Instructions, Elementary and
Secondary Education Azad Jammu and Kashmir,
Muzaffarabad.
3. Section Committee through Chairman/Director
Public Instruction Elementary and Secondary
Education, Azad Jammu and Kashmir, having his
office at DHQ complex, Muzaffarabad.
4. Divisional Director, Poonch Division, Rawalakot.
5. District Education Officer, Male, District Bagh.

6. Headmaster Government Boys High School Awaira, Tehsil and District Bagh.
7. District Accounts Officer, District Bagh.
8. Inquiry Committee through its Chairman committee/DPI Research, Curriculum and Development Department, Muzaffarabad.

..... RESPONDENTS

[On appeal from the judgment of the Service Tribunal, dated 29.6.2019, delivered in Service Appeals No.55, 57, 828, 829, 831, 841, 856, 899 and 907 of 2018; and Civil Appeals No. 39, 40, 41, 101 and 117 of 2019]

FOR THE APPELLANTS: Nemo.

FOR THE RESPONDENTS: Kh. Muhammad
Maqbool War,
Advocate-General

4. Civil Appeal No.22 of 2020
(PLA filed on 19.8.2019)

1. Rab Nawaz Malik SA) Muhammad Khurshid Malik Rio Changan, District Neelum, Junior Clerk, Government Boys Higher Secondary School Dawarian, District Neelum, Azad Kashmir.
2. Ali Asghar, Junior Clerk, Government. Boys High School Jagran, District Neelum.

3. Muhammad Shafique Khan, Junior Clerk B-11, Government Girls High School Rerha, Bagh, Azad Kashmir.
4. Bashir Shamas, Junior Clerk, Government High School Dosut, District Neelum.

..... APPELLANTS

versus

1. Azad Government of the State of Jammu & Kashmir through Secretary Elementary and Secondary Education (Schools), Civil Secretariat, Muzaffarabad.
2. Minister for Elementary and Secondary Education, Azad Government of the State of Jammu and Kashmir, having his office at Ministerial Block, New Secretariat, Chattar, Muzaffarabad.
3. Education Department, Azad Government of the State of Jammu & Kashmir through Secretary Elementary and Secondary Education, having his office Civil Secretariat, Muzaffarabad.
4. Director Public Instructions, Elementary and Secondary Education Schools, having his office New District Complex, Muzaffarabad.
5. Divisional Director, Elementary and Secondary Education, (Male), Muzaffarabad Division, Muzaffarabad.
6. District Education Officer, (Male) District Neelum.
7. Selection Committee through its Chairman, Director Public Instructions, having his office at New District Complex, Muzaffarabad.

8. Inquiry Committee through its Chairman, Director Research and Curriculum Department, Muzaffarabad.
9. District Accounts Officer Neelum.
10. Principal Government Boys Higher Secondary School Dowarian, District Neelum.
11. Principal Government Boys Higher Secondary School Jagran, District Neelum.
12. Principal Government Boys Higher Secondary School Katha Chogali, District Neelum.
13. Principal Government Boys Higher Secondary School Dosut, District Neelum.

..... RESPONDENTS

[On appeal from the judgment of the Service Tribunal, dated 29.6.2019, delivered in Service Appeals No.35, 57, 828, 829, 831, 841, 856, 899 and 907 of 2018; and Civil Appeals No. 39, 40, 41, 101 and 117 of 2019]

FOR THE APPELLANTS:

Mr. Jehandad Khan
Mughal, advocate.

FOR THE RESPONDENTS:

Kh. Muhammad
Maqbool War,
Advocate-General
and Mr. Mansoor
Pervaiz Khan,
advocate.

5. Civil Appeal No.70 of 2020
(PLA filed on 8.8.2019)

Muhammad Shafique Khan, Junior Clerk B-11,
Government Girls High School Rerha, Bagh, Azad
Kashmir.

..... APPELLANT

versus

1. Secretary Elementary and Secondary Education,
Azad Government of the State of Jammu and
Kashmir, Muzaffarabad.
2. Director Public Instructions, Elementary and
Secondary Education, Muzaffarabad.
3. Divisional Director, Poonch Division, Poonch
Rawalakot.
4. District Education Officer, (Female) Bagh.
5. District Education Officer (Male), Bagh.
6. Headmistress Government Girls High School
Rehara, Tehsil and District Bagh.
7. District Accountants Officer, District Bagh.
8. Inquiry Committee (Illegal) through its Chairman,
Committee, District Curriculum, Syllabus,
Research and Development Department,
Muzaffarabad.

..... RESPONDENTS

[On appeal from the judgment of the Service Tribunal,

dated 29.6.2019, delivered in Service Appeals No.35, 57, 828, 829, 831, 841, 856, 899 and 907 of 2018; and Civil Appeals No. 39, 40, 41, 101 and 117 of 2019]

FOR THE APPELLANT: Mr. Muhammad Sajid
Abbasi, advocate.

FOR THE RESPONDENTS: Kh. Muhammad
Maqbool War,
Advocate-General

6. Civil Appeal No.71 of 2020
(PLA filed on 28.8.2019)

Rizwan Ahmed Shabbir, Chokidar (B-01), Government
Boys High School Hattala Topi District Bagh.

..... APPELLANT

versus

1. Secretary Elementary and Secondary Education,
Azad Government of the State of Jammu and
Kashmir, Muzaffarabad.
2. Director Public Instructions, Elementary and
Secondary Education, Muzaffarabad.
3. Selection Committee through its Chairman, DPI
Elementary and Secondary Education,
Muzaffarabad.
4. Divisional Director, Poonch Division, Poonch
Rawalakot.

5. District Education Officer, (Male) Bagh.
6. Headmaster Government Girls High School Hattala Topi, District Bagh.
7. District Accountants Officer, District Bagh.
8. Inquiry Committee (Illegal) through its Chairman, Committee, District Curriculum, Syllabus, Research and Development Department, Muzaffarabad.

..... RESPONDENTS

[On appeal from the judgment of the Service Tribunal, dated 29.6.2019, delivered in Service Appeals No.35, 57, 828, 829, 831, 841, 856, 899 and 907 of 2018; and Civil Appeals No. 39, 40, 41, 101 and 117 of 2019]

FOR THE APPELLANT: Raja Muhammad
Abbas Khan,
advocate.

FOR THE RESPONDENTS: Kh. Muhammad
Maqbool War,
Advocate-General

7. Civil Appeal No.72 of 2020
(PLA filed on 8.8.2019)

1. Muhammad Shahzad Khan s/o Kareem Dad Khan, Chowkidar (B-01), Government Boys High School Awaira, District Bagh.

2. Muhammad Fazal s/o Muhammad Yaqoob, Naib Qasid (B-01), Government Boys Middle School Dhar Samni, Tehsil and District Bagh.

..... APPELLANTS

versus

1. Secretary Elementary and Secondary Education, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Director Public Instructions, Elementary and Secondary Education, Muzaffarabad.
3. Selection Committee through its Chairman, DPI Elementary and Secondary Education, Muzaffarabad.
4. Divisional Director, Poonch Division, Poonch Rawalakot.
5. District Education Officer, (Male) Bagh.
6. Headmaster Government Girls High School Dhar Samni, District Bagh.
7. District Accountants Officer, District Bagh.
8. Inquiry Committee (Illegal) through its Chairman, Committee, District Curriculum, Syllabus, Research and Development Department, Muzaffarabad.
9. Forest Minister, Wildlife, Fisheries and Bagh City Development Project, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.

..... RESPONDENTS

[On appeal from the judgment of the Service Tribunal, dated 29.6.2019, delivered in Service Appeals No.35, 57, 828, 829, 831, 841, 856, 899 and 907 of 2018; and Civil Appeals No. 39, 40, 41, 101 and 117 of 2019]

FOR THE APPELLANTS: (Nemo)

FOR THE RESPONDENTS: Kh. Muhammad Maqbool
War, Advocate-General

8. Civil Appeal No.157 of 2021
(PLA filed on 24.7.2019)

1. Tahir Mehmood, Junior Clerk (B-11), in Government Boys High School Poti Chahprian, District Poonch.
2. Muhammad Aqeel Khan, Junior Clerk (B-11), Government Girls High School Keri Chroon, District Poonch.
3. Shahid Irshad, Junior Clerk (B-11), Government Boys High School Khatyara Poonch.

..... APPELLANTS

versus

1. Azad Government of the State of Jammu and Kashmir of the State of Jammu and Kashmir through its Secretary Education Schools, having his office at New Secretariat, Muzaffarabad.
2. Secretary Education Schools, Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.

3. Director Public Instructions, (Male), having his office at Old Secretariat, Muzaffarabad.
4. Director Public Instructions Schools (Female) of Azad Jammu and Kashmir, having her office at Old Secretariat, Muzaffarabad.
5. Divisional Director Schools (Male) Muzaffarabad Division, Muzaffarabad, having his office at Old Secretariat, Muzaffarabad.
6. Divisional Director Schools (Female) Muzaffarabad Division, Muzaffarabad, having her office at Old Secretariat, Muzaffarabad.
7. District Education Officer (Male) District Poonch.
8. District Education Officer (Female) District Poonch.
9. Headmaster, Government Girls High School Keri, District Poonch.
10. Headmaster Government Boys High School Pothi Chaprian, District Poonch.
11. Headmaster, Government High School Kethyara, District Poonch.

..... RESPONDENTS

12. Inquiry Committee (Illegal) through its Chairman, Committee, District Curriculum, Syllabus, Research and Development Department, Muzaffarabad.

..... PROFORMA RESPONDENT

[On appeal from the judgment of the Service Tribunal,

dated 29.6.2019, delivered in Service Appeals No.35, 57, 828, 829, 831, 841, 856, 899 and 907 of 2018; and Civil Appeals No. 39, 40, 41, 101 and 117 of 2019]

FOR THE APPELLANTS: (Nemo).

FOR THE RESPONDENTS: Kh. Muhammad
Maqbool War,
Advocate-General

Date of hearing: 10.6.2022

JUDGMENT:

Muhammad Younas Tahir, J.—Through the titled appeals by way of leave of the Court, the consolidated judgment passed by the learned Service Tribunal, on 29.6.2019, has been called in question, whereby the appeals filed by the appellants, herein, have been dismissed. As the appeals have been filed against the consolidated judgment of the Service Tribunal and through the appeals, common question of law and facts has been raised, therefore, these have

been heard together and being disposed of through the proposed consolidated judgment.

2. The common facts forming background of the controversy are that through the advertisement dated 21.04.2018, the Education Department of Azad Jammu and Kashmir advertised various posts of Junior Clerks. Through another advertisement dated 04.11.2018, the posts of Naib Qasid, Chowkidar and Sweeper were also advertised. The appellants, herein, being eligible, applied for appointment against the posts of their respective constituencies. After conducting test and interview, the Selection Committee prepared the constituency-wise merit lists. Consequently, the appellants, herein, were appointed against the advertised posts through different orders. It is alleged by the appellants that in compliance of the appointment orders, they submitted their joining reports, however, after implementation of the appointment orders, the official respondents, through

impugned notifications dated 22.11.2018 and 20.12.2018, cancelled their appointments on the basis of alleged irregularities in preparation of the merit lists. Through the aforesaid notifications, the inquiry committee was also constituted to inquire into the matter. It is alleged that the impugned notifications have been issued without issuance of any show cause notice or providing an opportunity of hearing. Being dissatisfied, the appellants, herein, approached the Service Tribunal by filing separate appeals (total 14 in number). The learned Service Tribunal consolidated all the appeals and after necessary proceedings, dismissed the same through the impugned consolidated judgment delivered on 29.06.2019, with the direction to the official respondents to hold fresh test and interview through proper selection committee in the light of departmental rules, hence, these appeals by leave.

3. Mr. Abdul Rashid Abbasi, Sardar Jehandad Khan Mughal, M/s Muhammad Yaqoob Khan Mughal and Sajid Hussain Abbasi, the learned advocates, representing the appellants in different appeals, after narration of necessary facts, submitted that the learned Service Tribunal has not applied its judicial mind while handing down the impugned judgment. According to the learned counsel, the appointments of the appellants were made after following due process of law, however, on the basis of the same process of selection, the appointments made in several other constituencies have been kept intact, whereas the appointments of the appellants have illegally been disturbed while treating them discriminately. The learned counsel forcefully argued that after due process of law, once a person is inducted into service, thereafter for his removal, the mode is prescribed under law and without following the prescribed mode, termination of service is not warranted. It was next

argued by the learned counsel that the appellants cannot be penalized for the act of the authority even if any legal flaw is pointed out in the selection process on the ground that after having been appointed, a right to service has been accrued to the appellants and the same cannot be snatched on the pretext of any irregularity. They further argued that as in this case, it is contended on behalf of the respondents that the service of the appellants has been declared illegal on the basis of some Government notification, whereas, according to the enforced law, the Government has directly no authority in relation to appointments, terms and conditions of service of the appellants, hence, the Government cannot interfere or exercise powers for termination of the service of the appellants. Mr. Abdul Rasheed Abbasi, the learned advocate, emphasised that the learned Service Tribunal while handing down the impugned judgment, has upheld the impugned notifications dated

22.11.2018 and 20.12.2018, on extraneous ground that the selection committee was illegally constituted/ amended, whereas the appointments of the appellants have not been cancelled on said grounds. According to the learned counsel, the learned Service Tribunal fell in error while holding that the notification/corrigendum dated 05.4.2018, was not a valid order, as the same was issued without prior approval of the competent authority, i.e. the Government but this objection was not raised by any party before the learned Service Tribunal, therefore, the learned Tribunal was not lawfully justified to make such like observations in this regard. The learned counsel jointly requested for acceptance of appeals and setting aside the impugned judgments. In support of the arguments, Mr. Abdul Rasheed Abbasi, the learned advocate, referred to and relied upon the following case-law:

- i. *Secretary AJ&K Legislative Assembly & another vs. Mian Muhammad Shafique & 2 others* [2018 SCR 1327],

- ii. *Director Kashmir Institute & another vs. Ali Afsar Abbasi & 2 others* [2017 SCR 869],
- iii. *Tanveer Fatima vs. Divisional Director schools & others* [2016 SCR 714],
- iv. *Shahzad Gilani vs. Sheraz Ahmed & 5 others* [2013 SCR 145],
- v. *Sardar Asif Mehmood Raza vs. Abdul Khamid & 7 others* [2004 SCR 298],
- vi. *Musarrat Begum vs. Azad Govt. & 3 others* [2004 SCR 386],
- vii. *Abdul Hafeez Abbasi vs. Managing Director, Pakistan International Airlines Corporation, Karachi* [2002 SCMR 1034],
- viii. *Secretary to Government of NWFP Zakat/Social Welfare Department, Peshawar vs. Sadullah Khan* [1996 SCMR 413],
- ix. *Mushtaq Ahmed & others vs. Muhammad Saeed & others* [PLJ 2004 SC (AJ&K) 53],
- x. *Muhammad Ishaque vs. Azad Govt. & 5 others* [2005 SCR 9],
- xi. *Development Authority Muzaffarabad & another vs. Shahid Qureshi & 7 others* [2004 SCR 80],
- xii. *Amjad Hussain Khan vs. DIG Police Range & another* [2004 SCR 151],
- xiii. *Muhammad Asif Zia vs. Nazir Ahmed Qadri & others* [2003 SCR 44],

- xiv. *Chairman Development Authority Muzaffarabad & another vs. Sajjad Ahmed Sheikh and 2 others* [2003 SCR 377],
- xv. *Azad Govt. & 2 others vs. Syed Tayyab Gilani & 14 others* [2009 SCR 415],
- xvi. *Engineer Naraindas vs. Federation of Pakistan* [2002 SCMR 82],
- xvii. *Muhammad Younas vs. Azad Govt. & 3 others* [2010 SCR 271],
- xviii. *I.A. Sharwani vs. Government of Pakistan* [1991 SCMR 1041],
- xix. *Abdul Qayyum Durrani vs. Legislative Assembly & 4 others* [2007 SCR 250],
- xx. *Zaffar Ahmed Khan vs. Azad Govt. & 4 others* [2002 SCR 247],
- xxi. *Syed Saleem Hussain Kazmi vs. Azad Govt. & 4 others* [2005 SCR 259],
- xxii. *Shafique Ahmed vs. The Hon'ble Chief Justice AJ&K High Court & 4 others* [2010 SCR 522] and
- xxiii. An unreported judgment of this Court titled *Conservator of Forests & others vs. Sheraz Afzal* (Civil Appeal No.78/2018, decided on 12.6.2018).

4. Conversely, Kh. Muhammad Maqbool War, the learned Advocate-General, appearing on behalf of the official respondents and Mr. Mansoor Pervaiz Khan, the learned advocate representing the private

respondents in Civil Appeal No.19/2020, controverted the arguments raised on behalf of the appellants and submitted that in the report of inquiry conducted under the orders of the Government, it has been proved that the selection of the appellants has been made by the committee constituted against law. According to the learned counsel, the services of the appellants have rightly been declared illegal having been made by committing malpractices. They further submitted that the appellants have got no *locus standi* to file appeals, therefore, the same have rightly been dismissed by the learned Service Tribunal. Mr. Mansoor Pervaiz Khan, the learned advocate, submitted that the private respondents in Civil Appeal No.19/2020, in their comments/objections before the Service Tribunal categorically took the stance that the Secretary Elementary and Secondary is vested with no power to constitute or amend the selection committee under the Azad Jammu and Kashmir Civil Servants

(Appointment and Conditions of Service) Rules, 1977, therefore, the selection process conducted by the illegal and unauthorized selection committee was without lawful authority, therefore, the contention raised by the learned counsel for the appellants that the learned Service Tribunal has decided the appeals on extraneous ground, is factually incorrect. The learned counsel lastly prayed for dismissal of the appeals.

5. We have heard the learned counsel for the parties and gone through the impugned judgments along with the other record made available with utmost care.

6. The appellants in all the appeals, in response to the advertisements issued by the official respondents, applied for appointment against certain posts of their respective constituencies, according to their eligibility. After completion of the selection process, the appellants were appointed against the

advertised posts through different appointment orders. The official respondents, later on, issued the notifications dated 22.11.2018 and 20.12.2018, whereby, in the light of inquiry report, the appointments of the appellants were withdrawn on the ground of irregularities in determining the merit lists. The appellants challenged the termination of their services by filing different appeals before the Service Tribunal on the ground that the impugned notifications have been issued against law without providing them an opportunity of hearing. The learned Service Tribunal after necessary proceedings, dismissed the appeals through the impugned consolidated judgment delivered on 29.06.2019, on the ground that appointments of the appellants were made contrary to law, rules, the notification dated 04.4.2018 and in violation of the law laid down by the superior Courts, especially by reconstituting the selection committee without approval of the Government, as provided by

law. The appellants, herein, have called in question the impugned judgment dated 29.6.2019, mainly on the grounds that the appeals have been dismissed by the Service Tribunal while observing that the appointments of the appellants were made on the recommendation of illegally constituted selection committee, which point was not under consideration before the Service Tribunal and that the other appointments made and proceedings taken by the same selection committee are still intact and the appellants have been discriminated, who cannot be penalized for the act of the authority.

7. Undoubtedly, under Article 49 of the Azad Jammu and Kashmir Interim Constitution, 1974, the appointment of persons to, and the terms and conditions of service of the persons in the service Azad Jammu and Kashmir are regulated by law. The Interim Constitution provides safeguard against discrimination in services of Azad Jammu and Kashmir on the basis of

race, religion, caste or sex. The appointments, terms and conditions of service of the civil servants employed in connection with the affairs of the Azad Jammu and Kashmir Government are regulated by the AJ&K Civil Servants Act, 1976 and the rules made thereunder. The Government and the executive authorities are required to make appointments, promotions, transfers or issue any order in respect of the terms and conditions of service, as per the enforced act, rules, regulations and statutory instructions. Under section 4 of the AJ&K Civil Servants Act, 1976, the appointment to civil service of Azad Jammu and Kashmir or a civil post in connection with the affairs of the Government shall be made in the prescribed manner by the Government or by a person authorised by it in that behalf. Under the Azad Jammu and Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977, different modes have been prescribed for appointment against the posts in the civil service i.e.

the appointment by initial recruitment, by promotion, on acting charge basis, by transfer, on officiating basis, on deputation or on ad-hoc basis. The Rules also provide for appointment by initial recruitment on the recommendations of the selection committee. Rule 4 of the Rules, 1977, deal with the constitution of selection committees or selection boards. For better appreciation, the relevant provision is reproduced as under:

“4. Selection Committee or Selection Boards. (1) In the Civil Secretariat, each Department or office of the Government, there shall be one or more departmental selection committee.

(2) the Government shall set up Azad Jammu and Kashmir Selection Board or Boards.

(3) Each such Committee or Board shall consist of at least three members one of whom shall be appointed as Chairman;

(4) The composition of such Committee and Board and the procedure to be observed by such committees and Boards shall be determined by the Government.

(5)

(6)

(7)”

The Government of Azad Jammu and Kashmir, for the purpose of induction against the disputed posts of BPS-5 to 11, constituted a selection committee, vide notification dated 04.4.2018, consisting of the following members:

- (i) Director Public Instructions (DPI) Elementary and Secondary Education, Schools (Male/Female)/Chairman,
- (ii) Deputy Secretary Elementary and Secondary Education Schools (Male)/Member,
- (iii) DEO Male/Female of the relevant District/Member; and
- (iv) Principal/Headmaster of the concerned institution/Member.

It also reflects from the record that on the very next day, i.e. 05.4.2018, a corrigendum/ amendment was brought on the record by the Secretary Education without prior approval of the Government, as is the requirement of Rule 4(4) of the

Rules, 1977. The notification dated 05.4.2018 is reproduced in verbatim as under:

"آزاد حکومت ریاست جموں و کشمیر
سیکرٹریٹ ایلیمینٹری اینڈ سیکنڈری ایجوکیشن
تصحیح نامہ:

سیکرٹریٹ ہذا سے جاری شدہ نوٹیفکیشن
نمبر ای اینڈ ایس ای/نسوان/11-6101-2018
مورخہ 4-4-2018 کے نمبر شمار (ب) میں بذیل
تصحیح کی جاتی ہے:

ب۔ سلیکشن کمیٹی برائے سکیل 05 تا 11

- 1- ناظم اعلیٰ ایلیمینٹری اینڈ سیکنڈری ایجوکیشن (مردانہ)
(چئیرمین)
- 2- ایڈیشنل ناظم اعلیٰ ایلیمینٹری اینڈ سیکنڈری
ایجوکیشن (مردانہ/نسوان) (ممبر)
- 3- ڈپٹی سیکرٹری (مردانہ) ایلیمینٹری اینڈ سیکنڈری
ایجوکیشن (ممبر)
- 4- ڈسٹرکٹ ایجوکیشن آفیسر مردانہ (متعلقہ ضلع)
(سیکرٹری)

سیکشن آفیسر

E&S

نمبر سیکرٹریٹ ای اینڈ ایس ای/نسوان/15-
2018/6205 مورخہ 05 اپریل 2018"

The record transpires that through the subsequent notification dated 05.4.2018, remarkable changes have been made by replacing the existing members of the selection committee with new ones. Similarly, through another order dated 22.10.2018, the Headmaster, Pilot High school Muzaffarabad, has also

been entered as a member of the Committee, in place of the Deputy Secretary Education Schools (male). The above-referred changes have been affected without fulfilling the legal criteria laid down by the relevant rules. In this background, the whole structure built upon illegal and void orders of reconstitution of selection committee, has no sanctity in the eye of law. Even otherwise, the merit lists have not been prepared and signed by some members of the subsequently constituted committee, which speaks of malpractice and colourable exercise of powers and the whole process appears to be doubtful. The selection committee constituted without fulfilling the legal requirement has no lawful authority to conduct the selection process, prepare merit lists or made recommendations, which has rightly been revisited by the Government through the notifications dated 21.11.2018 and 28.11.2018, and the orders dated 20.12.2018 and 21.10.2018. By now it is almost settled

law that the things provided to be done in a prescribed manner must be done in that way and no deviation can be made from it. In this regard, the learned Service Tribunal has rightly based its findings on the judgment passed by this Court in the case titled *Qari Muhammad Sajjad and others vs. Hafiz Muhammad Khalid & others* (Civil Appeal No.26/2016, decided on 03.3.2016). The relevant findings recorded by this Court are as under:

“Thus, undisputedly the whole selection process has been conducted in the light of the policy and mode prescribed by the District Education Officer. Whether, the district Education Officer is competent to prescribe such mode or policy or not? Obviously, prescribing the mode or laying down the policy does not fall within the domain of District Education Officer. Rule 4 of the Azad Jammu and Kashmir civil Servants (Appointment and Conditions of Service) Rules, 1977 speaks that only the Government is competent to lay down the procedure to be observed by the Selection committees or Boards. Same like, as in the instant appeals the composition of the committees and participation of unauthorised person in selection process is also admitted fact which

also amounts to violation of law as only the Government is competent to constitute committees or determine the composition of such committees. It will be useful to reproduce here Rule 4 of the Azad Jammu and Kashmir civil Servants (Appointment and Conditions of Service) Rules, 1977 which reads as follows:

“4. Selection Committee or Selection Boards. (1) In the Civil Secretariat, each Department or office of the Government, there shall be one or more departmental selection committee.

(2) the Government shall set up Azad Jammu and Kashmir Selection Board or Boards.

(3) Each such Committee or Board shall consist of at least three members one of whom shall be appointed as Chairman;

(4) The composition of such Committee and Board and the procedure to be observed by such committees and Boards shall be determined by the Government.

(5)

(6)

(7)

The above reproduced statutory provision of law clearly speaks that the composition of the committees and prescribing mode and procedure to be adopted is job of the Government and not of the District Education Officer. Thus, leaving aside all other points involved in this case, in our opinion, this sole ground which goes to the root of the case is sufficient for setting at naught the challenged process of selection. This important aspect could not attract the attention of the learned High Court, however, keeping in view the matter of public importance and suffering of candidates at large due to litigation since long, settlement of the controversy conclusively by this Court is required for doing complete justice.”

Thus, it can safely be held that in absence of valid selection committee for selection to the posts in dispute, the whole selection process has been conducted in the manner contrary to law and major irregularities manifested in the selection process smack of colourable exercise of powers against the spirit of Interim Constitution Act, which commands for regulating of induction into service in the prescribed transparent and legal manner, strictly in accordance

with law by extending equal opportunities to the State subjects without any discrimination qua race, religion, caste, creed, sex or political affiliation.

8. The main arguments of Mr. Abdul Rasheed Abbasi, the learned advocate representing the appellants in Civil Appeal No.19/2020, is that the learned Service Tribunal has based its findings on the observation that the selection committee was not validly constituted, therefore, the appointments of the appellants were not valid and legal, however, according to the learned counsel, the point was not raised before the Service Tribunal and the learned Tribunal has travelled beyond the pleadings while dismissing the appeals. The above-referred contention raised by the learned counsel for the appellants is misconceived and negated from the record. A perusal of the impugned judgment passed by the learned Service Tribunal reveals that the private respondents in Service Appeal No.829/2018 have categorically taken

the stance in their written objections/comments that the selection process has been conducted by an illegally constituted committee, which is not warranted under law. The relevant findings recorded by the Service Tribunal in para 04 of the impugned judgment are reproduced as under:

“...The private respondents of the aforesaid appeal filed their written objections against the appeal and stated that the concerned selection committee for grade 5 to 11 (including the post of Junior Clerk B-11) has been constituted vide Notification dated 04.04.2018, by which Director Public Instructions (DPI) Elementary and Secondary Education Schools (Male) and (Female) (of their respective jurisdiction) has been nominated as Chairman, Deputy Secretary Elementary and Secondary Education Schools (Male) as Member, DEO (Male and Female) of their relevant Districts, Member/Secretary and Principal/Headmaster of the relevant institution, (where the post available), as Member, whereas, the merit lists prepared by the committees on the basis of which the appellants have been appointed have not been prepared by all the Members of the above referred committee and the same have been prepared and signed

by the members, who have not been appointed as Members by the Government through above refereed Notification and no other Government Notification is available which shows that the previous committee has been reconstituted or modified. Hence, whole the process of selection is against the law of the land and not sustainable on this sole ground.”

So, we are of the considered opinion that the above-reflected point was sufficiently raised by the respondents before the learned Service Tribunal, which is the core issue going to the roots of the case and the whole controversy revolves around the same. The learned Service Tribunal, after perusal of the record and hearing the learned counsel for the parties, has rightly come to the conclusion that the selection committee was not validly constituted and the appointments have not been made in a transparent manner. The argument of the learned counsel for the appellants, thus, being devoid of any legal force, is hereby repelled.

9. Another contention of Mr. Abdul Rasheed Abbasi, the learned advocate for the appellants is that the appellants have been treated discriminately on the ground that the appointments of some other persons made by the same selection committee have not been disturbed. As we have already observed that the whole selection process conducted by the illegally constituted selection committee has no legal backing, therefore, we feel no hesitation in holding that the structure built upon the proceedings of an illegally constituted committee is void *ab initio*, having no force of law, but at the same time we are of the view that the appointments of the appellants, herein, made by an invalid selection committee cannot be rectified while taking into consideration the plea of discrimination. The Court has to adjudicate upon the matters agitated before it and no order in vacuum can be passed nor two wrongs can make a right. The term 'discrimination' has been defined by the Webster's

Third New International Dictionary and seven language Dictionary as *'the act or an instance of discriminating, something that discriminates: a distinguishing mark, the quality of being discriminating, the power of finely distinguishing; and the act, practice or an instance of discriminating categorically rather than individually.'*

The term 'discrimination' has been defined by the Supreme Court of Pakistan in the case reported as *Shirin Munir & others vs. Government of Punjab through Secretary Health, Lahore and another* [PLD 1990 Supreme Court 295], as under:

"16. Clause (2) of Article 25 prohibits distinction on the basis of sex alone. However, the very next clause (3) controls the rest of Article 25 by providing that "nothing in this Article shall prevent the State from enacting any special provision for the protection or women and children". It implies, therefore, that while the difference on the basis of sex can be created and maintained, it shall be done only in those cases where it operates favourably as a, protective measure for and not against women and children. The field of prohibition,

of adopting sex, as a criterion for making a distinction, is thereby reduced to only that category wherein sex is adopted as a standard for discriminating against females generally and against males only if it is not as a measure protective of females. Discrimination against a group or an individual implies making an adverse distinction with regard to same benefit, advantage or facility. All pervasive nature of this constitutional provision is self-evident. In interpreting Constitution and also in giving effect to the various legislative measures, one distinction has to be consistently kept in view and it is that classification based on reasonable considerations is permissible and not violative of the principle. This aspect of the matter was dealt with in a case in the Indian Jurisdiction in *Kathi Raning Rawat v. State of Saurashtra* (A I R 1952 Supreme Court 123) in the judgment of the Chief Justice in the following words:

‘Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the statute will, without more incur condemnation as violating a specific constitutional prohibition unless it is saved by

one or other of the provisos to those articles. But the position under Article 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies.”

Similarly, in the case reported as *Irfan Anwar Baloch vs. Secretary, Ministry of Communications, Islamabad & 4 others* [1997 PLC (CS) 792], the term ‘discrimination’ has been defined as under:

“The term ‘discrimination’ denotes the refusal of a vested right of one particular person and grant of the same right to another one carrying junior merit.”

Although the term ‘discrimination’ is a broader term having more than one meanings, however, while confining the same to the extent of

contention raised in the case in hand, it may be observed that the appellants cannot allege discriminatory treatment on the ground that they are entitled to the relief prayed for on the ground that other applicants were appointed on the recommendations of the same selection committee, which has been declared illegal for having been constituted without approval of the Government. It is also worth mentioning to hold that the legal remedy may be invoked through the Court only in case one's some 'legal right' has been infringed or negated. It would be beneficial to determine the judicial interpretation of the term 'right'. 'Right' has been defined in the case reported as *Capt. Naqiullah vs. Chairman, State Engineering Corp.* [1989 CLC 284], in the following manner:

“Right” means a right recognized by law and capable of being enforced by the power of the State.”

Again, in the case reported as *Piran Ditta vs. Noor Muhammad* [PLD 1966 W.P. Karachi 618], the word 'right' has been defined while observing as under:

"9. A legal right is less abstract than the conception which is represented by the unqualified word 'right', because the unqualified word includes both juristic and legal conceptions. The juristic conceptions have their source in and pertain to what is idealistic or to the word order as a whole, or to the social order in principle. They come out of what Prof. Roscoe Pond has called, "Culoudcuckootown"; while legal conceptions and legal rights pertain to an actual legal order. These two kinds may sometimes fall far apart because while the former belongs to the science of law, the latter belongs to a particular system of law. "Hence jurists may hold different ideas as to them without affecting the law." The two kinds of conceptions meet when the provisions of a particular legal system need to be better understood by breaking them up, like a beam of light, into the waves of thought that had combined to produce them, by passing them, as it were, through the prism of jurisprudence. The diffraction that is achieved is both realistic and colourful..."

Further, there is distinction between the terms 'right' and 'legal right'. The term 'legal right' has been defined as *Rana Muhammad Afzal Khan vs. The State* [PLD 1992 Supreme Court 397], as under:

“..., and legal right is defined in jurisprudence as an interest recognised and protected by a rule of right. It is any interest, respect for which is a duty, and disregard of which is a wrong. Unless and until the effect of the certificate was that in consequence somebody would be legally obliged to do something or to refrain from doing something it could not be said that the certificate carried with it any legal right.”

In the case reported as *Agha Altaf Nabi vs. Government of Sindh & 2 others* [2001 PLC (CS) 566] the term has been defined in the following manner:

“As regards the pleadings/ application of the doctrine of locus poenitentiae, in our humble opinion the keywords are 'if a legal right has been created and enjoyed' both prerequisites are must for such application. What is a 'legal right'? In our humble opinion, it is a right given under a 'law' and its definition by any stretch of imagination would not

extend to any right acquired or given illegally including through coercion--mental, physical, political all included.”

So, the plea of ‘discrimination’ could only be raised in case a person or a group of persons was given some ‘legal’ right or favour and other person or group of persons was denied same ‘legal’ right or favour. But, plea of discrimination cannot be raised on the ground that other person or a group of persons has been extended some favour or benefit which could not be otherwise extended under law, so the same should be extended to person or group of persons who are asserting and claiming such favour or benefit. The law recognizes only ‘legal rights’, not the gains, favours, benefits which could not be otherwise extended due to being alien to law. We are fortified in our view from the case reported as *Irfan Anwar Baloch vs. Secretary, Ministry of Communications, Islamabad & 4 others* [1997 PLC (CS) 792], wherein, in para No. 3, it has been held under:

“Extending favour without existence of a vested right does not become a precedent for another similarly placed persons with no vested right.”

It has been further held in the same para of the report, as under:

“Vested rights can be enforced through judicial or Constitutional process, but concessions, favours and extensions of facilities do not invoke the judicial jurisdiction, particularly when there was no immediate right of the appellant...”

It has been held in the same paragraph, that;

“Thus, we do not find any element of violation of any vested right of the appellant and we further hold that the cases of favouritism cannot become precedent nor vest a particular person with any valuable right on point of discrimination.”

In para No.5 of the same report (supra), it has been enunciated, as under:

“In addition thereto, the exercise of an authority not vested in a person or any institution, cannot become a precedent for similar exercise of authority by any other institution. It is

generally stated that legal orders are considered to be precedents for similar orders but illegalities cannot serve as precedents for other illegalities.”

Similarly, in the case reported as *Dr. Hafiz Ahmed Khan & others vs. The Secretary, Establishment Division and others* [2000 PLC (C.S.) 553], it has been observed as under:

“11. The learned counsel for the appellant had also taken a stand that there had been discrimination at the time of appointment of the Associate Professors because prior thereto several lecturers were promoted as Assistant Professors and two officers were promoted as professors under the same four-tier formula and prior to the approval by the cabinet. Thus, he wanted to assert that following the same precedent the appointment of the appellants could also be notified in the last months of 1996 in anticipation of the approval of the formula by the Cabinet. So, it was argued that the appellants have been treated discriminatively in their appointment. 'Discrimination' is a term used for the distinctive treatment between the two individuals or classes entitled to equal rights. In this case there was neither any entitlement nor was there any right which has been violated or discriminated. The appellants admit

that any policy of the Government could not be acted upon unless it was approved by the cabinet. Announcement of a formula is only a proposal or a desire unless it is approved in accordance with the Rules of Business. If there was any irregularity in the promotion of certain lecturers or professors, it did not vest the appellants with, any entitlement or right and, therefore, the question of discrimination simply does not arise. One regularity does not justify its repetition for another one only on the ground of avoiding discrimination. Legal and regular vested rights when negated discriminatively can give a cause to an affected person but irregularities do not amount to discrimination.”

While dealing with a similar proposition, the apex Court of Pakistan in an identical case reported as *Shahid Pervaiz vs. Ejaz Ahmed* [2017 SCMR 206] has observed as under:

“125. The contentions of the learned Counsel Khawaja Haris, Sr. ASC, pertaining to applicability of Article 27(1), are beyond appreciation. This Article protects the citizens from discrimination based on race, religion, caste, sex, residence and place of birth in matter of appointment to service of Pakistan. However, it does not open

the doors of other forms of discrimination or nepotism under the garb of some rules that are patently unconstitutional and against the very scheme of the civil services. Were it so, a number of constitutional provisions such as Articles 4, 8, 9, 14, 18 and 25 would lose their significance and the entire edifice of social justice and equality before law would become vulnerable to various exceptions created under the perverse interpretation of Article 27(1)....”

Thus, in the light of above-referred case-law, we are of the view that the law protects the rights recognized, conferred and gained lawfully. The rights conferred in derogation of law cannot be protected by the Courts of law and judicial remedies are not meant to protect and restore the illegal gains.

From the whole discussion, we have come to the definite conclusion that the impugned judgment passed by the learned Service Tribunal does not suffer from any legal infirmity and the learned Service Tribunal, in the given circumstances, was left with no other legal option, except to dismiss the appeals filed

by the appellants. Resultantly, the findings recorded by the Service Tribunal through its consolidated judgment dated 29.6.2019 are upheld. The appeals stand dismissed with no order as to costs.

	JUDGE	CHIEF JUSTICE	JUDGE
Mirpur			
20.6.2022			