

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate/Original Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Muhammad Younas Tahir, J.

1. Civil Appeal No. 121 of 2018

(PLA filed on 02.04.2018)

1. Fareeda Rafique, IT Computer Science Teacher, Government Girls High School Kalyal Shero, District Mirpur, Azad Kashmir.
2. Javed Habib-ul-Rehman, IT Computer Science Teacher, Government Pilot High School Kotli, Azad Kashmir.
3. Syed Habib Hussain Shah, IT Computer Science Teacher, Government Boys High School Fatehpur District Kotli, Azad Kashmir.
4. Amjad Saleem, IT Computer Science Teacher, Government, High School Horna Mera, District Rawalakot, Azad Kashmir.
5. Imtiaz Ahmed, IT Computer Science Teacher, Government Girls High School Dothan, District Rawalakot, Azad Kashmir.
6. Samia Ishtiaq, IT Computer Science Teacher Government Girls High School Harigahal, District Bagh, Azad Kashmir.
7. Nazir Ahmed, IT Computer Science Teacher, Government Boys High School Palangi, District Bagh, Azad Kashmir.

8. Yamna Akbar, IT Computer Science Teacher, Government Girls High School Bagh, Azad Kashmir.
9. Muhammad Zia-ul-Haq, IT Computer Science Teacher Government High School Kalri, District Bhimber, Azad Kashmir.
10. Ejaz Iqbal, IT Computer Science Teacher, Government High School Samahni, District Bhimber, Azad Kashmir.

.....APPELLANTS

v e r s u s

1. Azad Government of the State of Jammu and Kashmir through its Chief Secretary having his office at New Secretariat Muzaffarabad.
2. Secretary Elementary and Secondary Education (School), having his office at New Secretariat, Chatter Domail, Muzaffarabad.
3. Director Public Instructions Schools, Elementary and Secondary Education (Male), having his office at DHQ, Complex Muzaffarabad.
4. Director Public Instructions Schools, Elementary and Secondary Education (Female), having his office at DHQ, Complex, Muzaffarabad.
5. District Education Officer Schools (Male), District Kotli, Azad Kashmir.
6. District Education Officer Schools (Male), District Bhimber, Azad Kashmir.

7. District Education Officer Schools (Male), District Bagh, Azad Kashmir.
8. District Education Officer Schols (Male), District Poonch, Azad Kashmir.
9. District Education Officer Schools (Female), District Mirpur, Azad Kashmir.
10. District Education Officer Schools (Female), District Poonch, Azad Kashmir.
11. District Education Officer Schools (Female), District Bagh, Azad Kashmir.
12. District Education Officer Schools (Female), District Sudhnoti, Azad Kashmir.
13. District Education Officer Schools (Female), District Muzaffarabad, Azad Kashmir.
14. District Education Officer Schools (Female), District Bhimber, Azad Kashmir.
15. Accountant General, Azad Jammu and Kashmir, having his office at AG Office Muzaffarabad.

.....RESPONDENTS

16. Muhammad Tariq Khan, Computer Instructor, Jinnah Pilot High School Muzaffarabad, Azad Kashmir.
17. Asya Khalil, Computer Instructor Girls Degree College Miani Bandi, Muzaffarabad, Azad Kashmir.
18. Azhar Rashim, IT Computer Science Teacher, Government Pilot High School Rawalakot Azad Kashmir.
19. Naheed Salma, IT Computer Science Teacher, Government Girls High School Dhardarch, District Sudhnooti, Azad Kashmir.

20. Muhammad Naeem, IT Computer Science Teacher, Government High School Syah, District Sudhnooti, Azad Kashmir.
21. Raeesa Mustafa, IT Computer Science Teacher, Government High School Miani Bandi, Tehsil and District Muzaffarabad Azad Kashmir.
22. Sania Naz, IT Computer Science Teacher, Government Girls High School Muzaffarabad, Azad Kashmir.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the Service Tribunal, dated 31.01.2018, in service appeal No. 1002 of 2015]

Appearances:

FOR THE APPELLANTS: Sardar Abdul Hameed Khan & Ch. Shoukat Aziz, Advocates. (Written arguments)

FOR RESPONDENTS NO. 1,2, 4 & 15 Raja Mazhar Waheed, Addl. Advocate-General. (Written arguments)

FOR RESPONDENTS NO. 16 & 17 Mr. Mansoor Pervaiz Khan, Advocate. (Written arguments)

2. Crim. Orig. No. 07 of 2019
(Filed on 05.04.2019)

1. Fareeda Rafique, IT Computer Science Teacher, Government Girls High School Kalyal Shero, District Mirpur, Azad Kashmir.
2. Javed Habib-ul-Rehman, IT Computer Science Teacher, Government Pilot High School Kotli, Azad

Kashmir.

3. Syed Habib Hussain Shah, IT Computer Science Teacher, Government Boys High School Fatehpur District Kotli, Azad Kashmir.
4. Amjad Saleem, IT Computer Science Teacher, Government, High School Horna Mera, District Rawalakot, Azad Kashmir.
5. Imtiaz Ahmed, IT Computer Science Teacher, Government Girls High School Dothan, District Rawalakot, Azad Kashmir.
6. Samia Ishtiaq, IT Computer Science Teacher Government Girls High School Harigahal, District Bagh, Azad Kashmir.
7. Nazir Ahmed, IT Computer Science Teacher, Government Boys High School Palangi, District Bagh, Azad Kashmir.
8. Yamna Akbar, IT Computer Science Teacher, Government Girls High School Bagh, Azad Kashmir.
9. Muhammad Zia-ul-Haq, IT Computer Science Teacher Government High School Kalri, District Bhimber, Azad Kashmir.
10. Ejaz Iqbal, IT Computer Science Teacher, Government High School Samahni, District Bhimber, Azad Kashmir.

.....PETITIONERS

v e r s u s

1. Raja Amjad Pervaiz, Secretary Elementary and Secondary Education (Schools) having his office at New Secretariat, Chatter Domail, Muzaffarabad.

2. Abdul Shakoor Siddiqui, Director Public Instructions Schools, Elementary and Secondary Education (Male), having his office at DHQ, Complex Muzaffarabad.
3. Shahid Ayyub, Secretary Public Service Commission Azad Govt. of the State of Jammu and Kashmir, having his office at New Secretariat, Chatter Domail, Muzaffarabad.
4. Mohsin Kamal Chairman Public Service Commission Azad Govt. of the State of Jammu and Kashmir, having his office at Narrul, Muzaffarabad.

.....RESPONDENTS/CONTEMNORS

[Application for initiation of contempt of Court proceedings]

Appearances:

FOR THE APPELLANTS: Ch. Shoukat Aziz, Advocate.

FOR THE RESPONDENTS: Nemo

3. Civil Appeal No. 161 of 2018
(PLA filed on 24.02.2018)

1. Syeda Nazmin Kazmi d/o Mushtaq Hussain Shah, Computer Lab Assistant (B-7), Government Girls High School Miani Bandi, Tehsil and District Muzaffarabad, Azad Kashmir.
2. Shabana Younas d/o Muhammad Younas, Computer Lab Assistant (B-7), Government Girls High School Hari Ghel, Tehsil and District Bagh, Azad Kashmir.

3. Zaheera Khanum d/o Wazir Farooq Khan
Computer Lab Assistant (B-7), Government Girls
High School Bagh, District Bagh.
4. Samina Kousur d/o Sakhi Muhammad Khan,
Computer Lab Assistant (B-7), Government Girls
High School Dhar Drach, District Suhnoti, Azad
Kashmir.
5. Sajida Khatoon d/o Abdul Qayyum, Computer Lab
Assistant (B-7), Government Girls High School
Siah, District Sudhnoti, Azad Kashmir.
6. Moeen Iqbal s/o Muhammad Yaseen Khan,
Computer Lab Assistant (B-7), Government Boys
High School Dhar Drach, District Sudhnoti, Azad
Kashmir.
7. Muhammad Ilyas Hashmi, Computer Lab Assistant
(B-7), Government Boys High School Panjeri,
District Bhimber, Azad Kashmir.
8. Shehnaz Zaffar d/o Habibullah, Computer Lab
Assistant B-7, Government Girls High School
Muzaffarabad.
9. Annam Afreen d/o Muhammad Fazal Khan,
Computer Lab Assistant (B-7), Government Girls
High School No. 1, Rawalakot District Poonch,
Azad Kashmir.

.....APPELLANTS

v e r s u s

1. Azad Government of the State of Jammu and
Kashmir through its Chief Secretary having his
office at Civil Secretariat, Chatter Domel,
Muzaffarabad.

2. Secretary Elementary and Secondary Education, Azad Government of the State of Jammu and Kashmir, Civil Secretariat, Chatter Domel, Muzaffarabad.
3. Section Officer, Elementary and Secondary Education Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
4. Director Public Instructions Elementary and Secondary Education (Female), Azad Jammu and Kashmir, District Complex, Muzaffarabad.
5. Director Public Instructions, Elementary and Secondary Education (Male), Azad Jammu and Kashmir, District Complex, Muzaffarabad.
6. Director Elementary and Secondary Education (Technical), Azad Jammu and Kashmir District Complex, Muzaffarabad.
7. District Education Officer, Elementary and Secondary Education (Female), District Muzaffarabad.
8. District Education Officer Elementary and Secondary Education (Female), District Sudhnoti.
9. District Education Officer, Elementary and Secondary Education (Male), District Sudhnoti.
10. District Education Officer Elementary and Secondary Education (male), District Bhimber.
11. Headmistress Government Girls High School Miani Bandi, District Muzaffarabad.
12. Headmistress Government Girls High School Hari Ghel, District Bagh, Azad Kashmir.
13. Headmistress, Government Girls High School Bagh, District Bagh, Azad Kashmir.
14. Headmistress, Government Girls High School Dhar Drach, District Sudhnoti.

15. Headmistress, Government Girls High School Siah, District Sudhnoti, Azad Kashmir.
16. Headmaster Government Boys High School Dhar Drach, District Sudhnoti, Azad Kashmir.
17. Headmaster Government Boys High School Panjeri, District Bhimber, Azad Kashmir.
18. Accountant General, Azad Jammu and Kashmir, Muzaffarabad.
19. District Accounts Officer, District Bagh Azad Kashmir.
20. District Accounts Officer, District Sudhnoti, Azad Kashmir.
21. District Accounts Officer, District Bhimber, Azad Kashmir.

.....RESPONDENTS

22. Muhammad Naeem s/o Muhammad Hanif Khan, Computer Lab Assistant (B-7), Government Boys High School Palangi, District Bagh, Azad Kashmir.
23. Nazneena Akhtar d/o Muhammad Azam, Computer Lab Assistant (B-7), Government Girls High School Dothan, District Poonch, Azad Kashmir.
24. Maqsood Hussain s/o Noor Hussain, Computer Lab Assistant (B-7), Government Boys High School Samahni, District Bhimber, Azad Kashmir.
25. Imran-ul-Haq s/o Abdul Hai, Computer Lab Assistant (B7), Government Boys High Schools Mangla Hemlat, District Mirpur, Azad Kashmir.
26. Shafique Ahmed s/o Muhammad Sadiq, Computer Lab Assistant (B-7), Government Pilot High School Mirpur, District Mirpur, Azad Kashmir.

27. Raja Muhammad Jabeen s/o Muhammad Sadiq, Computer Lab Assistant (B-7), Government Pilot High School Kotli, District Kotli, Azad Kashmir.
28. Rahana Usman, d/o Muhammad Usman, Computer Lab Assistant (B-7), Government Girls High School Kotli, District Kotli, Azad Kashmir.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the Service Tribunal, dated 31.01.2018, in service appeal No. 915 of 2015]

Appearances:

FOR THE APPELLANTS: Ch. Shoukat Aziz, Advocate.
(Written arguments)

FOR RESPONDENTS NO. 1,2, 4, 5 & 6 Raja Mazhar Waheed, Addl. Advocate-General. (Written arguments)

Date of hearing: 26.07.2022

JUDGMENT:

Raza Ali Khan, J.— The titled appeals, by leave of the Court, have been filed against the separate judgments of the Service Tribunal, however, as both the cases involve identical questions, hence were clubbed together and are decided through the single judgment.

2. The facts of Appeal No. 121 of 2018, are that the appellants, herein, were appointed as Computer Science Teachers BPS-17, on the basis of test and interview against a project vide notifications dated 07.01.2005, 18.06.2005 and 27.03.2007. The posts occupied by the appellants were later on, brought on the normal budget along-with the other posts. The concerned department sought opinion from the Law Department and after relaxation in rule 17 of the Azad Jammu and Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, confirmed the appellants against the posts occupied by them w.e.f. 01.07.2008, through notifications dated 25.03.2010, 16.11.2010 and 04.03.2011. It was stated that some Laboratory Assistants B-7 and Computer Science Teachers B-17, filed writ petitions before the High Court which were dismissed. Against the judgment of the High

Court petition for leave to appeal was filed before this Court which was granted. It was further stated that the appellants, herein, were impleaded as proforma-respondents in that appeal i.e. appeal No. 225/2014 which was dismissed by this Court vide judgment dated 10.02.2015. After the judgment of this Court, the notifications, whereby, the appellants, herein, were regularized were cancelled by the competent authority vide notification dated 16.11.2015. The aforesaid cancellation order was challenged before the Azad Jammu and Kashmir Service Tribunal by way of appeal on 27.11.2015. The appeal was contested by the other side and after necessary proceedings, through the impugned judgment dated 31.01.2018, the learned Service Tribunal has dismissed the appeal.

3. The facts of 2appeal No. 161 of 2018, are that the appellants, herein, were appointed as IT Lab Incharge B-7, on the basis of test and interview in a project vide orders dated 03.06.2005, and 15.04.2005. The posts occupied by the appellants were later on brought on, the normal budget along-with the other posts vide notification dated 18.03.2009. It was stated that the concerned department confirmed the appellants against the posts occupied by them w.e.f. 01.07.2008, through notifications dated 09.09.2009. Later on, the appointments of the appellants, herein, were cancelled by the departmental authority vide notification dated 30.07.2015. The said notification was challenged by the appellants, herein, before the Service Tribunal by way of filing an appeal, alleging therein that the appellants, herein, were inducted into the service after following due process of

selection. Their posts were also brought to the normal budget, hence, they are permanent civil servants and cancellation of their permanent appointment is illegal and against law. It was further stated that the department has cancelled permanent appointments in compliance of the judgment of this Court rendered in the case titled *Farkhanda Jabeen & others vs. Azad Govt. & others*, whereas, in the said case the appellants were not party, hence, cancellation of their appointment is against the norms of justice. The appeal was contested by the other side by filing objections, wherein, beside refuting the claim of the appellants it was submitted that the appointments of the appellants, herein, were cancelled in compliance of the judgment of this Court, hence, no illegality has been committed by the department. The learned Service Tribunal after necessary proceedings

through the impugned judgment dated 31.01.2018, has dismissed the appeal.

4. Vide order dated 04.04.2018, this Court granted interim relief in favour of the appellants, herein, whereupon, the appellants have filed application of initiation of contempt of Court proceedings against the respondents/contemnors in violation of the order of this Court dated 04.04.2018 and 17.05.2018.

5. Sardar Abdul Hameed Khan and Ch. Shoukat Aziz, the learned Advocates representing the appellants, herein, while filling the written arguments, stated that the learned Service Tribunal has failed to take into consideration that this Court in its judgment did not order for setting-aside the confirmation notification of the appellants, rather, ordered to take action against the authority who

issued the illegal notification but no action was taken against the authority, instead, the appellants have been made scapegoat. It was stated that the Service Tribunal has also failed to consider the important aspect of the case that if the Government is vested with the power under Rule 24 of the Azad Jammu and Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, to relax the any provision of these rules, hence, the Government after fulfilling all the requirements issued the confirmation orders of the appellants which have illegally been cancelled. It was further stated that it is settled principle of law that party should not suffer from the fault of the authority, therefore, while setting-aside the impugned judgments, the impugned cancellation order may kindly be set-at-naught.

6. Raja Mazhar Waheed Khan, the learned Additional Advocate-General, representing respondents No. 1,2, 4 & 15 (*in appeal No. 121 of 2018*) and respondents No. 1,2,4, 5 & 6 (*in appeal No. 161 of 2018*), also filed written arguments, wherein, it was stated that the learned Service Tribunal has rightly passed the impugned judgments which do not call for any interference by this Court. It was further stated that the impugned judgments passed by the Service Tribunal are in conformity with the judgment of this apex Court in the case reported as "*Farkhanda Jabeen & others vs. Azad Govt. & others*", [2015 SCR 1362], hence, the appellants have failed to point out any illegality in the impugned judgment. It was further stated that the appellants were appointed on temporary basis, thus, their appointment notifications have been cancelled in the light of direction of this Court. It

was further stated that the appellants are not entitled to be confirmed without adopting due course of law as an illegal order can not be made basis for the regular appointment. It was finally prayed for dismissal of both the appeals.

7. Mr. Mansoor Pervaiz Khan, the learned Advocate appearing for proforma-respondents No. 16 & 17 (*in appeal No .121/18*), also filed written arguments, wherein, it was stated that proforma-respondent No. 16, was initially appointed as Computer Instructor BPS-17, on adhoc basis vide order dated 12.05.2009 and was posted in the Government Boys High School, Miani Bandi, and thereafter, he was transferred and posted in Boys Jinnah Pilot High School No. 2, Muzaffarabad, vide order dated 12.01.2010. It was further stated that the official respondents sent the requisition of the

post held by proforma-respondent No. 16 to the Public Service Commission, however, due to issuance of the stay order by the High Court the requisition to the extent of post occupied by him was sent back to the department which has never been advertised up till now, but the official respondents have appointed another person against the post of respondent No. 16 and has not extended the adhoc service of proforma-respondent No. 16. It was further stated that similarly, the proforma-respondent No. 17 was appointed as Computer Instructor on adhoc basis vide order dated 27.06.2012, which has been extended from time to time and the last extension was issued vide notification dated 21.06.2017. It was further stated that the learned Service Tribunal while passing the impugned judgment did not consider the fact that a high profile committee has been constituted to look

into the matter of adhoc and contract employees which will prepare a final report. The proforma-respondent No. 17 who has rendered more than 9 years' service on adhoc basis have been ousted from the job as such their case have been excluded from the purview of the committee as the committee shall only consider the cases of those who are in adhoc service. It was further stated that if the matter of proforma-respondent No. 17 is not placed before the committee for consideration, the persons who have become over age during their adhoc service will not more be eligible to be appointed in any service of Azad Jammu and Kashmir, thus, the impugned judgment of the learned Service Tribunal is liable to be set-aside.

8. Abdul Shakoor Siddiqui, Director Public Instructions Schools, Elementary and Secondary

Education (male), respondent No.2, herein, also filed objections on the application for initiation of contempt of Court proceedings, wherein, it was stated that the Court issued the status quo order on 04.04.2018, whereafter, he has not conducted any proceedings. It was further stated that he has also not violated the order of this Court in any manner nor he ever thinks as such. It was further stated that the appointment notifications of the appellants have been cancelled in the light of the judgment of this Court which is infact the implementation of the judgment not the violation. Finally prayed that the application for initiation of contempt of Court proceedings may be dismissed.

9. We have heard the learned Advocate for the parties and meticulously scrutinized the record, relevant law on the subject and the impugned

judgments of the Service Tribunal. The perusal of the record reveals that the appellants, herein, were initially appointed on adhoc basis in a project/scheme, however, later on, these posts were shifted to the normal budget, and services of temporary employees were regularized by the authority without adopting due course of law. Thereafter, in the light of judgment of this Court titled "*Farkhanda Jabeen and others vs. Azad Govt. & others*" [2015 SCR 1362], their permanent appointment notifications were cancelled. The relevant portion of the said judgment is reproduced hereunder: -

"9. So far as the argument of the learned counsel for the appellants regarding equality before law is concerned, no doubt, according to the constitutionally guaranteed fundamental rights, equality does not mean equality in the illegalities and violation of law, it means

equality in good sense for supremacy of law and upholding the constitutionally guaranteed fundamental rights. Any wrong act cannot be justified for doing another wrong act or perpetuate the same. If such practices are recognized, it will amount to defeat the very purpose of legislation and supremacy of law. Therefore, if the respondents have regularized or permanently inducted some persons against law, that cannot be a reason for accepting the appeals or protecting their illegal acts by directing them to perpetuate the illegalities rather such situation requires eradication of corrupt practices and the concerned authorities should bring law into action to do the needful.

10. According to the celebrated principle of law, void or illegal orders do not create any right or interest in any person. Therefore, the respondents are directed to take up the matter seriously and initiate for necessary action regarding the illegal regularization notifications issued by the authorities. The persons who have exercised the authority for passing such notifications shall also be taken to the task.”

Feeling aggrieved from the cancellation of their appointment notifications, the appellants filed the services appeals before the Service Tribunal. The learned Service Tribunal after necessary proceedings have dismissed the appeals through the impugned judgment while observing that the temporary appointment notifications of the appellants have been regularized contrary to the rules by issuing illegal notifications.

10. Undisputedly, the appellants have been inducted into service on adhoc basis, thus, it is clear that neither the posts were advertised for permanent induction nor the appellants have been appointed on permanent basis. In Azad Jammu & Kashmir, for induction into service, the law has been now settled in the light of the Constitutional provisions and other subordinate legislation as

interpreted by this Court in the judgments reported as *Azad Jammu and Kashmir Government & others vs. M. Younas Tahir & others*, [1994 SCR 341] and *Mst. Tanveer Ashraf & others vs. AJ&K Government & others* [2011 SCR 528]. In the above authoritative judgments, it is clear that appointments of a civil servants are subject to constitutional limitation and cannot be exercised arbitrarily. Article 49 of the Azad Jammu and Kashmir Interim Constitution, 1974 gives the Government power to frame rules for the purpose of laying down the conditions of service and recruitments of the persons to be appointed to public service and in connection with the affairs of the State. The Article contemplates the drawing up of a procedure and rules to regulate the recruitment and to regulate the service conditions of appointees appointed to a public post, because of this, the entire process of recruitment of service is controlled

by the detailed procedure which specify the necessary qualifications, the mode of appointment etc and to adopt these rules so framed. The spirit of Constitution is very much explicit for upholding the merit, therefore, the Courts cannot justify, substantiate or approve any other method of appointment through back door, firstly; the appointment on temporary basis for some period and thereafter induction of the same person against permanent post. Merely because a temporary or contract employee is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent on the strength of such continuance, if the original appointment was not made by following the due process of selection as envisaged by the relevant rules. If such practice is allowed, it will amount to subvert the whole Constitutional and

legal scheme of induction into service. It is also a settled principle of law that writ jurisdiction cannot be exercised for protection of ill-gotten gains. No fundamental right of appellants infringed; right to be treated equally with other employees employed on adhoc or contractual basis cannot be extended to a claim for equal treatment with those who were regular employees, that would be treating unequal's as equal. When the Court is approached for relief by way of writ the Court has necessary to ask itself whether the appellant(s) had any legal right to be enforced. The induction against a post in civil services is a trust bestowed by Almighty Allah and the same shall have to be fulfilled honestly and any dishonest mode or practice amounts to violation of the commands of Allah Almighty.

11. The moot point involved in the instant case is that whether the persons who have been appointed on contract basis are entitled for permanent induction without due process of law. In our opinion regularization cannot be a mode of recruitment to accede to such proposition would mean the introduction of new mode of appointment in defiance of rules or it might have an effect of setting naught the rules and would be a departure from constitutional backed scheme of law. In presence of authoritative judgments of this Court, no further deliberation is required. Reference can be made to the judgment of this Court handed down after survey of case laws while following the consistently enunciated principles in the case reported as *Waqas Latif & others vs. Azad Govt. & others*, [PLJ 2013 SC (AJ&K) 140], wherein, while

dealing with the identical proposition, it has been observed as under:-

“6. So far No.1 of the referred notification is concerned, the same speaks of filling the posts according to duly prescribed recruitment rules. In the Azad Jammu and Kashmir, under the constitutional provisions, Azad Jammu and Kashmir, Civil Servants Act, 1976 has been enforced and the rules have been made there under, in 1977, which are called as the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977. According to the spirit of the constitution, Civil Servant Act and the recruitment rules, all the posts in the civil service shall be filled in on merit determined by the open transparent competitive method. This Court, in several cases has interpreted and enunciated the principles governing the induction into civil services. In this regard, we may fortify through the wisdom of landmark judgment titled *Azad Jammu and Kashmir Government & others v. Muhammad Younas Tahir & others*, reported as 1994 SCR 341. According to the facts of this case, a large number of persons were

inducted into service on the ad-hoc basis. Among them, some were continuing for period of more than 10 years. The Azad Jammu and Kashmir legislative Assembly, made a law known as "The Azad Jammu and Kashmir Civil Servants (Regularization of Ad-hoc Appointment) Act, 1992, through which ad-hoc appointee's services were regularized but when the vires of this Act, were challenged and the Court tested this legislative Act on the touch stone of the constitutionally guaranteed fundamental rights, the Act, was found contrary to fundamental right No. 15 which speaks that all the state subjects are equal before law, thus, the Act was struck down. The relevant portion of this judgment speaks as under:-

"It seems necessary to first advert to the argument of Mr. S.M.Zafar that Right No. 15 (equality before law) is not applicable to entry into Government Service and that the only fundamental right applicable is Right No. 17. This argument has no force and must be repelled. The Constitution has to be treated, in accordance with all pronouncements of superior Courts, as one organic whole and must be harmoniously construed. In this connection I may refer to Azad

Government of the State of AJ&K V. Kashmir Timber Corporation [PLD 1978 SC (AJ&K) 42]in which it was observed that:-

"Besides these he has also referred to Maxwell and Crawford which support the broad principle of interpretation. From these authorities the following principles of interpretation of statutes emerge

(1) that a Constitutional instrument should be read as a whole and its provisions construed harmoniously;

- (1) xx xx xx xx xx xx xx
- (2) xx xx xx xx xx xx xx
- (3) xx xx xx xx xx xx xx

Even otherwise the established rule is that in case of apparent inconsistency between two provisions of law, attempt should be made to harmonize them as there is presumption against inconsistency. In fact there is no inconsistency between the two Rights under consideration. Fundamental Right No. 15 refers to all state subjects without exception. It does not lay down that state subjects who are in service of Azad Jammu and Kashmir or those who want to join service will not be entitled to equal protection of law.

In my view the guarantee of equality before law is more fundamental than all other fundamental rights. It is also my view that most of other rights would in some situations become meaningless without Right No. 15. The first fundamental right guarantees that no person shall be deprived of liberty save in accordance with law. Can a "law" contemplated by this right be discriminatory? The answer to this question must be in the negative because it cannot be visualized that, for instance, person belonging to a particular ideology or political creed may be deprived of liberty under a harsher law than the others. Similar is the case of other rights for instance freedom of speech, movement, assembly, association, trade etc.

If Right No. 17 is alone applicable then discrimination on the basis of place of birth, parentage and many other considerations would become valid. In that case it would be possible to make laws, for instance, that judicial service in Azad Jammu and Kashmir will be reserved for sons of serving or retired Judges or that persons in Police service shall only be recruited from a particular

Tehsil or that only who are recommended by the members of the Legislative Assembly shall be' appointed to posts in Government service. If we test these laws against the touchstone of Right No. 17 the said laws will have to be declared valid. However, if Right No. 15 is applied in all probabilities such laws will be declared invalid on the ground that they deny equality before law and equal protection of law and create a class which is not reasonable. This analysis shows that the argument of Mr. S. M. Zafar is without substance.

The Interim Constitution Act through Right No. 15 holds out a firm and forthright guarantee that all state subjects are equal before law and are entitled to equal protection of law. Its meanings are plain enough to ensure that laws of the State shall equally apply to all subjects and there would be no discriminatory treatment amongst them. Since there is no particularization in the phraseology these guarantees cover all laws dealing with state subjects whether they relate to life, honour, property, freedom, employment and all rights and liabilities. These lofty pronouncements have, however,

been rationalized were experienced in literally implementing these guarantees. These difficulties are real and substantial. Therefore, reasonable classification was recognized.

Supposing a law is to be enacted to regulate grant of driving licenses. Going by the plain phraseology of Right No, 15 every citizen must be allowed to have a driving license but a problem may be faced that it would mean that minors, blind persons and physically unfit citizens would also be entitled to obtain a driving license. If a law makes no distinction such a driver would put to risk the lives of citizens, including his own. Thus law may be made to meet this situation and citizens falling in a well defined class may be treated differently for grant of driving licenses. Such a law may be covered by the class legislation rule. However, if it is provided in the statute that women will not be allowed to drive any vehicle there might be a valid challenge that it violates the equality clause. Although women may be a class by themselves but it may be said that the classification is not reasonable.”

Finally this Court passed the order:-

“The Azad Jammu and Kashmir Civil Servants (Regularization of ad-hoc appointment) Act, 1992 is found to be void as it was violative of Fundamental Rights No. 15”

12. The same view is later on adopted by this Court in the case titled *Mst. Tanveer Ashraf & 25 others v. AJ&K Government & 2 others*, reported as 2011 SCR 528, wherein, some ad-hoc appointees were having service of more than 15 years on their credit but to uphold the supremacy of law and spirit of merit, their permanent induction having been made without open competition was disapproved by this Court following the dictum laid down in the above referred comprehensive judgment. The relevant portion of the judgment is reproduced hereunder: -

8.It is now settled that except the method of appointment on merit determined through a transparent open competition, no other method, tactics, policy or practice can be

approved, therefore it can be safely held that condition No.1 imposed in this notification is quite in accordance with the spirit of law and principle of law enunciated by this Court in several cases.

While disposing of the review petition filed by the respondents on this judgment, it has been further elaborated as under:-

“5. We have dived deep into appreciation of the arguments advanced at bar on behalf of the parties. The first and foremost heated argument advanced on behalf of the petitioners is that they have been inducted into service after advertisement of the posts and due process of selection. In this regard, they have placed on record clippings of advertisement of several posts published in the newspapers. On the factual aspect, we have no cavil with the argument of the learned counsel for the petitioners but the perusal of all these advertisements reveals that the vacancies were advertised either for temporary appointment or for appointment on contract basis. According to spirit and scheme of law, mere an advertisement of post for appointment on contract or temporary basis does not create any

right or interest for permanent induction. According to provisions of the enforced law and policies, even for ad-hoc appointments, contract appointments and temporary appointment, advertisement of the posts is legal requirement. The statutory provisions of the enforced law on the subject are not supportive to the contentions of the learned counsel for the petitioners as in this case, all the petitioners were appointed temporarily on contract basis. The provisions of the Contract Appointment Policy, 2006 are very much clear. In clause IV sub clause (vi) of the Contract Appointment Policy, 2006, there is prohibition on conversion of contract appointment into regular appointment. The relevant provision of statutory provision i.e sub clause (vi) of clause IV of the Contract Appointment Policy, reads as follows:-

‘(vi). A contract employee shall, under no circumstances, claim conversion of his contract appointment into regular appointment.’

6. So far as the mode of permanent induction is concerned, it has been prescribed under law, especially under the provisions of the Azad

Jammu and Kashmir, Civil Servants Act, 1976 and the rules made thereunder. The Civil Servants Act has defined the term 'permanent post', 'temporary post' and also prescribed the mode of appointment for permanent induction. The term 'post' refers to the permanent post and not the contract or temporary post, therefore, on this aspect hardly any detailed deliberation is required. It is suffice to say that for permanent induction, advertisement of permanent post is pre-requisite as to whether the post falls within the purview of Public Service Commission or selection committee or board.

7. The other point which has been most forcefully been pressed on behalf of the petitioners is regarding the question of past and closed transactions. It has been argued that as per previous judgments of the High Court especially of this Court in Ghulam Mustafa Abbasi's case, the matter of permanent induction of the persons falling in different categories holding 101 posts finally concluded, therefore, the matter could not be reopened in the judgment under review. This point has already been dealt with in detail

in the judgment under review. The relevant paragraph 13 of the judgment is very much clear, thus, according to principle of law, the points which have been considered and decided either way, cannot be made valid ground for review of the judgment. Even otherwise, this argument from another aspect has no substance as it has already been observed in the impugned judgment that in the previous round of litigation relating to 101 posts, controversy was regarding cancellation of notification dated 18.7.2000 whereas in the subsequent round of litigation in which the impugned judgment has been handed down, vires of the notification dated 2.9.2010 have been challenged. The authority/Government, itself has included 101 posts in this notification. In this notification if the petitioners can claim or assert for any grievance, that might be against the authority which has included these posts in the subsequent notification and on the basis of this they cannot claim review of the judgment. If there was any legal grievance available to them, they were at liberty to seek remedy before appropriate forum. As the petitioners have neither brought any

such grievance before the Court against this notification and this Court through the judgment under review has examined the legality and propriety of this notification in the light of enforced law and in view of the settled principles of law laid down in the previous famous judgments in the cases reported as *Azad Jammu and Kashmir Government & others vs. Muhammad Younas Tahir & others*, [1994 SCR 341], and *Mst. Tanveer Ashraf & 25 others vs. AJ&K Government & 2 others*, [2011 SCR 528], and conditions No.2 and 3 incorporated in the notification have been declared illegal, self contradictory and of no legal effect.

8.The learned counsel for the petitioners have failed to point out any illegality in this regard in the impugned judgment rather they have submitted that to this extent judgment is quite consistent with the statutory provisions as well as principle of law enunciated by the Courts, therefore, in our considered view, the petitioners have failed to make out any legal or valid ground for review of the judgment.

9.The review jurisdiction has been discussed in uncountable judgments by this Court. Without detailed

discussions, reference may be made from plethora of judgments in the cases reported as *Azad Govt. & others v. Gulzar Ahmed Abbasi & others*, [2005 SCR 361], *Major (Rtd) Rafique Ahmed Durrani vs. AJ&K University & others*, [2005 SCR 373], *Muhammad Basharat v. Mrs. Naseem Begum & others*, [2009 SCR 185], *Ch. Zahid Hussain v. Khalid Iqbal & others*, [2009 SCR 192], *Talat yasmeen v. Samina Rashid & others*, [2009 SCR 333], *Sabir Hussain & others v. Muhammad Taj & others*, [2010 SCR 65], *Malik Zafar Ali Awan & others vs. Muhammad Riaz Khan & others*, [2011 SCR 96], *Syeda Tasneem Kazmi v. Education Department & others*, [2011 SCR 155], *Azad Govt. & others v. Shakoor Bashir & others*, [2011 SCR 228], and the full bench judgment in the case titled *Shahida Iftikhar & others v. Shabana Mumtaz & others*, [2011 SCR 273]. Thus, the argument of learned counsel for the respondents that the petitioners have failed to make out any case for interference in review is having weight. In view of the consistent practice of this Court, there is no valid ground for review of the judgment, thus, the review petitions stands dismissed.

10. Before parting with the judgment we deem it necessary to observe here that the Courts are to interpret and enforce the law as it is and not to legislate. Due to failure on the part of legislature or executive, people or a class of people may suffer but for rectification of this wrong, obligation lies upon the legislature and executive and not upon the Courts. The executive and legislature may be aware of the constitutional limits, protection of the rights of the people and shall take steps for just and equitable purposes. The legislature or executive has to take necessary measures for protection of the rights of people on the rational and reasonable classification and not to deal with the matters in a discriminatory manner in violation of the constitutionally guaranteed fundamental rights. In the instant case if the petitioners claim any vested legal right or there is any reasonable classification, it is the matter to be considered by the executive or the legislature by adopting the legislative measures, if necessary, but the Courts cannot legislate to change the law.”

13. In the light of the principle of law enunciated in the referred judgments, with reference to the contract policy and conditions of contract appointment orders, such services cannot be converted into regular appointment, therefore, the learned Service Tribunal has rightly dismissed the appeals through the impugned judgments.

14. The learned counsel for the appellants also submitted that as the appellants have been inducted into service and later on appointed permanently, hence, a right has been accrued in their favour. So far as this argument is concerned, they have themselves opted for temporary services while accepting the terms and conditions imposed in their induction orders. They have been paid for the period they serviced and even they have gained experience on the cost of the public exchequer.

Moreover, their rights are also equally protected. They have equal chance to compete in open transparent selection process and prove their merit. If they succeed in proving their merit, there will be no discrimination on the basis of their temporary appointments, therefore, this cannot be said that their rights in any way are adversely affected.

15. The learned counsel for the proforma-respondents No. 16 & 17, also raised a question of crossing upper age limit of the adhoc appointees. In this regard, it may be stated that if any civil servant renders the period of adhoc appointment, his said period shall be counted under AJ&K (Relaxation of Age Limit) Rules, 1997, therefore, the apprehension of the inducted persons that they may be deprived of the service due to crossing the upper age limits is without any substance. This view is fortified from

the Waqas Latif' case (supra), wherein, it has been observed that: -

“12. So far the question of crossing upper age limits is concerned, it has already been observed by this Court that in the Azad Jammu and Kashmir, in this regard, special laws, rules dealing with the relaxation in upper age limit, i.e. (The AJ&K Relaxation of Age Limit), Rules, 1997 are holding the field which speak that for computation of upper age limit, the period of ad-hoc continuous service rendered, shall be counted.”

16. As far as the contempt application filed by the appellants, is concerned, as the fate of the case has already been decided, therefore, there is no need to proceed with the application for initiation of contempt of Court proceedings which is hereby consigned to record.

17. The crux of the above discussion is that both the appeals have no substance. The Service

Tribunal by following the judgments of this Court has rightly dismissed the appeals as the judgment of the Service Tribunal do not suffer from any legal infirmity, therefore, both the appeals along-with contempt application stand dismissed.

**JUDGE
J-II**

**JUDGE
J-III**

Muzaffarabad:
05.09.2022.

Fareeda Rafique VS Azad Govt. & others
Fareeda Rafique VS Raja Amjad Pervaiz
Syeda Naznain VS Azad Govt. & others
Kazmi

ORDER:

The judgment has been signed. It shall be announced by the Registrar after notifying the learned counsel for the parties.

**JUDGE
J-II**

**JUDGE
J-III**

Muzaffarabad:
05.09.2022.

