

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Civil PLA No. 81 of 2023

(Filed on 21.01.2023)

1. Azad Government of the State of Jammu and Kashmir through Secretary Elementary & Secondary Education, having his office at New Secretariat, Muzaffarabad.
2. Secretary Elementary & Secondary Education Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
3. Department of Elementary & Secondary Education, Azad Government of the State of Jammu and Kashmir through Secretary Elementary & Secondary Education, having his office at New Secretariat, Muzaffarabad.
4. Director Public Instructions (Male) Elementary & Secondary Education Muzaffarabad, Azad Jammu and Kashmir having his office at Old Secretariat, Muzaffarabad.
5. Divisional Director Schools Elementary & Secondary Education (Male), Muzaffarabad, Division Muzaffarabad, having his office at Old Secretariat, Muzaffarabad.

6. Divisional Director Schools Elementary & Secondary Education (Female), Mirpur Division Mirpur, Azad Jammu and Kashmir.
7. Divisional Director Schools Elementary and Secondary Education (Female), Mirpur Division Azad Jammu and Kashmir.
8. District Education Officer (Female) District Muzaffarabad, having his office at Old Secretariat, Muzaffarabad.
9. District Education Officer (Female) District Poonch, Azad Jammu and Kashmir.
10. District Education Officer (Female), District Mirpur, Azad Jammu and Kashmir.

.....PETITIONERS

VERSUS

1. Syed Tofiq Hussain Government Boys Middle School Chilhana (Neelum).
2. Shahid Akhter Government Boys Inter College Rehara (Puch).
3. Syed Yasir Ul Hussain Government Boys High School Malhar (Kotli).
4. Usman Ahmed Malik Government Boys High School Dakh (Kotli).
5. Aman Ullah Government Boys High School Giyain (Kotli).
6. Raja Fida Muhammad Government of Boys Inter College Therian Muzaffarabad.
7. Zeeshan Amin Government Boys High School Troty Abbaspur Poonch.
8. Rashid Hussain Government Boys High School khore (Kotli).

9. Bilal Matloob Government Boys Middle School Panjan Charhoi (kotli).
10. Muhammad Hafeez Government Boys High School Kakani Kotli.
11. Muhammad Asif Government Boys High School Kurti Kotli.
12. Suleman Ahmed Government Boys High School Gola Kotli.
13. Faheem Riaz Government Boys High School Bal Brahmna Kotli.
14. Usman Jabbar Government Boys Middle School Manil Kotli.
15. Muhammad Afzal Raja Government Boys High School Dehri Kotli.
16. Ayesha Fereed Government Girls High School Maneel Kotli.
17. Neelum Riaz Government Girls High School Bal Brahmana Kotli.
18. Sumaira Bashir Government Girls High School Pilyat Syedan Kotli.
19. Aroosa Qayyum Government Girls High School Barali Kotli.
20. Memoona Ayoub Government Girls Middle School Phagwar Mohara Kotli.
21. Sadia Nazir Government Girls Middle School Barmoch Kotli.
22. Hina Ashraf Government Girls Middle School Changpur Khawas Kotli.
23. Noreen Akhtar Government Girls High School Jandrot Kotli.
24. Sonia Ajib Government Girls High School Panag Kotli.
25. Saba Malik Girls High Schol Khanka Kotera Kotli.
26. Ayesah Fareed Government Girls High School Maneel, Kotli.

27. Usma Hameed Government Girls Middle School Nakyal Charbi Kotli.
28. Arfan Ahmed Girls High School Gajri Bagh.
29. Amjad Glazar Government Girls High School Raheer Bum Bagh.
30. Siraj-ul-Islam Waqar Government Boys High School Thab Bagh.
31. Sobia Khalid Girls High School Bani Minhasan Bagh.
32. Sana Hameed Minhas Government Girls High School Bani Mahldara, Bagh.
33. Asim Saeed Government Girls High School Basara Rawali Bagh.
34. Arfan Ahmed Khan Government Girls High School Sohawa Sharif Bagh.
35. Ahzaz Hussain Khan Raja Government Boys High School Naryola Bagh.
36. Mehwish Shafique Government Girls High School Sawaj, Bagh.
37. Misbah Bashir Government Girls High School Nar Sher Ali Khan, Bagh.
38. Syeda Lubna Fizah Batool Government Higher Secondary School Dhal Qazian, Bagh.
39. Syed Abadian Ali Shah Government Girls High School Ghziabad Bagh.
40. Taiba Nawaz Government Girls High School Gojra Muzaffarabad.
41. Samra Tahir Government Girls High School Moyian Syedan Muzaffarabad.
42. Kinza Arshid Government Girls High School Pajgran Muzaffarabad.
43. Aroosa Majeed Government Girls High School Dachor Miran, Muzaffarabad.
44. Nasir Javid Boys High School Shariyan, Hattian.

45. Khawaja Muneed Government Boys High School Nakot, Hattian.
46. Khawaja Rizwan Farid Government Boys High school Salmia Chakar, Hattian.
47. Muhammad Asim Government Boys High School Dara Batangi, Hattian.
48. Latif-ur-Rehman, Government Boys High School Nardejian, Hattian.
49. Sana Fatima Government Girls High school Nokot Leepa, Hattian.
50. Ihtsham-ul-Haq Government Boys High School Dhoke Lalyan, Bhimber.
51. Asim Razzaq Government Boys Middle School Sona Valley, Bhimber.
52. Shams-ur-Rehman Government Boys Middle School Dul Bandaala, Bhimber.
53. Rasheed Ahmed Government Boys Middle School Kanjlour, Bhimber.
54. Ali Ammad Government Boys High School Malot, Bhimber.
55. Sana Shabir Government Girls High School Randyam, Bhimber.
56. Baseer Ahmed Government Girls High School Chirikot, Haveli.
57. Sundas Khurshid Government Girls Middle School Dhok Doura, Bhimber.
58. Madiha Zanab, Government Girls High School Darhal Gaggan, Bhimber.
59. Iftikhar Hussain Government Boys Middle School Mail, Bhimber.
60. Syed Qammar Riaz Government Boys High School Miragala, Poonch.
61. Muhammad Fiyaz Ahmed Cornal Muhammad Naqi Government Bosy High School Sehra Poonch.

62. Qammar-ul-Zaman Govt. Boys High School Dara Sher Khan, Poonch.
63. Shahid Farooq Government Boys High School Tanda, Poonch.
64. Zaib-un-Nisa Girls High School Kalpur, Poonch.
65. Aqsa Jameel Government Girls High School Banbaik, Poonch.
66. Zeba Khanum Government Girls High School Baigalah Dhammi Rawalakoti, Poonch.
67. Junaid Bashir Government Boys High School Tah, Poonch.
68. Uroosa Kanwal Government Girls High School Ghai Banjosa, Poonch.
69. Zaheen Akbar Boys High School Bagnoyoun, Poonch.
70. Tahira Saba Government Girls High School Tetri-Noot, Poonch.
71. Anum Raja Government Girls High School Mdia Mera Bala (Poonch).
72. Naqash Zafar Government Boys High School Rakkar (Poonch).
73. Sumaira Tariq Government Girls High School Battal (Poonch)
74. Mewish Shaheen Government Girls High School Sehr Madarlour Hajera (Poonch).
75. Khan Asfand Yar Khan Government Boys High School Dhamni (Poonch).
76. Saher Afaq Government Girls Model High School Nar (Poonch).
77. Afia Qadeer Government Girls High School Kotera (Poonch).
78. Anaa Shoket Government Girls High School Rakkar (Poonch).
79. Babrik Jahangir Government Boys High School Nambal Serrari (Poonch).

80. Junaid Bashir Government Boys High School Tahil (Pounch).
81. Danish Ali Government Boys Middle School Shahkot (Neelum)
82. Saad Mushtaq Government Boys Middle School Keyan Shreef (Neelum).
83. Ayaz Ahmed Government Boys Middle School Khawaja Sei (Neelum).
84. Sadam Hussain Government Boys Middle School Janawei (Neelum)
85. Safoorah Ferdous Government Girls Middle School Shahkot (Neelum).
86. Shakeela Sabir Government Girls Middle School Khawaja Sri (Neelum).
87. Bibi Maryam Government Girls Middle School Kail (Neelum).
88. Moheen AKhter Government Boys Middle School Ashkot (Neelum).
89. Shaheen Aziz Government Girls Middle School Salkhala (Neelum).
90. Saffaih Bibi Government Girls Middle School Rawta (Neelum).
91. Raja Masood Government Boys High School Bugna Kahirabad (Muzaffarabad).
92. Syed Shafaqat Gillani Government Boys High School Daban (Muzaffarabad).
93. Khawar Fareed Government Boys High School Hattian Dupata (Muzaffarabad).
94. Raja Kabir Hussain Government Boys High School Nayaz Pura (Muzaffarabad).
95. Muhammad Sherez Qureshi Boys Middle School Bardi Dhenhroo (Sadhouti).
96. Taiba Zahid Government Girls High School Mang (Sadhouti)

97. Huma Naseer Government Girls High School Pooura Plandri (Sadhnouti).
98. Ghamza Gul Government Girls Higher Secondary School Cheechan (Sadhnouti).
99. Zarqa Ilyas Government Girls High School Tararkhal (Sadhnouti).
100. Saira Kosar Government Girls Middle School Bloch (Sadhnouti).
101. Misbah Shabir Government Girls Middle School Rajua Papynar Papunar (Sadhnouti).
102. Salma Naz Government Girls High School Gran Domakiyan (Sadhnouti).
103. Sania Javed Government Girls Middle School Nar Kanyati (Sadhnouti).
104. Muhammad Nasir Government Boys Middle School Jonjal Hel (Sadhnouti).
105. Muhammad Shaid Haleem Government Boys High School Murshadabad (Sadhnouti).
106. Washiq Naseer Government Boys High School Mangriyat (Sadhnouti).
107. Uzma Sajjad Government Girls Middle School Daredk Gorah (Sadhnouti).
108. Moizzoa Najam Government Girls Middle School Baitran (Sadhnouti).
109. Uzma Akram Government Girls Higher Secondary School Kaneeli (Mirpur).
110. Asma Azam Government Girls High School Chakswari (Mirpur).
111. M. Farooq Ramzan Government Boys High School Sahang (Mirpur).
112. M. Awais Arif Government Boys Middle School Pindi Suberwall (Mirpur).
113. Khalida Shafi Government Girls High School Chechian (Mirpur).

114. Adeel Hussain Government Boys Middle School Kaljoor (Mirpur).
115. Abbas Mushtaq Raja Government Boys High School Bearri Pachoot (Pouch).
116. Iqra Batool Government Middle School (Kakahi).
117. Wajid Hassain Government Boys Middle School Nandi Chani (Sadhnouti).
118. Ahman Gillani Government Girls High School Chinare (Hattian).
119. Sana Shafi Government Girls High School Sharrian (Hattian).
120. Sydea Meemona Naqvi Government Girls Higher Secondary School Gojar Bandi (Hattian Bala).
121. Usman Yameen Government Boys Middle School Dhary Mong (Sadhnouti).
122. Shazia Gul Computer Lab Assistant Government Girls High School Kundi Peeran Tehsil Naseerabad, Pattika, District Muzaffarabad

..... RESPONDENTS

123. Secretary Information Technology Azad Government of the State of Jammu & Kashmir, having its office at New Secretariat Muzaffarabad.
124. Director General Information Technology Azad Government of the State of Jammu & Kashmir, having its office at Old Secretariat Muzaffarabad.
125. Secretary Finance Azad Government of the State of Jammu & Kashmir, having its office at New Secretariat Muzaffarabad
126. Accountant General of Azad Jammu & Kashmir having his office at Sathra Tehsil & District Muzaffarabad.

.....PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated 22.11.2022, in writ petition No. 2607 of 2021]

Appearances:

FOR THE PETITIONERS: Sh. Attiq-ur-Rehman,
Advocate.

FOR THE RESPONDENTS: Ch. Shoukat Aziz,
Advocate.

FOR THE INTERVENER: Syed Ashfaq Hussain
Kazmi, Advocate.

Date of hearing: 17.02.2023.

ORDER:

Raza Ali Khan, J.– The captioned petition for leave to appeal has been addressed against the judgment of the High Court dated 22.11.2022, whereby, the writ petition filed by the respondents, herein, has been disposed of. Ch. Shoukat Aziz, the learned Advocate has filed power of attorney and caveat on behalf of the respondents which has been made part of the record. Syed Ashfaq Hussain Kazmi, the learned Advocate has also filed an application for impleadment of Shazia Gul, Computer Lab Assistant,

which is accepted and she is hereby impleaded as party in the line of respondents.

2. The matter in hand pertains to payment of monthly salary of the respondents as well as other incumbents who have served in the Education Department. The respondents, herein, were serving as Junior Computer Teachers on adhoc basis in all the Districts of Azad Jammu and Kashmir who were appointed by the Information Technology Board against the posts of Scheme namely, "*Establishment of Computer Labs in Educational Institutions District of Azad Jammu and Kashmir*". Their posts were advertised through advertisement No. AK11D/7/21, for the purpose of permanent appointment, however, the same was challenged by the respondents before the High Court. The learned High Court while partly accepting the appeal, ordered for payment of

monthly salary to the incumbents for the period they have served in the department.

3. Sh. Attiq-ur-Rehman, the learned Advocate appearing for the petitioners mainly stressed on the point that the High Court has wrongly observed in the impugned judgment regarding appraisal of the Muhammad Aslam Abbasi, Law Officer, whereas, the Law Officer did not make any such submission but only appraised with respect to the payment of salary to the extent of respondents, in this regard, the affidavit of Law Officer has also been filed. He further submitted that the impugned judgment of the High Court is liable to be set-aside on this sole ground.

4. On the other hand, Ch. Shoukat Aziz and Syed Ashfaq Hussain Kazmi, the learned Advocates appearing for the respondents opposed the petition and submitted that the impugned judgment of the High court is quite in accordance with law. The High

Court has rightly ordered for payment of the salary of the respondents along-with similar incumbents who have served in the department, which is quite legal and does not call for any interference by this Court.

5. I have heard the learned Advocates for the parties and gone through the record of the case made available. The matter pertains to payment of salary of the incumbents who have served during certain period of time in the Education Department. The perusal of the impugned judgment of the High Court reveals that the High Court has not committed any illegality while issuing a direction to the departmental authority to pay the salary of the incumbents. Payment of salary is a fundamental right of any incumbent and should be treated as such. It is the legal obligation of the employer to make timely and accurate payments to their employees and it should not be delayed or denied for any reason. It is the

responsibility of the employer to ensure that all employees receive their salary in a timely manner and in accordance with the terms of their employment contract. It is important that employers respect the fundamental rights of their employees to receive their salary in a timely manner and in accordance with the terms of their contract. This right is also protected by the law, and employers should adhere to it. Moreover, Islamic teachings are quite evident in this regard as it is narrated from 'Abdullah bin 'Umar that the Messenger of Allah (ﷺ) said:

"حَدَّثَنَا الْعَبَّاسُ بْنُ الْوَلِيدِ الدِّمَشْقِيُّ، حَدَّثَنَا وَهْبُ بْنُ سَعِيدِ بْنِ عَطِيَّةَ السُّلَمِيِّ، حَدَّثَنَا عَبْدُ الرَّحْمَنِ بْنُ زَيْدِ بْنِ أَسْلَمَ، عَنْ أَبِيهِ، عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجْفَأَ عَرْفُهُ " .

“Give the worker his wages before his sweat dries.”

In another hadith, it is narrated, “The rich, despite his riches, cannot delay of payment to the

worker, for it is a crime”. [11] These Hadiths show the general principle that wages need to be paid promptly, and an employer cannot unduly withhold the wages of an employee. In the light of Islamic teachings and basic principle of law, wages are considered as a right and not benevolence from the employer; so the wages of employees are their basic right and the same cannot be infringed. However, workers and employers can negotiate the payment of wages on daily, weekly, fortnightly, or monthly terms according to their mutual consent. In such state of affairs, the learned High Court has rightly passed the impugned judgment which does not call for any interference by this court. Therefore, the petition for leave to appeal stands dismissed with no order as to costs.

JUDGE

Muzaffarabad,
06.03.2023.