

**IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE RAZA ALI KHAN

**CIVIL PLA No. 534 OF 2023**

(Against the judgment of the  
High Court dated  
16.05.2023, passed in writ  
petition No. 687 of 2021)

Muhammad Pervaiz s/o Muhammad Ayub r/o Phagwari  
Tehsil Hajira District Poonch, Rawalakot and 09 others.

**...Petitioners**

**VERSUS**

Department of Planning and Development through Secretary  
P&D Muzaffarabad office at New Secretariat, Muzaffarabad  
and 05 others.

**...Respondents**

**Appearances:**

For the Petitioners:                      Sardar Karam Dad Khan,  
Advocate.

For the Respondents:                      Nemo.

Date of hearing:                              14.09.2023

**ORDER:**

**Raza Ali Khan, J:-** Leave to appeal has been sought in the instant petition from the judgment of the High Court dated 16.05.2023, through which, the learned High Court has dismissed the writ petition in limine filed by the petitioner, herein.

2. Based on the case facts, the petitioners were employed in the "*Neelum Jehlum Development Project*" under the P&D Department since 1992. In 2004, the project's name was changed to the "*Azad Jammu and Kashmir Community Development Programme,*" and the petitioners were appointed therein. The project was later on closed, and in October 2011, the government issued a circular providing therein the adjustment of project employees. Subsequently, in February 2019, the petitioners were terminated from their jobs. Dissatisfied, they filed a writ petition in the High Court claiming therein that the respondents have created 68 posts vide notification dated 08.08.2019, but in contravention of the circular dated 19.10.2011, they are reluctant to fill in the posts by appointing the petitioners, hence, they prayed for a direction to the respondents for appointment of the petitioners against the aforesaid posts. The other side filed comments, wherein, the stance taken by the petitioners was refuted. The learned High Court, after hearing the preliminary arguments through the impugned judgment dated 16.05.2023, dismissed the writ petition in limine on the ground of laches.

3. Sardar Karam Dad Khan, the learned counsel for the petitioners submitted that the learned High Court has not gone through the record in its true perspective and has dismissed the writ petition in limine. He submitted

that the writ petition filed by the petitioners, herein, was mandamus in nature, therefore, the same could not have been dismissed on the point of laches. He argued that the petitioners, herein, belong to the lower class of the society appointed in basic pay scales 1 to 5 and a circular for their adjustment was rightly issued by the Government but the authorities are reluctant to implement the same in letter and spirit, therefore, it was enjoined upon the learned High Court to adjudicate the case on merit and issue an appropriate writ but the High Court, instead, dismissed the writ petition in limine which is not justified. He finally prayed for grant of leave.

4. I have considered the arguments of the learned counsel for the petitioners and gone through the record of the case along-with the impugned judgment. It divulges from the record that the petitioners, herein, were appointed in a Project named "*Neelum Jehlum Development Project*", however, later on in the year 2019, they were relieved off the service, dissatisfied of which, they approached the High Court for implementation of a circular dated 19.10.2011, through which, the Government had announced the adjustments of the petitioners on permanent basis. The prayer clause of the writ petition filed by the petitioners, herein, shows that they have prayed for issuance of a direction to the authorities to permanently adjust them against the newly posts created vide notification dated 08.08.2019. The prayer clause is reproduced hereunder for better appreciation: -

“It is therefore, very humbly prayed that in light of pleadings an appropriate writ may kindly be issued in favour of the petitioners directing the respondents to comply with the circular dated 19.10.2011 and adjust the humble petitioner by

creating the post in the department of planning and development as the respondents have created posts vide notification dated 08.08.2019 or adjust the humble petitioners in other Government department working in service and general administration or any other relief which is admissible under law, may also be granted in favour of the petitioners.”

5. It reveals from the prayer clause of the writ petition that the petitioners want their permanent adjustment on the newly created posts in the garb of the circular dated 19.10.2011. I am afraid, no such direction could be issued for temporary employees to adjust them on permanent basis without following due course of law; secondly, the Government circular, which was against the basic laws, i.e. Civil Service laws and plethora of pronouncements of this Court, cannot be implemented. In Azad Jammu and Kashmir, the appointments to government positions are governed by the Azad Jammu and Kashmir Civil Servants Act, 1976 and the rules made therein. The underlying principle of this law is that the appointments should be based on merit, as determined by the relevant selection authorities. The Azad Jammu and Kashmir Interim Constitution, 1974 upholds the right to equality before the law and equal treatment under the law. Consequently, this right can only be upheld through the prescribed process, which includes advertisement of job vacancies and assessment candidates' qualifications through a transparent selection process. The law does not permit the practice of appointing the individuals on ad-hoc basis, allowing them to continue for indefinite period, and eventually granting them permanent positions through the channels alien to statutory provisions. This practice undermines both constitutionally guaranteed fundamental rights, such as equality before the law, and the established laws governing the appointment process. Allowing such practices would incentivize influential

individuals to manipulate their way into civil service positions, unfairly depriving qualified candidates of opportunities based on merit. Not only is this practice a violation of the law and fundamental rights, but it can also lead to inefficiency, maladministration, and corruption. This Court in its authoritative judgment reported as *Muhammad Binyamin vs. Azad Govt. & others*<sup>1</sup>, wherein, a series of earlier judgments of this Court have been referred to and relied upon, has held that: -

“This Court time and again has held that the appointments can only be made on the basis of merit determined in the open competition and the law does not admit any such tactics that any person, who has been appointed on ad-hoc basis and thereafter for one reason or the other continued as such for an indefinite period and then becomes entitled for the permanent induction. In a case reported as *Hussain Khan and 57 others v. Azad Government and 9 others* [2012 SCR 45] this Court observed as under:-

We have heard the learned counsel for the parties and perused the record. The case of the petitioners in all the three writ petition, filed in the High Court, is that they are ad-hoc appointees. They were initially appointed for six months and the period of their ad hoc appointment is being extended from time to time. We may observe that all the appointments in the civil service are made on the basis of merit determined in the open competition. Selection on merit is instrumental in creating necessary confidence and independence to perform the functions as a civil servant particularly under the Rules of business. The purpose of appointment on the basis of merit determined in open competition is that all the civil servants appointed after open competition should carry on the administration independently. The Public Service Commission is an important organ of the State for recruitment in civil service. It is a constitutional body.

In another case reported as *Mst. Tanveer Ashraf & 25 others v. AJ&K Government and 2 others*

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<sup>1</sup> [2016 SCR 1045]

[2011 SCR 528] while dealing with the proposition this Court observed that:

Be that as it may, however, even if the ad-hoc appointment is made in strict compliance of Rule 23 of rules 1977, such appointment couldn't create any right for permanent or regular appointment as has been categorically mention in the appointment order and also in the Rules. In Azad Jammu and Kashmir, appointments in the service are regularized by the law known as the Azad Jammu and Kashmir Civil Servants Act 1976 and the Rules made thereunder. The spirit of law is that the appointment should be made on the basis of merit determined by the concerned selection authorities. The Interim Constitution of Azad Jammu and Kashmir has guaranteed the right of equality before law and equal treatment of law, thus, this right can only be enforced by following the prescribed mode of appointment by advertising the vacancies and determination of the merit of the eligible candidates through transparent selection process. Law doesn't admit any such tactics that any person, who has been appointed on ad-hoc basis and thereafter for one reason or the other continued such for an indefinite period and then becomes entitled for the permanent induction. Such induction through back door, in fact, amount to violation of constitutionally guaranteed fundamental right of equality before law and the enforced law regulating the mode of appointment. If such practice is allowed it will encourage the influential and clever persons to manoeuvre for occupation of the civil post and deprive the qualified candidates to complete on the basis of merit. Such a practice is not only violation of land and fundamental right but also at the end of day may result into inefficiency, mal-administration and also be a main cause of generating the corruption.

Similarly, in a case reported as *Waqas Latif and 3 others v. Azad Government of the State of Jammu and Kashmir through Chief Secretary, Muzaffarabad and 6 others* [PLJ 2013 SC (AJ&K) 140], this Court observed as under:-

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.”

5. From the perusal of the chain of the authorities (ibid), it is already settled that any temporary/adhoc appointment does not create any right for regular appointment. It is just a stop-gap arrangement which has to continue till a regular appointment as postulated by the Civil Servants Act, 1976 and the Civil Servants (Appointment & Conditions of Service) Rules, 1977, is made. Similarly an adhoc appointment as far legal position is concerned, does not confer any right irrespective of the period of such an incumbency. If the temporary/adhoc appointments are regularized, even by the Legislative Assembly<sup>2</sup>, the piece of such legislation was declared ultra vires the Constitution and has to be removed from the statute book<sup>3</sup>. Admittedly the service of the petitioners cannot be regularized by the Government or the competent authority, on the basis of legislative enactment ultra vires the Constitution or a notification (*as in the case in hand*) or order issued by the Government. Similarly, the High Court or for that matter even this Court cannot regularize adhoc service and the prayer to that extent, stands rejected.

6. Even otherwise, the learned High Court has dismissed the writ petition in limine on the point of laches. As stated in the proceeding paragraphs the petitioners were relieved off service in the year 2019, but they approached the High Court on 23.02.2021, i.e. after a lapse of more than one year, hence, the principle of laches

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<sup>2</sup> Muhammad Bilal Khan vs. Azad Government & others [2009 SCR 493]

<sup>3</sup> Azad Jammu and Kashmir Government and others vs. M. Younas Tahir others [1994 SCR 341]

is also attracted, therefore, the learned High Court has rightly dismissed the writ petition in limine.

In view of the above, the leave stands refused.

**JUDGE**

Muzaffarabad,  
14.09.2023