

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

**PRESENT:**

*MR. JUSTICE RAJA SAEED AKRAM KHAN, C.J.*  
*MR. JUSTICE RAZA ALI KHAN*

**CIVIL APPEAL NO. 169 OF 2023**

[Against the judgment  
dated 12.09.2022, passed  
by the High Court in writ  
petition No. 2290 of 2021]

Home Department through its Secretary Home Department  
Azad Government of the State of Jammu and Kashmir having  
its office at New Secretariat, Muzaffarabad and 05 others.  
...Appellants

**VERSUS**

Aqib Farooq s/o Muhammad Farooq Khan r/o Komi Kot,  
Garhi Dopatta Tehsil and District Muzaffarabad and 22  
others.

...Respondents

**Appearances:**

For the Appellants:	Raja Mazhar Waheed Khan, Addl. Advocate-General.
For the Respondents:	Raja Sajjad Ahmed Khan and Mr. Maqsood Ahmed Sulehria, Advocates.

Date of hearing: 05.10.2023

**JUDGMENT:**

**Raza Ali Khan, J:-** The appeal under consideration, having obtained leave from the Court, originates from the High Court's decision dated 12.09.2022, which resulted into acceptance of the writ petition filed by the respondents in this case.

2. Briefly, the facts of the case are that the respondents, herein, preferred a writ petition before the High Court. In their petition, they raised the issue of recruitment of Constable positions via advertisement No. 160N/10/2020 across various branches of the Police Department. The respondents, who were eligible candidates, applied for the positions in question and, following the due legal process, secured positions in the merit list at serial Nos. 68, 71 to 75, 80 to 86, 89, 92 to 94, 98, 100, 109, 119, 121, 124, and 166, respectively. Subsequently, appointment notifications were issued by the department in favour of the candidates who had achieved positions according to the final merit list of the District Muzaffarabad. These notifications were issued on 05.02.2021, 08.02.2021 and 06.02.2021. It was alleged that there existed 78 vacant positions of Constable, and the candidates falling at serial No. 1 to 33 were appointed against the reserved seats of the District Police. In contrast, candidates falling at serial No. 34 to 68 were selected against the seats of the Reserve/Rangers Police, however, 15 successful candidates from this group declined to join the Police Force. Additionally, it was claimed that 22 Constable remained vacant in District Muzaffarabad. On the basis of that factual position, the respondents prayed for their appointment. The other side contested the claim by submitting the written statement, refuting therein,

allegations made in the writ petition while advocating for its dismissal. After due course of legal proceedings, the learned High Court, through its judgment dated 12.09.2022, accepted the writ petition. Consequently, the department was directed to appoint the respondents, herein, as Constables based on the merit list. These appointments were directed to be made to fill the vacancies remaining vacant due to non-joining of the successful Constables and other vacant positions within various branches of the Police Department falling in the quota of the District Muzaffarabad, within a period of 30 days.

3. Raja Mazhar Waheed, the learned Additional Advocate-General, after narration of the necessary facts, asserted that the High Court's contested judgment is in clear violation of the law, the established facts, and the record of the case. He contended that Police Rules, 1934, do not contain any provisions for appointment of candidates from the waiting list. Therefore, the stance adopted by the respondents, herein, in their petition was arbitrary and against the statutory provisions. However, he submitted with concern that the learned High Court did not give due consideration to this crucial aspect. Furthermore, he argued that the positions became vacant after the completion of the selection process conducted for the advertised posts. Consequently, he asserted that the positions which were not available at the time of the impugned advertisement cannot be filled in from the waiting list. He further contended that the impugned judgment contains misinterpretations and omissions. According to him, the learned High Court failed to exercise proper judicial discretion while rendering the contested judgment. He finally prayed for setting-aside the impugned judgment.

4. On the contrary, Raja Sajjad Ahmed Khan and Mr. Maqsood Ahmed Sulehria, the learned counsel representing the respondents, maintained that the impugned judgment is perfect one in accordance with both; the law and the facts of the case. They emphasized that the appellants, herein, in Grounds 'C' and 'D' of the appeal, have taken a divergent stance, arguing that the posts in question were not available at the time of the impugned advertisement. However, they pointed out that during the hearing of the writ petition, this point was neither raised nor argued. It is an established legal principle that questions of fact not raised before the lower forum cannot be raised for the first time before this august Court. In support of this argument, they referred to the case of *Tabassum Ashraf vs. Azad Jammu and Kashmir Government and others* [2020 SCR 127]. Furthermore, they contended that the crux of the matter revolves around the respondents' request for appointment to the posts of Police Constable falling vacant in District Muzaffarabad. Appellant No.3 had initially advertised 53 vacant positions of Police Constable for District Muzaffarabad, with a clear proviso in the advertisement that the number of vacancies might be increased or decreased. They argued that the department's own detailed sheet dated 04.02.2021, makes it evident that at the time of the advertisement, 78 vacancies were lying vacant. Out of these, successful candidates falling at serial No. 1 to 33 were appointed in the District Police, while candidates falling at serial No. 34 to 66 were inducted into the Reserve/Rangers Police on the basis of a flexible increase/decrease arrangement, as indicated in orders dated 08.02.2021, 06.02.2021, and 05.02.2021. They also pointed out that even if, for the sake of argument, only 53 Constable positions were advertised, it raises serious questions regarding the appointment of individuals i.e. Musharraf Khan Abbasi and

Faisal Munir Usmani, who were assigned merit position, serial No. 60 and 61. Therefore, they argued that the High Court, after a comprehensive examination of the case record, rightfully passed the impugned judgment, which is devoid of any illegality or deficiency.

5. We have thoroughly examined the arguments presented by the learned counsel for both parties and meticulously reviewed the case record. In the case in hand, an advertisement was published, which included 53 posts of the Constable reserved for District Muzaffarabad. Subsequently, following a comprehensive testing and interviewing process, individuals who achieved merit-based rankings were appointed to these positions. However, the respondents who initiated legal action by filing a writ petition before the High Court, contending that, actually, there were a total of 78 vacant positions at the time of issuance of the advertisement, but the department had advertised only 53 out of them. Based on the assertions made by the respondents, herein, the learned High Court, in its impugned decision, issued a directive instructing the authorities to appoint them to the positions which remained vacant due to non-joining of some successful candidates and also other vacant posts within various branches of the Police Department relating to District Muzaffarabad.

6. Before stepping forward, it would be advantageous to canvas here that for the purpose of running the affairs of the Government and the Public Institutions, the legislature has been empowered to regulate by law the appointment of persons to and the terms and conditions of service of persons in, the service of Azad Jammu and Kashmir. The legislature enacted Azad Jammu and Kashmir Civil Servants Act, 1976 to regulate the appointment and conditions of persons in the service of AJ&K. Likewise for

disciplined police force. The Constitutional mandate under Article 49 of the Interim Constitution, 1974, prescribes that the appointment of persons to and the terms and conditions of the service of the service of Azad Jammu and Kashmir may be regulated. The Azad Government of the State of Jammu and Kashmir vide the Adaptation of Laws Resolution, 1948 has adopted the Police Act, 1861. The Police Rules, 1934, have been made under the Police Act, 1861. The members of the police force have been declared Civil Servants for the purpose of section 4 of the Service Tribunals Act, 1975. Regarding the question whether the police employees are civil servants or not, stands concluded by the judgments of this Court, wherein, after examining the relevant statutory provision, this Court held that so far as the matter of discipline is concerned the police men are governed by the Police Act, 1861 and the Police Rules etc., but since the definition of the civil servants as contained in the Azad Jammu and Kashmir Civil Servants Act, 1976, enacted by the legislature under the Constitutional mandate is wide, thus, all the police employees are governed by that Act and the rules made thereunder in respect of the matters to which the police Act, 1861 and Police Rules 11934 do not apply. This Court in a case reported as *AJK Government, through its Chief Secretary and others vs. Sardar Muhammad Rafique Khan*<sup>1</sup>, has observed as under: -

“It is thus clear that so far as matters of discipline are concerned Police Officers of the subordinate ranks are governed by Section 7 of Police Act and the rules made thereunder and in matters of discipline Civil Servants (Efficiency and Discipline) Rules do not apply. However, since the definition of ‘civil servant’ is wide, all Police Officers are governed by Civil Servants Act and the rules made thereunder in respect of matters to which the Police Act does not apply.”

---

<sup>1</sup> [PLJ 1993 SC(AJK) 39]

7. Chapter XII of the Police Rules, 1934, deals with the appointment and enrollment in the police force. Chapter 12.1 provides the list of authorities empowered to make appointments in the police force. The authorities for appointment of Head Constables and Constables are the Superintendent and Assistant Superintendent of Police. The Police Act, 1861, and the Police Rules, 1934 are not exhausted enough regarding the method of recruitment of police employees, thus, as discussed in the earlier part of the judgment, the provisions of the Police Rules and Police Act regarding terms and conditions and mode of recruitment then obviously should resort to the provisions of Civil Servants Act, 1976 and the Rules made thereunder. Section 4 of the Civil Servants Act, 1976 provides that the appointment in a civil service of Azad Jammu and Kashmir to 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 authorized by it in that behalf. Likewise, Rule 17 of the Azad Jammu and Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, the method of initial appointment to all the posts in grades I and above has been provided. The Police Constables and Head Constables are appointed on the recommendations of the Selection Board constituted in accordance with the order of the Inspector General.

8. The crucial point which needs resolution by us is whether Rule 13 of Public Service Commission Procedure Rules, 1994, is applicable to the case in hand as the High Court on the basis of Rule 13 of the Public Service Commission Procedure Rules, 1994, (PSC Rules), accepted the writ petition and directed the authorities for appointment of the respondents, herein. It may be observed here that the concept of preparation of the waiting list exists in PSC Rules

and in AJ&K Teachers Recruitment Policy, 2017, (Education Policy) however, it is clarified that under Rule 13 of the PSC Rules, the waiting list remains valid for 180 days and under the stipulated period if any of the successful candidates fails to join the post the PSC may recommend next at the merit position from the waiting list on the initiation of the concerned department for appointment against the post which was duly advertised. However under the Education Policy the waiting list remains valid for 1 year, the candidate falling in the waiting list may be appointed against any post which may become vacant after the advertisement in consequence of which the waiting list was prepared. Neither the Police Act 1861, Police Rules 1934 nor the Azad Jammu and Kashmir Civil Servants Act, 1976, or rules made thereunder provide for maintaining the waiting list. It is settled principle of law that nothing is to be added to or taken from a statute unless adequate grounds exist to justify the intent of the legislature. The Court can interpret the provisions of law but cannot change or substitute such provisions and also cannot go beyond the wisdom of law. Reliance in this regard may be placed to the case reported as *Al-Khair Trust of Pakistan and another vs. Prof. G.J. Preshan Khattak and others*<sup>2</sup>, wherein, it has been held as under: -

“According to the settled principle of interpretation, the Court while interpreting the provisions of a statute, can neither add to nor subtract anything from any provision.”

Moreover, it is also a celebrated principle of law that where an Act or rules prescribe a specific mode for performance of an act then such act should be performed in the manner or it should not be performed at all in contravention of that manner and any deviation from it is impermissible. This principle is well exemplified in In

---

<sup>2</sup> [2002 SCR 476]



*Muhammad Younis Tahir's* case<sup>3</sup> wherein, at page 241 of the report this Court observed as under:-

"It is celebrated principle of law that when a particular method for performance of an act is prescribed under an Act or Rules, then such act must be performed according to that particular method or not at all".

This view has been reiterated by the this Court in the case reported as *M. Munir Raja vs. Chairman AJ&K Council & others*<sup>4</sup>, wherein, it has been held as under: -

"It is now almost settled principle of law that when a particular method of performance of an act is prescribed under an Act or Rule then such act must be performed according to the prescribed method alone or not at all."

In case reported as *Muhammad Idrees v. Collector of Customs and others*<sup>5</sup>, it was observed as under:-

It is established principle of law that the things should be done as they are required to be done or not at all. Nobody can be allowed to contravene, flout or violate the statutes or the rules framed thereunder in the name of national interest or any other so-called high or sublime idea or ideal. The rule of law requires that every person in execution of law should follow strictly the law as lay down and should not exceed the limit of law for any reasons whatsoever."

09. We are unanimous to declare that Rule 3 of the PSC Rules, 1994 is not applicable to the appointments made other than the PSC and made under the AJ&K Teachers Recruitment Policy, 2017. Turning to the specific case under consideration, it becomes evident upon examination of the records that a total number of 53 vacancies of Constable, designated for District Muzaffarabad, were advertised. Following the prescribed legal procedures

---

<sup>3</sup> 2012 SCR 213

<sup>4</sup> [2018 SCR 48]

<sup>5</sup> PLD 2002 Karachi 60

and selection criteria, the candidates who secured positions on the basis of merit were duly appointed. However, the respondents, herein, asserted that, at the time of the advertisement of these 53 positions, there were, in fact, 78 Constable vacancies were available. The respondents, herein, filed a writ petition seeking their appointment as Constables from a waiting list to fill positions left vacant by successful candidates who did not join, as well as other vacant posts not covered by the disputed advertisement. It is essential to note that in the disciplined police force, maintaining a waiting list is not a recognized practice, and the concept of appointments from such a list is inapplicable. Additionally, according to established legal principles the positions or vacant posts not properly advertised cannot be filled without following the appropriate procedures. The learned High Court made an error by directing the department to appoint the respondents from the waiting list to fill positions left vacant due to non-joining of successful candidates and other vacant posts in District Muzaffarabad. This situation prompts several questions. Firstly, if there were indeed 78 vacancies at the time of advertisement, why were all these positions not advertised? Conversely, if only 53 positions were vacant, what led to the inclusion of a proviso in the advertisement stating that the number of vacancies could be increased or decreased? (آسامیوں کی تعداد میں کمی بیشی ہو سکتی ہے). This condition raises doubts about the circumstances surrounding the advertisement, particularly why such a condition was incorporated. The exhaustive examination of the entire Civil Service Code and Police Rules did not yield any provision that may justify the inclusion of such a proviso in the advertisement. Moreover, the rationale behind this condition remains unclear, as it is not discernible from the available records. In a case, reported as *Naseem Abbas Shah and*

*another vs. Imran Shaffi and others*<sup>6</sup>, this Court has already established a legal principle stipulating that successful candidates, following tests and interviews, can only be appointed to those posts which were explicitly advertised. This principle raises further questions about the respondents' appointments to positions that were either not advertised or became available after the selection process. We still do not deny the fact, that there may have been some positions vacant at the time of the advertisement, it appears that these vacancies were intentionally left unadvertised by the department, as is evident by the proviso's inclusion, reflecting a potential malicious intent. Such practices should come to an end, especially given the numerous Court pronouncements and Government Directives emphasizing the need for strict adherence to law and regulation, as it fosters the irregularities, favoritism, and unfairness within government departments, resultantly creating betterment of administrative governance.

10. Upon a thorough review of the case record and longstanding practices, it has become necessary to issue directives to all government departments. The impugned verdict passed by the High Court suffers from severe illegality and infirmity which cannot be upheld and such practices which are not backed by any law cannot be protected at any cost; therefore, the same is set-at-naught with the following directives: -

- I. In accordance with Rule 23(1), it is imperative that a vacant position or post must exist before it is advertised.
- II. Appointments must strictly adhere to law and regulations, which involve advertisement of actual vacant positions and fair conducting of test and interviews.

---

<sup>6</sup> [2014 SCR 1022]

- III. All vacant positions at the time of advertisement must be requisitioned, and no positions should be withheld by the department.
- IV. Advertising a position is only permissible when a vacancy has arisen and not otherwise; if two positions are advertised, only two appointments must be made, unless the relevant law provides otherwise.
- V. Authorities should refrain from including any proviso or condition (as observed in the instant case) which lacks legal backing.

15. In the light of the above-detailed discussion, while setting aside the judgment of the High Court the appeal stands accepted in the manner indicated above. Consequently, the writ petition filed before the High Court being meritless is also dismissed. A copy of this judgment shall be sent to the Chief Secretary and be circulated in all the departments of the State through their Secretaries to ensure implementation. No order as to costs.

**JUDGE      CHIEF JUSTICE**

Muzaffarabad,  
17.10.2023  
Approved for Reporting.

Home Department & others                      vs.    Aqib Farooq

**ORDER:**

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

**CHIEF JUSTICE                      JUDGE**

Muzaffarabad,  
17.10.2023