

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

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL NO. 83 OF 2023

(Against the judgment of the
High Court dated
22.02.2023, passed in writ
petition No. 31 of 2020).

Muhammad Atta-ul-Mustafa s/o Muhammad Jamroz Khan
Siddiqui r/o Khuiratta District Kotli.

...Appellant

VERSUS

Azad Jammu and Kashmir Public Service Commission
through its Chairman having his office at Narrul,
Muzaffarabad and 05 others.

...Respondents

Appearances:

For the Appellant: Mr. M. Zubair Raja, Advocate.

For the Respondents: Ch. Shakeel Zaman, Addl.
Advocate-General.

Date of hearing: 13.12.2023

JUDGMENT:

Raza Ali Khan, J:- The captioned appeal, by leave of the Court, stems out from the judgment of the High Court dated 22.02.2023, whereby, the writ petition preferred by the appellant, herein, has been dismissed in limine.

02. The present appeal revolves around the assertions made in the writ petition before the High Court, it was asserted that the Azad Jammu and Kashmir Public Service Commission had advertised 82 posts of Senior Science Teachers vide advertisement No. 04/2018 and 10 posts through advertisement No. 03/2019. The appellant contended that although the government has established 2% quota for disable persons for induction in the service of AJ&K in all departments but the Public Service Commission (PSC) failed to take into account the aforesaid quota while advertising the posts. Consequently, candidates with disabilities who had fulfilled the requirements, were not called for interviews. The respondents contested the writ petition by filing detailed comments, explaining therein, that the PSC had advertised 146 positions of Headmasterd, including one reserved for a disable person, and urged the petitioner to participate in the selection process against the post of Headmaster. The High Court, after hearing preliminary arguments, dismissed the writ petition in limine through the impugned judgment dated 22.02.2023.

03. Mr. Muhammad Zubair Raja, the Advocate representing the appellant, contended that the learned High Court overlooked the pleadings, the record and relevant legal principles, leading to an erroneous conclusion in the case. He asserted that the respondents were burdened with legal obligation to adhere to law and strictly observe the quota for disable persons. Instead, they appointed candidates without

reserving the required quota for individuals with disabilities. Referring to a notification dated 20.06.2005, i.e. the Disable Persons Employment & Rehabilitation (Amendment) Act 2015, he highlighted that 2% quota is mandated for persons with disabilities. He argued that this quota has regrettably not been implemented in letter and spirit, thereby denying candidates with disabilities for their lawful rights. Finally, he sought a directive compelling the respondents to enforce 2% quota for disable persons for induction in service across all departments to ensure the employment of individuals with disabilities.

04. Conversely, the learned Additional Advocate-General representing the respondents argued that the dismissal of the writ petition by the learned High Court is based on law and facts. The counsel submitted that the PSC had advertised 146 Headmaster's positions, and in the advertisement No. 1/2020, a specific Headmaster position under disable persons quota was advertised, providing an avenue for the appellant to participate in the selection process. The learned High Court, as per the impugned judgment, appropriately acknowledged the advertisement of the posts falling in the quota of disable persons and correctly observed that the appellant was eligible to participate in the selection process, leading to the rightful dismissal of the writ petition. Finally, he prayed for dismissal of this appeal on the grounds of lacking legal basis.

05. Having thoroughly considered the arguments put forth by the respective counsel and meticulously examining the available record, we will first delve into the understanding of the concept of disability and the pivotal role of employment which may play in the lives of persons with disabilities, in comparison to those without disabilities. Disability is defined as the lack of one or more physical abilities, such as the

capacity to walk or coordinate movements, stemming out from the effects of a disease or accident, or due to mental impairment. Referring to Article 1 of the United Nations Convention on the Rights of Persons With Disabilities (Convention), ratified by Pakistan in 2011, persons with disabilities encompass those experiencing long-term physical, mental, intellectual, or sensory impairments. These impairments, when interact with various barriers, may impede their full and effective participation in society on an equal basis with others. Tremendous legislation has been made around the world to ensure and protect the rights of the persons with disabilities and their rightful participation in all the sphere of the society.

06. The terms 'disable persons' and 'person with disabilities', are vastly used and accepted in majority of the concepts which although carries a wide debate worldwide but in our humble opinion; that's not the priority issue but the issue which must be focused on foremost is how this segment of society is treated instead of how this segment is referred or addressed as? The greater issue which should be discussed and resolved more than any other thing is the inclusion of this segment of our society and the provision of equal treatment of law for all.

07. Employment holds equal significance for all individuals, as it plays a pivotal role in achieving social inclusion and economic independence. For individuals with disabilities, the challenges are compounded as societal perceptions often view them as dependents, not expected to be gainfully employed or independent. Erroneous assumptions regarding the performance capabilities of persons with disabilities further contribute to employment barriers for them. The perspective on disability has now evolved from exclusion to inclusion, and sympathy to a

rights-based approach. Previously, disabled individuals were denied rights and treated as abnormal or different, necessitating medical treatment under the medical model. The social model, however, posits that disability is a condition created by societal and environmental factors, not an individual's impairment and we are inclined to agree to it as we are the ones who create such factors, mindsets and approaches which give birth to meanings to words such as 'disability'. We as a society have attached some kind of unacceptance and stigma which is looked down upon and in our considered view; this is completely a defect of our societal norms, mindsets and approaches and has nothing to do with the word 'disability' and persons with disabilities because there is no concept of such discriminations before the law. It is a societal hypocrisy that it does not accept their existence as they are and cannot digest who they are but attach a negative stigma to their identity instead of empowering and accepting who and how they are. The rights-based model, enshrined in the UN Convention on the Rights of Persons with Disabilities (CRPD) of 2006, emphasizes dignity, respect, equality, and social justice for disabled individuals and recognizes disabled persons' inherent right to life, liberty, equality, security, and dignity, like any other human being marking a departure from the perception of them as objects of mercy and making them active members of society with equal rights.

08. Another point which this Court finds appropriate to discuss is the concept of the interconnection of equality and equity. Equality and equity always go hand in hand to serve the purpose of justice and fairness. In order to achieve equal treatment before the law; we should always ensure promotion of opportunities on the basis of equity first. There is a deep-rooted bond of the both to achieve fair

administration of justice and with this being said; all the policies, rules and requirements should be based on equity which must ensure equitable opportunities for all the segments of the society and only then; equal treatment of law could be achieved.

09. The Azad Jammu and Kashmir Interim Constitution, 1974, does not differentiate between individuals with or without disabilities. It upholds the inherent dignity of every human being, recognizing equal and inalienable rights for all people as the foundation of freedom, justice, and peace. This constitutional guarantee applies equally to persons with disabilities, ensuring their full enjoyment of fundamental rights without discrimination. This constitutional approach reflects the vibrancy and vitality of a living democracy.

10. To comprehend the distribution of disability quotas, the Supreme Court of Pakistan has issued a groundbreaking judgment addressing a similar situation in considerable detail. In the case reported as *Malik Ubaidullah vs. Government of Punjab etc*¹, it has been observed as under: -

“14. Understanding Disability and the importance of employment for PWDs, we now examine the relevant provision of the Ordinance. The preambular statement of the law is that it is an Ordinance to provide for the employment, rehabilitation and welfare of PWDs. Section 10 of the Ordinance provides as under:- 10. Establishments to employ disabled persons. 21 (1) Not less than two percent of the total number of persons employed by an establishment at any time shall be disabled persons whose names have been registered with the Employment Exchange of the area in which such establishment is located and against whose names in the register maintained under section 12 an endorsement exists to the effect that they are fit to work. (2) The disabled persons employed against any post in pursuance of subsection (1) shall be entitled to the terms and conditions which

¹ PLD 2020 SC 599

are not less favourable than those of the other persons employed by the establishment against similar posts. (3) When calculating the percentage of the posts in an establishment for the purposes of employment of disabled persons, the fraction of 0.5 and above shall count as a whole number. (emphasis supplied) Section 10 of the Ordinance provides that not less than 2% of the total number of persons employed by an establishment at any time shall be PWDs. The total number of persons employed means the total sanctioned posts²² of the establishment, i.e., an Organization, Authority, Department or Ministry. 2% of the total sanctioned posts or workforce of the establishment becomes the Disability Quota for the establishment. Every establishment has a variety of posts with different qualifications; job descriptions and skill sets. Appointments to these posts are based on different selection criteria and separate merit lists. The mechanism for appointment against 2% Disability Quota is also to work side by side with the general recruitment process for every category of posts. Therefore, the total Disability Quota for the establishment is further apportioned and allocated against the sanctioned strength of various category of posts which have a separate selection criteria. For example in the instant case the Disability Quota in the respondent Education Department is as follows, including the Disability Quota for the post of SESE [Arabic]:

CADRE WISE POSTS - 2009

<i>SR. #</i>	<i>POST</i>	<i>SANCTION</i>	<i>2% DISABILITY QUOTA</i>
1	SSE/SST	1326	27
2	EST/SESE (Arts, Science)	1699	34
3	EST (OT)	299	6
4	EST (ARABIC)	252	5
5	EST (DM)	159	3
6	EST (Phy)	291	6

7	ESE/PST	5900	118
8	NON TEACHING POSTS	2306	46
TOTAL Sanctioned Posts		12,232	245

15. There may arise a situation where the posts in a particular category are less than 50, in that case it will be upto the establishment to allocate Disability Quota to respective categories of posts even though they are less than 50 posts in a particular category in order to maintain the overall Disability Quota of the establishment. It may also be the case that a particular category of posts in an establishment may not be fit for a person with disability, in that case the establishment may shift the Disability Quota to posts which are fit for PWDs. The prime objective is to maintain a 2% Disability Quota within the establishment and it is for the establishment to allocate the posts against respective categories in case they are less than 50 in a particular category or not suited to PWDs. 23 16. The Allocation of 2% Disability Quota on the basis of the advertised posts as compared to the sanctioned posts is adverse to the interest of the PWDs for the reasons that 2% Disability Quota can only be actualized if there is a minimum of 50 posts advertised to secure one post for the PWDs. If the advertisement is for less than 50 posts (due to the vacancies arising at that particular time), Disability Quota on the basis of the advertised posts cannot be worked out, depriving the PWDs of their prospect of employment. This can go on for a longtime as posts are advertised as per vacancies which vary from time to time, therefore, if Disability Quota were to be based on the advertised posts, the fate of the PWDs would continue to hang in the balance and remain uncertain unless the posts advertised happen to be above 50. It is, therefore, in the interest of the PWDs that the Disability Quota for the establishment is first worked out on the basis of the total sanctioned posts and then apportioned against the total sanctioned strength of different categories of posts. Thereafter, the posts can be successively filled as and when the vacancies arise through advertisement, keeping the total Disability Quota in mind rather than the number of posts advertised.”

11. Having discussed the above in detail, coming to the merits of the instant case which seems

to be going paradox to the discussion hereinabove, as from the record, it is evident that the appellant instituted a writ petition before the High Court, seeking a directive for the respondents to enforce 2% quota for persons with disabilities across all departments. The appellant additionally prayed for the preparation of a seniority list for the disable quota of Senior Science Teachers and urged the appointment of the appellant as a successful candidate within the realm of disable's quota. Notably, the PSC had advertised 82 posts of Senior Science Teachers vide Advertisement No. 04/18 and 10 posts through Advertisement No. 03/2019. The appellant participated in the test and successfully passed the same. However, due to the non-validation of the disable quota post, he was not called for interview. Subsequently, following the PSC's recommendations, candidates securing the positions were appointed. Rather than challenging the appointment orders of the successful candidates, the appellant solely filed a writ petition before the High Court, broadly seeking a direction against the respondents to implement 2% quota for disable persons in all departments. At this stage, where the entire selection process has been completed, and candidates have been appointed, it is impractical to set aside the process solely based on the appellant's apprehensions, especially when he has not challenged the appointment orders. During the course of arguments before the High Court, the learned Additional Advocate-General by taking stance that in Advertisement No. 01/2020, a post reserved for disabled persons quota was advertised. Based on this information, the High Court directed the appellant to participate in the selection process. The findings of the learned High Court that the disabled quota post had been advertised, and the appellant had the opportunity to participate in the selection process, aligns with the law. Therefore, the High Court's

judgment stands in accordance with law and requires no intervention by this Court.

12. Before parting with, it is imperative to acknowledge the pervasive challenges faced by individuals with disabilities. While commendable reforms have been instituted, the ongoing need for improvement remains evident. Consequently, the following directives are proposed for diligent consideration:

- Flexible eligibility criteria and account for the distinctive challenges associated with different disabilities should be formulated;
- Various categories of disabilities, ensuring equitable representation for individuals with physical, sensory, intellectual, developmental, behavioural and psychological disabilities should be comprehensively developed;
- The Policies mandating reasonable accommodations in the workplace such as, provisions for accessible facilities, assistive technologies, and flexible work arrangements to facilitate the active participation of employees with disabilities, should be established and implemented;
- Institute mandatory programs for awareness and sensitization, targeting both existing and prospective public servants;
- A structured mechanism for periodic reviews of the effectiveness of disability-related legislation should be established and this process should allow for adjustments and improvements based on feedback from individuals with disabilities, advocacy groups, and relevant stakeholders; and
- Community-based support programs that provide resources, counseling, and assistance to individuals with disabilities and their families. i.e. support groups, counseling services, and vocational training to enhance overall well-being and integration into society, should be established.

In the light of the foregoing directives, this appeal stands disposed of accordingly. Copy of this judgment shall be sent to the Chief Secretary of Azad Jammu and Kashmir for compliance. Nor order as to costs.

JUDGE

JUDGE

Mirpur,
22.01.2024