IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

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

CIVIL PLA No. 177 OF 2024

CIVIL Misc. No. 89 OF 2024

(Against the Judgment dated 31.01.2024 passed by the High Court, in Writ Petition No. 2534 of 2022.)

Waqas Awan s/o Abdul Rehman Awan r/o Centre Plate, Tehsil and District Muzaffarabad.

…Petitioner

VERSUS

Khawaja Naveed Ahmed s/o Khawaja Khaleel-ur-Rehman (Candidate for the post of Social Welfare Officer BPS-17 r/o Babu Mohallah Ward No. 7 Muzaffarabad.

…Respondent

Azad Jammu & Kashmir, Public Service Commission through its Chairman, having office at Narrul Muzaffarabad and 06 others.

…Proforma-Respondents

Appearances:

For the Petitioner:	Mr. Tahir Aziz Khar vocate.
For the Respondents:	Mr. Abdul Rashid Abbasi, Advocate.

Date of hearing: 07.05.2024

JUDGMENT

***Raza Ali Khan, J*:-** This petition for leave to appeal has been addressed against the judgment of the High Court dated 31.01.2024, whereby, the writ petition filed by respondent No.1, herein, has been accepted.

2. Khawaja Naveed Ahmed, respondent, herein, filed a writ petition before the High Court on 24.06.2022, challenging the Public Service Commission's recruitment process for the post of Social Welfare Officer, BPS-17, reserved for District Muzaffarabad, advertised under No. 1/2020. He claimed that despite his qualifications (M.Sc. Sociology, M.S. in Sociology from International Islamic University Islamabad), he was not recommended for the post and was placed on a waiting list. Instead, a candidate with a Master's degree in Botany was appointed, although initially deemed ineligible based on the advertisement's qualifications, which preferred degrees in Social Work, Sociology, Anthropology, or Rural Sociology. It was stated that the term "preference" was misinterpreted, disadvantaging him and violating his fundamental rights. He asserted that "preference" should apply only when candidates with the preferred degrees are unavailable. Consequently, he sought to annul the appointment and the related letter issued by the Rule Making Committee, alleging it violated relevant laws and rules. The High Court accepted his petition on 31.01.2024.

2. Mr. Tahir Aziz Khan, the petitioner's advocate, argued that the High Court's judgment is flawed, deviating from the law, facts, and case record. Initially, the advertisement specified required qualifications as (i) a master’s degree in Anthropology/Rural

Sociology/Psychology and (ii) computer skills. A corrigendum later added a preferable qualification of a Master's Degree in Social Work, Sociology, Anthropology, or Rural Sociology. The petitioner, meeting the initial requirements, secured the highest merit position and was declared successful by the Public Service Commission. He further contended that the High Court misinterpreted the word "preferably," which should only apply in a tie between a preferential and a general candidate, favoring the preferential one. He argued this misinterpretation led to a miscarriage of justice and should be overturned. He emphasized the substantial legal questions involved justify granting of leave to appeal, citing cases reported as [2021 SCMR 829] and an unreported judgment of the Supreme Court of India titled *"The Chairman Tangedco and ANR vs. Priyadaarshini."*

3. Mr. Abdul Rashid Abbasi, the learned Advocate representing the respondent, countered the petitioner's arguments by asserting that the High Court's judgment is consistent with the law and does not warrant intervention by this Court. He argued that the petitioner's claim regarding the Court seeking the opinion of the Department of Law is based on a misconception of legal principles. He further contended that the petition for leave to appeal contradicts established legal doctrines and should be rejected. He emphasized that the interpretation of the law is solely within the jurisdiction of the courts, as established by the Apex Court. While countering the petitioner's contention that no court, including the High Court, has the authority to override the opinion or recommendation of the Public Service Commission, he maintained that this assertion arises from a misunderstanding of the law, confusing matters of fitness determination with legal interpretation. The learned Advocate highlighted that only

the High Court or Supreme Court has the authority to interpret laws and rules. He argued that the petitioner's claim contravenes established legal principles enunciated by the Apex Court. In support of his contentions, he cited precedents from this Court, including *2020 SCR 726, 2017 SCR 1168, and PLJ 1999 SC (AJK) 334*. Concluding his arguments, he submitted that the petition for leave to appeal does not involve any substantial question of law of public importance and should therefore be dismissed.

4. Having considered the submissions of the learned Advocates representing the respective parties and reviewing the record of the case alongside the High Court's impugned judgment, the central issue revolves around the interpretation of the term "preferably" in the rules. Under the Constitution, the interpretation of law is the exclusive jurisdiction of the courts. In legal interpretation, courts consider the plain meaning of the words and the intention of the legislature or authority that enacted them. This has led to two main schools of thought: 'Textualism,' which emphasizes the literal meaning of the word, and 'Intentionalism/contextualism' which focuses on the legislature's intention. The fundamental principle in statutory interpretation is to construe the words according to their plain and ordinary meaning, without resorting to additional rules if the language is clear and unambiguous. Ambiguity arises only when a statute can reasonably be understood in more than one way or when its meaning is obscure. In cases of clarity, the statute or rules are interpreted based on its plain meaning without considering legislative intent unless there is a clear drafting error or omission. The Court prioritizes adherence to the statutory text unless there are compelling reasons to deviate from it. In this case, the High Court applied the fundamental principle of 'Textualism,' finding the rules clear and

unambiguous. According to the High Court, if candidates with a Master's Degree in Sociology or Social Work are available and meet the qualifications, then other candidates without the relevant qualifications are excluded when preferring successful candidates in the relevant subject. The High Court's interpretation, based on 'Textualism,' is in accordance with the law, as the language of the rules is clear and unequivocal. However, considering the 'Intentionalism/contextualism' approach, we must examine the intention of the rule-making authority in inserting the term "preferably" into the rules. As per the advertisement, the contested position is for a Social Welfare Officer B-17, requiring a Master's Degree in Anthropology, Rural Sociology, or Psychology, along with certain computer courses. However, a corrigendum dated 29.09.2020 extended preference to individuals holding Master's Degrees in Social Work, Sociology, Anthropology, or Rural Sociology. The intention behind the term "preferably" is to prioritize candidates with these specific degrees, as they are likely to have relevant knowledge. If no such candidates are available, individuals with other Master's degrees could be considered. It does not in any way mean that a candidate with a relevant degree should be bypassed in favor of one with a different qualification. In this case, the petitioner admittedly holds a Master's Degree in Botany, while the respondent has a Master's Degree in Sociology. There is a significant difference between the fields of Sociology and Botany. Therefore, even under the principle of 'Intentionalism/contextualism' it is clear that when candidates from both groups meet the qualifications, preference should be given to those with a relevant degree. Reliance may be made to the cases reported as *Service Global Footwear Ltd. Vs. Federation of*

Pakistan and others[1] *and Capital Insurance Services Ltd. Vs. Wood*[2]. In such state of affairs, the High Court's judgment correctly adhered to this principle and does not warrant any interference by this Court.

5. The petitioner has not demonstrated any illegality in the impugned judgment and also failed to raise any question of public importance, consequently, leave is refused. As a result, the petition for leave to appeal (PLA) is hereby dismissed.

JUDGE **JUDGE**

Muzaffarabad,
16.05.2024

[1] [2023 PLD, Lah. 471
[2] [2017 SCMR 1116]