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. 227 OF 2023
(Against the judgment of the High Court dated 09.05.2023, passed in writ petition No. 1087 of 2023).

Huma Imtiaz d/o Khawaja Imtiaz Ahmed, r/o Tehsil and District Muzaffarabad.

…Appellant(s)

VERSUS

Public Service Commission of Azad Jammu and Kashmir through its Secretary, having his office at old President House Jalalabad and 4 others.

…Respondent(s)

Appearances:

For the Appellant:	Mr. Abdul Rashid Abbasi, Advocate.
For the respondents:	Sh. Attiq-ur-Rehman, and Miss Aliya Abdul Rehman, Advocates.
For the Intervener:	Mr. Shahid Ali Awan, Advocate.

Date of hearing: 04.07.2024

JUDGMENT:

***Raza Ali Khan, J*:-** The captioned appeal, by our leave, stems out from the judgment of the High Court dated 09.05.2023, whereby, the appellant's writ petition stood dismissed for having no substance.

2. The succinct facts involved in captioned appeal are as follows:

The appellant filed a writ petition before the High Court, asserting her status as a first-class state subject of Azad Jammu and Kashmir, with academic qualifications including an M.A. in Education, an M.A. in Statistics, and an M.Ed. The Public Service Commission (PSC) had advertised 19 positions for Secondary School Teacher (Female), BS-16, for District Muzaffarabad. In response, the appellant submitted her application for the aforementioned post. The respondents-PSC subsequently issued call letters to candidates who secured a minimum of 65 marks out of 100 in the written examination, including the appellant. However, she came to know through credible sources that candidates holding an M.A. in Statistics were not being shortlisted or considered for the post of Secondary School General Line Teacher BS-16. She prayed that writ may kindly be issued while directing the respondents to consider the degree of M.A Statistics suitable/relevant for the said post allow her to participate in interview for the post in question. The writ petition was accepted for regular hearing, prompting the respondents to submit written statements on behalf of the PSC, wherein, it was disclosed that the appellant was permitted to participate in the interview by the directive of the High Court and did partake

in the selection process. However, upon thorough document verification, it was revealed that the appellant possessed an M.Sc. in Statistics, which did not meet the required qualifications for the post. Consequently, she was not summoned for the interview. After deliberating on the arguments presented by both parties, the learned High Court dismissed the writ petition through the impugned judgment dated 09.05.2020.

3. Mr. Abdul Rashid Abbasi, the learned Advocate, asserted that the impugned judgment of the High Court is fundamentally flawed, both legally and factually, and does not align with the case's records. He contended that the core subjects of an M.Sc. in Statistics, specifically Econometrics, Demography, and Population Studies, fall within the realm of Social Sciences, as corroborated by the Higher Education Commission's notification dated 03.02.2015. He argued that any ambiguity regarding this classification should have been resolved in favor of the appellant rather than excluding her from the competition process. Furthermore, he posited that even if the criterion concerning the eligibility of an M.Sc. in Statistics were to be set aside, the appellant is otherwise qualified, as she also holds a Master's Degree in Education. He emphasized that according to the Azad Jammu and Kashmir Elementary and Secondary Education Department Teaching Cadre Services Rules (Female), 2022, a Master's Degree in Education is a recognized qualification for the position, which the appellant possesses. The learned High Court, he argued, failed to consider this crucial point in its judgment.

4. On the other hand, Miss Aliya Abdul Rehman, the learned Legal Advisor for the Public Service Commission (PSC), contested the appellant's position, asserting that the

appellant was not qualified for the post in question, hence her non-consideration merits. She further argued that the appellant's secondary claim of being otherwise qualified holds no merit, as she failed to attach any additional degrees at the time of her submission of application. Instead, she solely submitted her Statistics degree, which did not meet the requisite qualifications for consideration.

5. Mr. Shahid Ali Awan, the learned Advocate representing the intervener, also submitted an application to implead his clients as respondents in the case. During the Court hearing, he was allowed to present arguments on their behalf. He stated that while he does not contest the appellant's other qualifications, he specifically objects to her M.Sc. Statistics degree. He argued that this degree does not meet the requisite qualifications for the post in question, thereby disqualifying her from consideration for the appointment.

6. We have carefully heard the arguments presented by the learned counsel for the parties and thoroughly examined the entire record available in this case. The primary question that has emerged, based on the arguments advanced and the record, is whether the degree of M.Sc. Statistics qualifies as a relevant qualification under the rules for the post in question, she is nonetheless qualified by virtue of her master degree. Therefore, we deem it proper to leave the matter of Degree of Statistic open to be decided in any other appropriate case. As far the other argument of the learned counsel for the appellant is concerned, that the appellant possesses not only a Master’s Degree in Statistics but also a Master’s Degree in Education, this claim must be assessed in light of the Azad Jammu and Kashmir Elementary and Secondary Education

Department Teaching Cadre Service Rules 2016. These rules stipulate that the qualification for the post in question includes a Master's Degree/BS (Honors) 2nd division in social sciences (such as Urdu, Pak. Studies, Islamic Studies, English, or other relevant subjects) from any university recognized by the Higher Education Commission (HEC), along with a B.Ed (2nd Division) from any HEC-recognized university or a Master's Degree in Education/BS (Hons) 4 years' 2nd Division from any HEC-recognized university is also considered a qualifying credential. Upon careful examination of these rules, it is evident that the required qualifications for the post in question clearly include a Master's Degree in Education as an acceptable alternative. The appellant has provided evidence of holding a M.Ed, degree as documented on pages 25 and 26 of the paper book. Now the core question that arises is whether the M.Ed. degree aligns with the qualifications stipulated by the relevant rules. Furthermore, it is also pertinent to mention that, aside from the Master's Degree in Education, the rules stipulate the qualification of a BS (Hons) 4 years. Therefore, whether the BS (Hons) degree is considered equivalent to the M.Ed. or not, is a matter that is be determined. Given these complexities, we refrain from making any definitive observations on this issue. Instead, we adhere to the argument presented by the learned counsel for the appellant that she is otherwise qualified according to the Rules. Therefore, leaving aside the question of the Statistics degree, we direct the PSC to consider the appellant for the post in question if she is otherwise qualified, as claimed by the learned counsel for the appellant. The PSC is further directed to evaluate the appellant's eligibility comprehensively, considering all her

qualifications, and to proceed with the selection process accordingly.

7. Regarding the objection raised by the learned Legal Advisor of the Public Service Commission (PSC) that the appellant should have attached all her testimonials with the application at the time of submission, and therefore, at this stage, it cannot be said that she is otherwise qualified, we must address this contention thoroughly. During the course of the arguments, when this objection was scrutinized, the Legal Advisor was asked whether such an objection had been explicitly raised in the written statement filed before the High Court. In response, she was unable to provide a definitive answer and half-heartedly conceded that no such objection was raised before the High Court. In this view when the same plea has not been taken specifically in the written statement, the same cannot be tenable, hence, this argument of learned Legal Advisor is repelled.

8. The learned counsel for the interveners, Mr. Shahid Ali Awan, also filed an application to include the applicants as respondents. However, during the hearing, he was permitted to present his argument. He stated that he has no objection to the appellant's qualifications if she meets the necessary criteria. His primary contention is that the Degree of Statistics does not fall within the realm of social sciences. In the preceding paragraphs, we have already indicated that we do not intend to resolve this specific issue in the current context, opting instead to leave it for determination in any other case. Consequently, there is no need to implead the applicants as respondents in this case.

9. For the foregoing reasons, the appeal stands accepted in the manner indicated above. Consequently, the impugned judgment of the High Court is set-aside.

JUDGE **JUDGE**

Muzaffarabad,
08.07.2024