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

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CIVIL PLA NO. 433 OF 2024
(On appeal from the judgment of the High Court dated 07.05.2024, passed in Writ Petition No. 1787 of 2023).

Finance Department through Secretary Finance of the State of Jammu & Kashmir, having his office at New Secretariat Muzaffarabad & 3 others.

…Petitioners

VERSUS

Dr. Wajid Ali Khan, Eye Specialist, posted at CMH Rawalakot, President PMA Azad Jammu & Kashmir, Chairman Joint Action Committee (JAC) & 07 others.

…Respondents

Appearances:

For the Petitioners:	Mr. Amir Ali Awan, Advocate.
For the Respondents:	Raja Sajjad Ahmed Khan, Advocate.
Date of hearing:	29.08.2024

ORDER:

***Raza Ali Khan, J*:-** The instant petition for leave to appeal is addressed against the judgment of the High Court dated 07.05.2024 passed in writ petition No.

1787 of 2023, whereby the writ petition preferred by the respondents, herein, stood accepted.

2. The respondents, who are Civil Medical Officers, Eye Specialists, Chest Specialists, and Senior Medical Officers, employed in various hospitals across AJ&K, filed a writ petition before the learned High Court. They claimed that they are being paid significantly lower salaries and emoluments as compared to the Doctors serving under the federal Government, the provinces of Pakistan, and Gilgit-Baltistan. The respondents claimed that the Ministry of Health, Pakistan, approved a Special Health Care Allowance for Doctors in the regions, but the Doctors in AJ&K have been deprived of the similar benefits. The Health Minister of AJ&K had assured the Joint Action Committee of Doctors that their demands for increase in salaries shall be met positively. A proposal for such increments was submitted and subsequently approved by the AJ&K Cabinet on 04.05.2022, yet no steps have been taken for its implementation. The petitioners, in their written statement, refuted the claims made by the respondents, and after hearing both the parties, the learned High Court accepted the writ petition through its judgment dated 07.05.2024. This led to the filing of the instant petition for leave to appeal.

3. Mr. Amir Ali Awan, learned counsel representing the petitioners, argued that the impugned judgment of the learned High Court is contrary to law and suffers from several defects. He contended that the High Court failed to consider the petitioners' detailed written statement and arguments, which specifically refuted the respondents' claims with valid reasons. He emphasized that these points, which were crucial to the petitioners' defense, were neither discussed nor resolved by the High Court, despite the legal

obligation to address all issues raised by the parties. He further argued that the Health Allowance in AJ&K was granted based on the revised Pay Scale of 2015, whereas the Federal Government's allowance was frozen at the level of 2011 Pay Scale. Therefore, the demand for an allowance at the level of 2017 Pay Scale is unwarranted, as Doctors in AJ&K are already receiving higher rates than their counterparts in the Federal Government. He also pointed out that the Federal Government's Non-Practicing Allowance (NPA) is awarded only to the Doctors who fulfill the specific criteria in core hospitals, whereas the Doctors in AJ&K are already receiving a 100% revised NPA. He concluded that the petition raises significant legal questions of public importance, warranting the grant of leave to appeal.

4. Conversely, Raja Sajjad Ahmed Khan, Advocate, representing the respondents, argued that the petitioners' arguments lack merit and credibility. He emphasized that the High Court has carefully considered all the facts and circumstances of the case before delivering its judgment. He argued that the learned High Court's judgment does not warrant any interference by this Court. He further submitted that the increase in salary, the Special Health Care Allowance, and the Non-Practicing Allowance had been approved by the Cabinet. Directions, in accordance with the Rules of Business, have been issued to implement the same. However, the petitioners refused to implement the Cabinet’s directions. The learned High Court, through the impugned judgment, also issued directions to implement the Cabinet's decision as per the Rules of Business. Despite this, the petitioners have filed the instant PLA. Moreover, the Government, Chief Secretary, and Secretary Cabinet are not the petitioners in

this appeal, which indicates that they have accepted the judgment of the High Court. The learned Advocate also argued that even the Secretary Health himself moved the proposal for an increase in salary, the Special Health Care Allowance, etc., which had been partially approved. However, when this summary was presented to the Worthy Prime Minister, who instead of approving it, constituted a Special Committee on 26.12.2023 to deliberate on the proposal of the Health Secretary. He contended that the constitution of this Committee after the Cabinet's approval was against the Rules of Business and mocked the system. Therefore, the learned High Court, while taking into account the overall facts and circumstances of the case, rightly issued the direction which does not call for any interference by this Court. He finally prayed for the dismissal of the instant PLA. In support of his submission, the learned advocate placed reliance on the case reported as *AJK Govt. and others vs. M/s Spindtex Limited* [1998 SCR 167].

5. I have heard the counsel for the parties and carefully reviewed the record of the case. The Court is seized with the matter concerning the respondents' primary contention that, as Doctors serving within the territory of Azad Jammu and Kashmir (AJ&K), are receiving salaries and emoluments significantly lower than those of their counterparts employed in the Federal areas and other provinces of Pakistan. The respondents, who serve in various hospitals across AJ&K, have repeatedly raised concerns regarding this disparity. To support their claims, they have submitted a range of documents, including salary slips of Doctors from Federal areas and provinces, and relevant notifications that highlight these parity issues. Additionally, they have presented a demand made by the

Joint Action Committee, which sought an increase in allowances such as the Special Health Care Allowance, Medical Risk Allowance, and Non-Practicing Allowance (NPA), to bring these in line with the allowances admissible to Doctors in the Federal areas. A proposal for the enhancement of salaries and allowances was also submitted by the Director General (DG) of Health, Muzaffarabad, to the Secretary of the Health Department. This proposal explicitly requested an increase in both, the salaries and the Special Health Care Allowance for Doctors. The respondents have also attached the minutes of the Cabinet meeting of the Government of AJ&K, held on the 4th and 5th of August 2022, which show that the Cabinet approved the inclusion of Rs. 1,574.484 million in the current budget for these enhancements. During the Cabinet meeting, the Health Secretariat presented an agenda item for consideration and approval, which included several proposals submitted by the D.G. Health via correspondence No. 35-20932 dated 2022. The proposals were made on the basis that the Health Department had been classified as an Essential Service according to government policy. To ensure the timely provision of quality healthcare services to the public, the following proposals were suggested for incorporation in the financial year 2022-23 i.e., establishment of 10 Family Health Units (FAP) and Basic Health Units (BHU) in each of the 33 constituencies of AJ&K, with an estimated cost of Rs. 424.256 million, allocation of specific allowances for staff serving in various hospitals and districts, estimated at Rs. 201.741 million, adjustment of salaries for all Doctors, Paramedics, Nursing staff, and allied personnel to bring them in line with the salaries of Federal Government Health Employees, with a total estimated cost of Rs. 946.485 million. The Cabinet accorded its approval for the inclusion of Rs. 1,574.484

million in the budget for the financial year 2022-23 to implement these enhancements.

6. In the light of the aforesaid decision, the Cabinet approved the proposal to increase the salaries for various categories of Doctors, those serving in hard areas, as well as all employees including Paramedics, Nurses, and allied staff. The approval also included the allocation of Rs. 1574.484 million, which was to be made part of the budget for the financial year 2022-23. However, despite this clear decision by the Cabinet, the requisite action to implement this decision was not taken by the relevant authorities.

7. The respondents contended that the petitioners, instead of implementing the decision of the Cabinet, issued a notification dated 26.12.2023, whereby a Special Committee was constituted to deliberate on the proposals submitted by the Health and Finance Departments concerning the Special Health Care Allowance, Medical Risk Allowance, and enhancement in Non-Practicing Allowances for Doctors. The special committee was comprised of Senior Most Minister/Minister for S&GAD – Chairman, Minister of Law – Member, Minister for Finance – Member, Minister for Health – Member, Chief Secretary – Member, Special Secretary Health – Member, Special Secretary Health - Member/Secretary who shall furnish its recommendations within 07 days. However, it is noteworthy that this committee was constituted subsequent to the Cabinet's decision dated 8th September 2022. This act raises significant legal concerns. According to established principles of administrative law and governance, a Special Committee does not possess the authority to alter, amend, or nullify a Cabinet decision. Its role is strictly limited to making recommendations to the Government, which must then be submitted for consideration by the Cabinet itself. The constitution of the Special Committee, dated

26.12.2023, with a mandate to furnish recommendations within seven days, further complicates matters as the committee had failed to submit any recommendation till to date. The decision of the Cabinet, dated 8th September 2022, therefore remains legally binding and unrevoked.

8. Rule 31(1) of the Azad Government of the State of Jammu and Kashmir Rules of Business (Revised) 1985, stipulates that When the decision of the Cabinet on a case is received by the concerned department, it shall acknowledge the receipt of the decision and take prompt action to give effect to the decision. It mandates that the relevant department must take immediate and decisive action to implement the decision of the Cabinet. The record reveals that despite the Cabinet's decision dated 8th September 2022, almost two years have elapsed, and the Finance Department has failed to implement the decision, which constitutes a clear violation of Rule 31(1). Such inaction is not only contrary to law but also detrimental to the interests of the respondents, who have been unfairly deprived of their rights.

9. The crucial issue before this Court is whether the decision of the Cabinet, dated 8th September 2022, was implemented in accordance with law and whether the constitution of the Special Committee was legally justified. Upon a careful review of the facts and circumstances of the case, I am of the view that the Cabinet's decision was clear and unequivocal. It approved the enhancement of salaries and allowances for the Doctors, Paramedics, Nurses, and allied staff, and allocated the necessary budget to the tune of Rs. 1574.484 million for this purpose. The constitution of Special Committee, subsequent to this decision, was not only procedurally flawed but also substantively beyond the scope of any administrative authority. No Committee, however so constituted, has the jurisdiction to review or

alter a Cabinet decision, except to make recommendations for its implementation. The attempt to bypass the Cabinet's decision through the creation of the Special Committee was, therefore, unlawful and constitutes a clear abuse of administrative power. The learned counsel for the respondents therefore, rightly relied upon the case reported as AJK Government and others vs. M/s Spintex Limited[1], wherein, it is observed by the Court that: -

> "The Minister sent the file for approval of the Prime Minister who approved it. Mr. Umar Mahmood Kasuri, the learned counsel for the appellants, rightly contended that under sub-rule (1) of Rule 15 of the Rules of Business 1985 no Department of the Azad Government of the State of Jammu and Kashmir can issue an order without previous consultation with the Finance Department which directly or indirectly affects the finance of the Government or which, in particular, involves remission or assignment of revenue, actual or potential. The sub-rule is as follows:-
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> 15. Consultation with Finance Department.- (1) No Department shall, without previous consultation with the Finance Department, authorise any orders, other than orders in pursuance of any general or special delegation made by the Finance Department, which directly or indirectly affect that finance of the Government or which in, particular, involve,
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> (a) Relinquishment, remission or assignment of revenue, actual or potential, or grant*of guarantee against it or grant of lease of land or mineral, forest or water power rights;
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> (b) expenditure for which no provision exists;
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> (c) a change in the number of grading of posts or in terms and conditions of service of Government servants or their statutory rights and privileges which have financial implications;
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> (d) levy of taxes, duties, fees, or ceses;
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> (e) floatation of loans;
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> (f) re-appropriations within budget grants;
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> (g) alteration in financial procedure in the method of compilation of accounts or of the budget estimates;

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[1] [1998 SCR 167]

(h) interpretation of rules made by the Finance Department.

It is obvious that the proposal was covered by sub-rule (1) reproduced above but still it was submitted for approval of the Prime Minister which was an illegal exercise. The consequent approval accorded by the Prime Minister was also illegal. Under the Rules of Business by-passing of Finance Department in such matters is not allowed.

Not only that, the order passed by the Prime Minister was illegal also in view of sub-rule (3) of the same Rule which runs as follows:-

(3) No proposal, which requires previous consultation with the Finance Department under sub-rule (1) but in which the Finance Department has not concurred, shall be proceeded with unless a decision to that effect has been taken by the Cabinet. Formal orders shall, nevertheless, issue only after the Finance Department has exercised scrutiny over the details of the proposal.

It is clear from the sub-rule extracted above that if it was necessary to over- rule the Finance Department it could only be done by the Cabinet and not by the Prime Minister. Since the order of the Prime Minister was clearly against law, it was not right for the High Court to enforce it in exercise of its constitutional jurisdiction, which is equitable in nature and cannot be exercised to implement an illegal order even if it be of the Prime Minister. It was held by this Court in "Major Muhammad Aftab Ahmad (Retired) vs. Azad Jammu and Kashmir Government " [1992 SCR 307] that

(iii) Even if it is assumed for the sake of arguments that the Prime Minister had made the order for the appointment of the appellant to the post of Superintendent of Police still it cannot be given effect to or enforced by way of issuing writ directing the respondent to issue the order of his appointment to the said post as it is a settled law that the writ jurisdiction cannot be exercised to direct a person to give effect to an unlawful order of any authority even though it is competent authority to pass such an order in a lawful manner. Since, as said earlier, the appointment of the appellant could not be made to the post of Superintendent of Police under the rules the orders of the Prime Minister claimed by

> the appellant to be the orders of his appointment to the said post being violative of the relevant rules were unlawful and consequently were not enforceable by the High Court in its writ jurisdiction which is discretionary in nature and its exercise is always refused where the ends of justice and facts of the case do not justify and call for to do so."

10. The respondents, having been promised an enhanced salary package, have accrued rights under the Cabinet decision which cannot be arbitrarily withheld or denied. Their right to equitable treatment stands established.

11. Before parting with, I would like to observe here that government departments must act in strict accordance with the Rules of Business and promptly implement Cabinet decisions is a fundamental principle of democratic governance. The Rules of Business, which provide the procedural framework for governmental operations, are essential to ensure consistency, transparency, and accountability within the administration. Government departments are obligated to adhere to these rules, which mandate the timely execution of Cabinet decisions. This adherence is critical for ensuring consistency and uniformity across all departments, thereby minimizing the risk of arbitrary or inconsistent actions. The importance of this compliance cannot be understated, as it directly contributes to maintaining public trust in the administration. Efficiency in implementing decisions is also crucial; any delay can result in significant inefficiencies, wastage of resources, and potentially damage the credibility of the government. Cabinet decisions are typically the product of extensive deliberation and consultation among various stakeholders. Once a decision has been made, it must be implemented without undue delay to achieve its intended outcomes. Delays in this context can undermine policy objectives, which may lead

to a loss of momentum, and, in some cases, render the decision ineffective or irrelevant. Furthermore, unnecessary delays can erode public confidence in the government's capacity to govern effectively. From a legal standpoint, prolonged delays may compel affected parties to seek judicial intervention to enforce the decision, which could place an additional burden on the judiciary and incur further costs for the government. Failure to implement a Cabinet decision, particularly when it results in accrued rights for individuals or entities, represents a serious violation of those rights. The Court has recognized that such delays can unjustly deprive petitioners of their legal entitlements, effectively denying them the benefits they were due. This is not merely a matter of administrative inefficiency; it is a breach with real consequences for those who affected. No committee or Executive authority acting subsequent to a Cabinet decision possesses the authority to alter, override, or reinterpret that decision.

In light of the above discussion, leave in the petition (supra) stands refused. No order as to costs.

JUDGE

Muzaffarabad,
29.08.2024
Approved for reporting.