THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

Khawaja Muhammad Nasim, J
Raza Ali Khan, J

Civil APPEAL NO. 247 OF 2024

[Against the judgment dated March 05, 2024, passed by the High Court in Writ Petitions No. 216/ 2020, 3734 & 3787/ 2022]

Hammad Ahmed, Computer Instructor, Government Boys High School Chelhana Pehalian, Azad Kashmir (MS Telecommunication Network) & 9 others.

... Appellant(s)

VERSUS

Azad Government of the State of Jammu & Kashmir through Additional Chief Secretary (G), having its office at New Secretariat, Muzaffarabad, Azad Kashmir & 5 others.

… Respondent(s)

Secretary Higher Education Department of Azad Jammu & Kashmir having its office at New Secretariat, Muzaffarabad, Azad Kashmir & 18 others.

… Pro-forma Respondent(s)

Appearances:

For the appellant(s):	Barrister Hamayun Nawaz Khan, Advocate.
For the respondent(s):	Mr. Aamir Ali Awan, Advocate.
Date of hearing:	16.06.2025.

JUDGMENT:

***Raza Ali Khan, J*:-** Impugned in the present appeal is the consolidated judgment dated March 5, 2024, rendered by the High Court in Writ Petitions No. 216/2020, 3734/2022, and 3787/2022, whereby the writ petitions filed by the appellants herein and others were dismissed.

2. The appellants and some others, claiming to hold MS degrees awarded by universities duly recognized by the Higher Education Commission (HEC), instituted separate writ petitions before the High Court. They contended that the MS and M.Phil degrees are academically equivalent, both comprising 18 years of education. On this basis, they asserted that they were entitled to the Special Allowance @ 50% of the Ph.D. Allowance, as provided under the Notification issued by the Government of Azad Jammu & Kashmir dated July 12, 2016. Further, they challenged paragraph No. 2 of the policy circular dated April 26, 2017, issued by the Finance Department, which restricts the grant of the Special Allowance exclusively to M.Phil degree holders. The writ petitions were contested by the respondents who denied the appellants' claim through written statements. It was asserted that the appellants lacked locus standi, as they did not fulfill the qualification criteria required for the Special Allowance. The respondents maintained that MS and M.Phil are not identical qualifications and that the aforementioned circular, lawfully confines the benefit to M.Phil degree holders. Following proceedings, the High Court dismissed the writ petitions via the impugned consolidated judgment dated March 5, 2024.

3. Barrister Hamayun Nawaz Khan, the learned counsel for the appellants, reiterated the factual matrix of the case and contended that the impugned judgment is legally unsustainable, being contrary to law. He argued that the impugned judgment misinterprets the relevant notifications and fails to acknowledge the equivalence of the MS and M.Phil degrees as recognized by the HEC through its Notification dated May 23, 2017. According to the said notification, the MS and M.Phil degrees are identical in substance, differing only in nomenclature, as both are structured around 18 years of education and may include coursework and/or a thesis component. He further argued that the circular dated April 26, 2017, issued by the Finance Department, was misapplied by the High Court, as it pertains only to degrees falling under the third category of the HEC Notification, whereas the appellants' qualifications fall under the first and second categories, which are explicitly recognized as equivalent. The learned counsel also submitted that the precedent relied upon by the High Court, "*Muhammad Rizwan-ullah Khan & others v. Azad Govt. & others"* (2018 SCR 1161), is distinguishable, as it pertains to the qualification of M.Sc. (Hons.), which does not equate to 18 years of education and therefore falls outside the scope of the appellants' case. He submitted that MS degree holders are being granted the same allowance in various departments across Pakistan and even in some departments of Azad Jammu & Kashmir, which supports the claim of parity. The learned counsel maintained that denial of the Special Allowance to MS degree holders amounts to a violation of the principles of equality, non-discrimination, and equal opportunity in public service, as enshrined in the Azad Jammu & Kashmir Interim

Constitution, 1974. Lastly, he prayed for acceptance of the appeal.

4. Conversely, Mr. Aamir Ali Awan, Advocate, the learned counsel for the respondents, defended the impugned judgment and asserted that the claim of the appellants is untenable in view of the Finance Department's Circular dated April 26, 2017, which restricts the Special Allowance exclusively to M.Phil degree holders, irrespective of any equivalence accorded by the HEC. He argued that the HEC Notification dated May 23, 2017, pertains only to academic equivalence for admission and progression in higher studies, such as entry into Ph.D. programs, and does not extend to financial entitlements, which fall under the exclusive purview of the Government's policy-making domain. He further contended that the reliance placed by the appellants on the Health Secretariat's order dated February 28, 2021, is misplaced, as it was issued without the concurrence of the Finance Department and does not relate to the Special Allowance governed by the Government's Notification dated July 12, 2016. He emphasized that Condition No. 1 of the said notification categorically prescribes eligibility for M.Phil holders only, and the precedent of *Muhammad Rizwan-ullah Khan* (supra) squarely applies, reaffirming that financial entitlements, such as a specific allowance, cannot be claimed on the basis of equivalence or alternate qualifications. He, therefore, prayed for dismissal of the appeal.

5. We have heard the arguments advanced by the learned counsel for the parties and meticulously examined the record along with the impugned judgment.

The core legal issues requiring adjudication in this appeal are as follows:

I. Whether in the light of HEC Notification dated May 23, 2017, an MS degree is academically equivalent to M.Phil degree?

II. Whether the Finance Department Circular dated April 26, 2017, which limits the Special Allowance to M.Phil degree holders, is valid and enforceable against MS degree holders?

III. Whether the denial of Special Allowance to MS holders, despite their equivalence with M.Phil as recognized by the HEC, constitutes discrimination in violation of the provisions of Azad Jammu & Kashmir Interim Constitution, 1974?

IV. Whether the High Court erred in relying upon the precedent reported as "*Muhammad Rizwan-ullah Khan & others vs. Azad Govt. & others*" (2018 SCR 1161), which pertains to a distinguishable qualification (i.e., M.Sc. (Hons.))?

V. Whether financial entitlements, such as the Special Allowance, can be justifiably denied to MS degree holders solely on the basis of administrative discretion, in disregard of uniform academic recognition?

6. It may be noted here that the HEC is the competent authority for determining the equivalence of academic degrees in Pakistan, including Azad Jammu & Kashmir. Through its Notification dated May 23, 2017, the HEC unequivocally declared that there is no substantive difference between the MS and M.Phil degrees, except in nomenclature. The said Notification also stated that, in some cases, the title was changed from M.Phil to MS

following the introduction of BS and MS programs by the HEC. Both degrees represent 18 years of education and are awarded either through coursework (30 credit hours) or a combination of coursework and thesis (24 credit hours of coursework + 6 credit hours of thesis). The HEC classified such degrees into three categories, with MS and M.Phil degrees falling under categories (i) and (ii), thereby affirming their academic equivalence. In contrast, professional qualifications in fields such as Engineering, Agriculture, Law, and MBA fall under category (iii). In view of this officially recognized academic equivalence, any distinction drawn between MS and M.Phil degree holders for the purpose of the Special Allowance appears arbitrary and devoid of lawful justification. Once equivalence is formally acknowledged, granting financial benefits to one group while denying the same to another similarly placed group undermines the legitimacy and binding nature of the HEC's authority. For the sake of convenience, the said Notification is reproduced hereunder:—

"**HIGHER EDUCATION COMMISSION**

H-9, Islamabad (Pakistan) Phone: (051) 90802750, Fax: (051) 90802753
E-mail: Ismaeel@hec.gov.pk

Muhammad Ismail
Consultant (Quality Assurance Division)

Ref. 1-1 (NQF)/QAD/2017/HEC/49-176
Dated: May 23, 2017

Subject: **Grant of MPhil Allowance @ Rs. 2500/- Per Month**

1. Reference to F.No.3(6)Imp/2016-Vol-11-4 dated January 04, 2017 on subject cited above.

2. Under the provision of Section 10 clause 1(o) of HEC's Ordinance No. LIII, dated 11.09.2002, the Quality

Assurance Division of HEC has devised the Admission and Award of Degree Criteria for MS/MPhil/PhD/Equivalent Programs. As per HEC approved criteria (enclosed), there is no difference between MS and M. Phil degrees except nomenclature. As such, there are two types of MS/MPhil Degrees that mentioned below:

a. MS/MPhil by Course Work (30 credit hours)

b. MS/MPhil by Thesis (24 credit hours course work + 06 credit hours thesis)

3. It is further added that in some cases, nomenclature was changed from MPhil to MS after the Introduction of BS and MS programs by HEC. As such following types of degrees are awarded as equivalent to 18 years of schooling:

S#	Degree Title	Description
i	a. M. Phil Degree (with thesis) b. MS Degree (with thesis)	Both are equal degrees, awarded after 24 credit hours course work+ 06 credit hours thesis. There is no difference except nomenclature.
ii	a. M. Phil Degree by Course Work b. MS Degree by Course Work	Both are equal degrees, awarded after 30 credit hours course work. There is no difference except nomenclature.
iii	Equivalent Degrees of other disciplines like Engineering, Agriculture, Law MBA etc.	In these disciplines, degrees are not awarded with MS/ M. Phil Title while these degrees are equated to 18 years of schooling.

4. According to above referred Office Memorandum of Govt. of Pakistan, Finance Division, the MPhil allowance is granted to those only who acquire/possess the degree of MPhil recognized by the HEC. However, in view of the above-mentioned clarification, all those who have MPhil or MS degrees (18 years schooling) should be eligible to draw the allowance @ Rs. 2500/- per month.

5. Forwarded for your favorable consideration, please.

With kind regards,

(Muhammad Ismail)"

7. The Finance Department's circular dated April 26, 2017, predates the HEC clarification of May 23, 2017, and fails to incorporate or reflect the academic parity between MS and M.Phil degrees as explicitly recognized by the competent authority. To the extent that the circular excludes MS degree holders from receiving

Special Allowance, it suffers from overbreadth and lacks a rational nexus with its stated objective. While it is correct that financial policy falls within the executive's domain, such discretion is not absolute and must function within the constitutional bounds and the principles of fairness, equality, and reasonable classification. Where the Government elects to confer financial benefits based on academic qualifications, it is obligated to respect the authoritative determinations of academic equivalence by the HEC. Ignoring such determinations results in an arbitrary and unreasonable classification, which is impermissible under the law.

8. It may also be observed that Article 4(4)(15) of the Azad Jammu & Kashmir Interim Constitution, 1974, guarantees that all State subjects are equal before the law and are entitled to equal protection under it. The denial of the Special Allowance to MS degrees holders, despite HEC's formal clarification dated May 23, 2017, constitutes a violation of these constitutional guarantees. The distinction drawn by the Finance Department through its Circular dated April 26, 2017, excluding MS degree holders in defiance of the HEC's authoritative recognition, amounts to arbitrary and hostile discrimination. Additionally, the record reflects that MS degree holders are being granted the M.Phil./MS Allowance in various provinces of Pakistan and even within certain departments of the Government of Azad Jammu & Kashmir, on the ground that the MS degree is equivalent to the M.Phil. degree. This inconsistency underscores a lack of uniformity and fairness in the implementation of policy, further invalidating the distinction drawn in the impugned circular.

9. The High Court's reliance on the judgment reported as *"Muhammad Rizwan-ullah Khan & others v. Azad Govt. & others"* (2018 SCR 1161) is misplaced and inapplicable to the case in hand. That judgment dealt with a claim for Special Allowance based on an M.Sc. (Hons.) degree which, as per the HEC Notification dated May 23, 2017, does not fall under categories (i) and (ii), and therefore cannot be considered equivalent to an M.Phil or MS degree. Moreover, the M.Sc. (Hons.) comprises 16 years of education, and no clarification has been issued by the HEC equating it with an M.Phil degree. In contrast, the degrees held by the present appellants fall squarely within categories (i) and (ii) of the HEC Notification, which pertain to MS and M.Phil degrees awarded through coursework or a combination of coursework and thesis, both involving 18 years of academic qualification and explicitly declared equivalent by the HEC. The distinction in academic level, recognition, and structure between the MS/M.Phil and M.Sc. (Hons.) degrees is material and renders the precedent cited by the High Court factually and legally distinguishable. Accordingly, the application of the *Muhammad Rizwan-ullah Khan* judgment to deny the appellants the Special Allowance is erroneous and without legal foundation.

For the foregoing reasons, the appeal is accepted. The impugned judgment of the High Court dated March 5, 2024, is hereby set aside. The appellants, and all other similarly placed individuals, are declared entitled to the Special Allowance @ 50% of the Ph.D. Allowance in terms of the Notification dated July 12, 2016, with effect from the date of clarification issued by the HEC, i.e., May 23, 2017. The concerned departments are directed to process

and disburse the said allowance to the appellants and all other similarly placed individuals within a reasonable timeframe. There shall be no order as to costs.

JUDGE **JUDGE**
(JII) **(JI)**

Rawalakot,
24.06.2025.