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

PRESENT:

RAZA ALI KHAN, J.
KHALID YOUSAF CHAUDHARY, J.

CIVIL APPEAL No. 110 OF 2025
(On appeal from the judgment of the High Court dated 31.01.2025 passed in writ petition No. 2934 of 2022)

Ajmal Zahid Junior Clerk, presently surplus and posted as Naib-Qasid in Directorate of Wildlife and Fisheries Muzaffarabad.

…Appellant(s)

VERSUS

Muhammad Safdar Mir, Machine Operator B-5 and others.

…Respondent(s)

Appearances:

For the Appellant(s):	Mr. Saqib Ahmed Abbasi, Advocate.
For the Respondent(s):	Mr. Maqsood Ahmed Sulehria, Advocate.
Date of hearing:	08.01.2026

JUDGMENT:

***Raza Ali Khan, J*:-** This appeal, granted by leave of the Court, arises out of the judgment dated 31.01.2025 passed by the learned High Court, whereby the writ petition filed by Respondent No. 1, was allowed.

2. The gravamen of the controversy is that Respondent No. 1 invoked the constitutional jurisdiction of the High Court, asserting that he was serving in the Fisheries Department in BPS-5, possessed an Intermediate qualification along with a six-month computer course certificate, and was the senior-most employee in his cadre. On the strength of these assertions, he claimed entitlement to promotion against the 20% quota reserved for departmental promotion to the post of Junior Clerk (BPS-11) and alleged inaction on the part of the department despite availability of vacancies. The learned High Court, vide judgment dated 31.01.2025, accepted the petition and directed the department to decide the matter within two months. The present appellant, though not a party before the High Court, has assailed the said judgment on the ground that it suffers from manifest illegality, as the relief was granted on the basis of repealed service rules, ignoring the amended statutory framework, under which the appellant claims to be better qualified.

3. Mr. Saqib Ahmed Abbasi, Advocate, learned counsel for the appellant, contended that Respondent No. 1 predicated his claim upon the Rules of 2020, which stood superseded by Notification dated 07.04.2021, whereby the minimum qualification for appointment or promotion to the

post of Junior Clerk (BPS-11) was enhanced to a Bachelor's degree from a university recognized by the Higher Education Commission, along with typing proficiency and a computer diploma. It was argued that Respondent No. 1 deliberately suppressed the amended notification, thereby misleading the High Court into granting relief on an erroneous legal premise. Learned counsel further submitted that the appellant, being a graduate and having already obtained a valid recommendation for promotion in 2011, possesses a superior and enforceable right under the amended rules. On these grounds, it was urged that the impugned judgment is unsustainable in law.

4. Conversely, Mr. Maqsood Ahmed Sulehria, learned counsel for Respondent No. 1, raised a preliminary objection regarding maintainability, contending that the appellant had earlier challenged an order dated 11.02.2009, before the Service Tribunal, which was allowed on 07.01.2010, and that the appellant's subsequent appeal before this Court was dismissed on 27.05.2010, thereby rendering the matter res judicata. He further argued that the 20% promotional quota earmarked for Naib Qasid already stood exhausted and that, under the Departmental Rules dated 16.02.2012, no promotional slot remained available. It was also contended that the department, by not filing an appeal against the High Court's judgment, had acquiesced to the claim of Respondent No. 1. Lastly, it was urged that Notification dated 07.04.2021, lacked legal force for want of publication in the Official Gazette.

5. We have heard the learned counsel for the parties and carefully examined the record. It transpires that

Respondent No. 1 approached the High Court seeking a direction to the department to place his case before the competent Selection Committee for promotion to the post of Junior Clerk (BPS-11). His claim was founded upon the Azad Jammu and Kashmir Fisheries and Wildlife Departmental Service Rules, 2006, as amended on 03.04.2020, which provided a 20% promotional quota on the basis of seniority-cum-fitness from amongst officials in BPS-1 to BPS-5, possessing five years' service and the prescribed qualification then in force.

6. However, the record unmistakably reveals that the regulatory framework governing the post of Junior Clerk had undergone a substantive amendment through Notification dated 07.04.2021, which expressly abrogated the earlier qualification of Intermediate and prescribed a Bachelor's degree as the minimum qualification for appointment by initial recruitment, promotion, or transfer. This notification was very much in force at the time the impugned judgment was rendered.

7. Learned counsel for the respondent sought to challenge the enforceability of the said notification on the ground of non-publication in the Official Gazette. To remove any ambiguity, this Court summoned the official record from the Controller, Printing Press, Azad Government of the State of Jammu and Kashmir, which confirms that the notification was duly published in the Official Gazette dated 12.04.2021. The objection raised by the respondent, therefore, stands repelled.

8. There is no dispute that the impugned judgment of the High Court was passed on 31.01.2025, long after the

amended qualification regime had come into force. Consequently, reliance upon the repealed Rules of 2020 was legally impermissible. The High Court, having been misled by suppression of material facts, proceeded on an obsolete statutory framework, which vitiates the impugned judgment.

9. It is a settled principle of service jurisprudence that fulfilment of prescribed eligibility criteria is a sine qua non for promotion. Seniority, howsoever long, cannot override statutory qualifications. An employee who admittedly does not meet the minimum educational requirement cannot claim promotion merely on the basis of length of service or seniority.

10. The contention that the amended notification applies only to employees in BPS-1 to BPS-4 and not to those in BPS-5 is equally misconceived. Where the rule-making authority prescribes a minimum qualification for promotion to a higher post, such requirement applies uniformly to all aspirants, irrespective of their existing pay scale. Any other interpretation would defeat the object of the amendment and render the statutory qualification meaningless.

11. In the circumstances, it is manifest that Respondent No. 1, being only an Intermediate pass, does not fulfil the mandatory qualification prescribed under Notification dated 07.04.2021 and was, therefore, ineligible for promotion to the post of Junior Clerk (BPS-11). The impugned judgment, having been passed in disregard of the prevailing statutory rules, cannot be sustained.

12. For the foregoing reasons, the appeal is allowed, the judgment dated 31.01.2025, passed by the High Court

is set aside, and the writ petition filed by Respondent No. 1 stands dismissed. No order as to costs.

JUDGE **JUDGE**

Muzaffarabad,
12.01.2026