IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

RAJA SAEED AKRAM KHAN, C.J.
RAZA ALI KHAN, J.

CIVIL PLA No. 504 OF 2025

(On appeal from the judgment of the High Court dated May 21, 2025, passed in Writ Petition No. 2543 of 2023)

Shahida Bibi, Junior Technician Medical, Abbas Institute of Medical Sciences Muzaffarabad & another.

…Petitioners

VERSUS

Secretary Health Azad Government of the State of Jammu and Kashmir & others.

…Respondents

Appearances:

For the Petitioners:	Raja Sajjad Ahmed Khan, Advocate.
For the Respondents:	Syed Ashfaq Hussain Kazmi, Advocate.
Date of hearing:	09.02.2026

ORDER:

***Raza Ali Khan, J*:-** The captioned petition for leave to appeal is directed against the judgment of the learned High

Court dated May 21, 2025, whereby the writ petition instituted by the petitioners was dismissed in limine.

2. The pertinent facts are that the petitioners were initially engaged on a temporary basis as Nursing Assistants/Dispensers B-9 under the development scheme titled "Strengthening of Accident and Emergency Service & Enhancement of Service Delivery" at Abbas Institute of Medical Sciences, Muzaffarabad, pursuant to an order dated June 30, 2009. By Government notification dated October 09, 2012, these all posts of scheme, including those held by the petitioners, were regularized under the recurrent budget of the Health Department, and permanent appointments on merit were formalized on February 20, 2013. The petitioners contested the cancellation of their appointments and, pursuant to directions issued by this Court, participated in the selection process, being placed at serial numbers 4 and 8, respectively. In 2015, the Service Rules were amended to prescribe matriculation with science, second division, as the minimum qualification for the post of Junior Technician. The petitioners sought relaxation of the revised qualification; however, no relief was granted, and they were relieved off ad hoc service by order dated June 22, 2023. Consequently, they filed a writ petition before the High Court, assailing the order dated June 22, 2023 as illegal and without lawful authority. They further sought directions for grant of relaxation in educational qualification in terms of the letters issued by the Services and General Administration Department, and further prayed for issuance of appointment orders and restoration in service on the basis of the earlier rules, official correspondence, and the merit list. The learned High Court, after considering the matter, dismissed their writ petition summarily via the

impugned judgment dated May 21, 2025. The present petition for leave to appeal arises therefrom.

3. Raja Sajjad Ahmed Khan, learned counsel for the petitioners, contended that the impugned judgment is manifestly contrary to law and the facts of the case. He submitted that the petitioners were appointed in 2009 under the Service Rules, 1984, continued to perform duties on an ad-hoc basis till their posts were absorbed into the normal budget in 2012, and that subsequent amendments to the Service Rules could not impinge upon their accrued rights. The learned counsel submitted that the petitioners, having served for a considerable period, had acquired and accrued an enforceable right to continuation in service, and that the absorption of their posts into the regular budget, created a legitimate expectation of regularization. It was further contended that the petitioners were subjected to differential treatment, as relaxation of qualification had previously been granted to similarly placed employees namely Wasim Akram, Shehnaz Begum, and Ejaz Ahmed Khan. Denial of similar treatment, it was argued, constituted discriminatory application of law and adversely affected the petitioner's legitimate expectation of regularization. He added that the government possess power to relax the qualifications requirement which ought to have been exercised in their faovur in the interest of fairness and equity. It was also contended that the termination of the petitioners' ad-hoc service was effected without affording them an opportunity of hearing, thereby infringing the principle of *audi alteram partem*, and rendering the order liable to be quashed.

4. Conversely, Syed Ashfaq Hussain Kazmi, learned counsel for the respondents, supported the impugned

judgment, asserting that it was rendered in accordance with law and that the learned High Court correctly held that no relaxation of qualification could be claimed as of right. The relaxation where permissible must be exercised sparingly and for recorded reasons. He further contended that no mala-fide, discrimination or arbitrariness has been demonstrated, therefore, the petition for leave to appeal is liable to be dismissed.

5. We have heard the learned counsel for the parties and meticulously examined the record. It is evident that the petitioners' appointments were adhoc in nature as Nursing Assistants/Dispensers B-9 under the development scheme titled "Strengthening of Accident and Emergency Service & Enhancement of Service Delivery" at Abbas Institute of Medical Sciences, Muzaffarabad, pursuant to an order dated June 30, 2009. Subsequently, by Government notification dated October 09, 2012, the posts, including those held by the petitioners, were brought under the normal budget of the Health Department, and formal orders of permanent appointment were issued on February 20, 2013.

6. The principal grievance of the petitioners is that, notwithstanding their length of service and accrued experience, they were denied relaxation of qualification after the amendment of the Service Rules in 2015, whereby Matriculation with Science (Second Division) was prescribed for the post of Junior Technician. Ultimately, they were relieved off service on the ground that they did not fulfil the amended qualification criteria. It is trite that ad-hoc appointments are temporary, precarious and subject to statutory regulation. Such appointments do not confer a vested right of permanent absorption or continuation in

service. Subsequent amendments to the Service Rules cannot alter the inherently temporary character of such appointments, nor can they create enforceable rights in favour of the incumbents. Temporary service entitles the appointees only to remuneration for the period actually served; it does not ripen into a vested right of regularization or relaxation of prescribed qualification. The petitioner's claim of accrued or vested rights is without merit, a right can be said to accrue only when it is complete, vested and enforceable under existing law. The petitioner's appointment being expressly ad-hoc and conditional, no enforceable right could crystallite beyond the framework of the rules.

7. The core question requiring determination is whether the amended Service Rules could be held inapplicable to the petitioners. Originally, under the Kashmir Health Department Service Rules, 1984, the qualification prescribed for the post was Matriculation along with a two-year diploma. By subsequent amendment, the qualification was modified to Matriculation with Science (Second Division). Although the petitioners contended that they were appointed in 2009 in accordance with the Service Rules, 1984 and continued to discharge their duties, particularly after the posts were placed under the normal budget in 2012, they nevertheless remained bound by the statutory regime as amended from time to time. Continued service on a daily-wage or ad-hoc basis does not confer immunity from compliance with amended statutory rules, nor does it give rise to legitimate expectation of exemption from such qualification.

8. We are not persuaded by the arguments advanced on behalf of the petitioners. It has been consistently held by the superior Courts that the minimum qualifications prescribed

under the Service Rules form the very foundation of a post and cannot be relaxed as a matter of course. Educational qualification and requisite experience constitute conditions precedent for appointment and merit in public employment. Any indiscriminate dilution of such standards would erode the benchmark of recruitment and compromise the integrity of the civil service.

9. Relaxation of Service Rules is permissible only in rare and exceptional cases, and strictly in accordance with the express statutory provision. Section 22 of the Azad Jammu and Kashmir Civil Servants Act, 1976 empowers the Government to relax the requirements of the Rules only in individual cases, for just and equitable reasons, and upon recording sufficient reasons. A blanket or wholesale order of relaxation, devoid of cogent justification, would be legally untenable. There exists no enabling provision for the Government to circumvent the essential eligibility criteria in a manner that undermines the object and scheme of the Rules. Educational qualification being condition precedent to appointment are subject to discretionary relaxation and cannot be claimed as a matter of right.

10. We have already held that the petitioners' initial appointments were purely of ad-hoc nature, and that such appointments do not confer any vested right for permanent absorption or continuation in service. It has further been observed that subsequent amendments to the Service Rules, being statutory in character, govern the field from the date of their promulgation and are binding upon all incumbents. Mere length of service cannot override the mandate of the amended Rules.

11. Faced with this legal position, the petitioners have sought to base their claim on the doctrine of relaxation, contending that even if the amended qualification is applied, the Government ought to have relax the same in their favour in view of their experience and continued service. This contention necessitates an examination of the scope and limits of the Government's power to relax statutory qualifications.

12. On this aspect, the law is well settled. The scope of relaxation of statutory qualifications has already been authoritatively settled by this Court. In *University of AJK and others v. Dr. Sardar Javed Iqbal and others*[1], it was unequivocally held that statutory qualification, being foundational to a post, cannot be dispensed with at discretion where the candidate admittedly lacks essential eligibility. The relevant portion of the judgment is reproduced hereunder: -

> "6.It may be observed here that the qualification for any post is very essence and vital to fulfill objective criteria in selections and appointments. Relaxation in educational qualification that too for the post of Professor in a State University should be regarded as an alien concept falling somewhere outer of this Universe. The relaxation in educational qualification should be in very exceptional and rarest of rare cases that too under explicitly and objectively defined rules. The educational qualifications and experience are deemed as condition-precedent in all cases of appointment to civil service. When educational qualifications and condition of experience are relaxed then of course, no criterion is left to recruitment to civil service."

13. Similarly, in *Javed Iqbal Khwaja and others v. Azad Government and others*[2], this Court categorically declared that there exists no law empowering the Government to relax

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[1] [2023 SCR 858]
[2] [PLD 1994 AJK 26]

educational qualification and experience prescribed for appointment to a particular post, as doing so would amount to manifest absurdity. Educational qualification and experience were held to be conditions precedent for appointments and any deviation would strike at the very root of the recruitment process. The relevant portion of the judgment (supra), is reproduced as follows:

> "There is no law empowering Government to relax even educational qualifications and experience required for appointment to a particular post as the same would amount to absurdity. The educational qualifications and experience are deemed as condition-precedent in all cases of appointment to civil service. When educational qualifications and condition of experience were relaxed, then, of course, no criterion was left to recruitment to civil service."

This principle was reaffirmed in *Abdul Shakoor v. Mrs. Shamim Khalid & others*[3], wherein, this court emphasized that subordinate legislation must be interpreted in harmony with the parent statute, and that any relaxation must strictly conform to the statutory limitations governing its exercise.

> "…. It is correct that aforesaid words do not appear in the rule, but it would be sufficient to mention that the aforesaid Rules are framed under the Act where this power is exercisable by the Government in respect of a civil servant, therefore no rule can be framed or read against the spirit of parent statute. It follows that the petitioner for the purposes of this matter was not a civil servant and the Government could not make any relaxation in this regard. It is also important to mention that keeping in view the provisions of the Act and the Rules, the notification must show to have recorded reasons for exercising the aforesaid power in any individual case which is just and equitable. The proposition finds support from case law reported as *Miss. Azra Hafiz and 10*

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[3] [2003 SCR 351]

others vs. Israr Hussain Mughal [1996 SCR 211] wherein it has been laid down as follows:-

> "The learned counsel for the petitioners has also drawn our attention to the Government Order dated 15.8.1992 and contended that the conditions laid down in rule 23 of the appointment rules were relaxed by the Government and thus, it was not necessary to comply with the conditions laid down in the rule. It may be stated here that the extent and scope of the powers of the Government to relax the conditions laid down in appointment rules has been previously discussed and resolved by this Court in the authorities which have been referred by the High Court in its judgment. Suffice it to say here that the power of relaxation of the rules can be exercised in individual cases which are 'just and equitable' as stipulated under section 22 of the Azad Jammu and Kashmir Civil Servants Act, 1976 for sufficient reasons and whole-sale order of relaxation of a service rule by the Government without giving reasons is not sustainable in law. Thus, we reiterate the principle laid down by this Court in some earlier cases, referred to by the High Court."

Similarly in Miss Shamaila Mehmood vs. Mukhtar Ahmed and others[4], it was held by this Court that where relaxation of prescribed qualification is granted, the Government must demonstrate on record the just and equitable reasons which necessitated such deviation, failing which, such relaxation cannot withstand judicial scrutiny.

> "The validity of the impugned notification by which the requirement of experience was dispensed with has to be answered in light of the principles stated above. When the notification in favour of the appellant was challenged by respondents, Mukhtar Ahmed and others, the Government and other respondents in the writ petition, including Shamaila Mahmood did not bring on record the reason which persuaded the Government to exempt the appellant from the requirement of experience laid down for

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[4] [1998 PLC C.S. 51]

> the post of Sub-Judge. Therefore, there is nothing on record to show that the order was passed for just and equitable consideration. I would, therefore, hold that the Notification of 15th of June, 1995 was bad in law and I would order acceptance of the writ petition filed by the present respondents for the reasons stated in this judgment."

14. The contention that certain similarly placed employees were granted relaxation in the past, and that denial of identical treatment amounts to discrimination, is misconceived and legally unsustainable. Firstly, Right No. 15 of Article 4(4) of the Azad Jammu and Kashmir Interim Constitution, 1974 guarantees equality before law, not equality in illegality, prior irregular relaxations cannot create a legitimate expectation or entitlement for other employees. If relaxation was extended in any previous instance contrary to statutory mandate, or without adherence to prescribed criteria, such irregularity cannot be relied upon to claim repetition. One wrong cannot be made basis for another wrong. The same deviation does not create a binding precedent, nor does it confer a vested right upon others to demand identical treatment. Secondly, the principle of equality operates among equally placed persons in identical factual and legal circumstances. The petitioners have not demonstrated that the alleged beneficiaries of the relaxation were granted such concession under circumstances identical in material particulars, supported by recorded reasons, and in strict compliance with the rules. Mere assertion of parity is insufficient to establish discrimination. Thirdly, it is a settled principle that Article 4(4) of the Azad Jammu and Kashmir Interim Constitution, 1974 does not envisage negative equality. If an irregular benefit was extended to one individual, others cannot invoke constitutional equity to perpetuate the

same irregularity. Accordingly, the plea of discriminatory application of law is devoid of merit.

15. Upon overall appraisal of the record and submissions advanced at the bar, we find that the petitioners, having been appointed purely on ad-hoc basis, admittedly lacking the prescribed qualifications under the amended service rules, cannot claim exemption from statutory requirements nor compel the Government to exercise discretionary relaxation in their favour. The amended rules, being binding, govern the field and admit of no exception in the absence of demonstrated arbitrariness or mala-fide. The learned High Court, therefore, committed no jurisdictional error or misapplication of the law. No ground warranting exercise of this Court's appellate jurisdiction has been made out.

Consequently, for the reasons recorded above, this petition for leave to appeal being devoid of merits, stands dismissed.

JUDGE **CHIEF JUSTICE**

Muzaffarabad,
18.02.2026