Form No: HCJD/C-121

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 979 of 2024

Zahid Hussain and 8 others

Versus

Federation of Pakistan through Secretary, Ministry of Interior and others

PETITIONERS BY:	Raja Saif ur Rehman, Advocate
RESPONDENTS BY:	Mr. Fahad Khan Tareen, Assistant Attorney General. Mr. Sana Ullah Khan, Advocate for respondent No.4. Mr. Shoaib Raza, S.O Litigation and Mr. Mansoor Ahmed, Superintendent, Establishment Division.
DATE OF DECISION:	14.10.2026

AYYAZ SHAUKAT, J:- Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the **"Constitution"**), the petitioners, who are Civil Gazetted Officers (BS-17) serving as Accounts Officers and Education Officers in the Frontier Corps, Khyber Pakhtunkhwa (the **"FC"**), seek a direction to the respondents to frame service rules for them, so as to provide them with a service structure and a defined channel of promotion. They further pray that they be accorded the same treatment as other employees whose services were regularised on the recommendation of the Cabinet Sub-Committee.

2. Briefly stated, the facts are that the petitioners were appointed in BS-17 on a contract basis against vacant posts of Captain, as General Headquarters was unable to spare army officers for those posts. On the recommendation made by the Cabinet Sub-Committee in its meeting held on 29.11.2012, their services were regularised vide Office Memorandum of the Establishment Division dated 23.01.2013. The Ministry of Interior, vide letter dated 04.12.2015, approved the regularisation of 26 Civil Gazetted Officers of

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the FC with effect from 29.11.2012, which was followed by a gazette notification dated 28.04.2016. No recruitment rules or service structure were, however, framed for them. In 2019, the Ministry of Interior and the Establishment Division agreed that rules be framed and posts be created for these officers. After protracted correspondence, the Management Services Wing of the Establishment Division, on 07.03.2022, recommended the creation of 24 posts of Civil Gazetted Officers against the surrender of an equal number of posts of Captain. According to the petitioners, the case was thereafter referred, without any necessity, to the Austerity Committee, where it remained pending. The petitioners continue to serve in the same scale without any career progression.

3. Learned counsel for the petitioners contends that, unlike other employees regularised through the same Cabinet Sub-Committee, the petitioners have been denied a service structure, in violation of Article 25 of the Constitution. He further contends that the reference of the matter to the Austerity Committee was wholly uncalled for.

4. Conversely, the learned Assistant Attorney General contends that the Finance Division (respondent No.3) conveyed its concurrence to the creation of 24 posts on 17.06.2025 and that no matter remains pending with it. He further submits that the Establishment Division (respondent No.2) returned the draft recruitment rules to the Ministry of Interior on 16.06.2025 for obtaining the prior concurrence of the Federal Public Service Commission (the **"FPSC"**). He accordingly contends that the petition is premature.

5. I have heard learned counsel for the petitioner and the learned Assistant Attorney General, and have perused the record with their assistance.

6. The grievance of the petitioners is twofold. The first limb relates to the creation of posts against which they could be adjusted; according to the petitioners, this was stalled when the case was referred to the Austerity Committee. The second relates to the framing of recruitment rules, in the absence of which they have no service structure. The record reveals that there has been material progress on both counts since the filing of this petition.

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7. As regards the posts, the Finance Division, through its Office Memorandum dated 17.06.2025, has conveyed as under:

> *"... in pursuance of recommendation of Establishment Division vide O.M. No. 8/4/2016-MSW-III dated 7.3.2022, the Competent Authority i.e., Finance Secretary/Chairman Austerity Committee has been pleased to concur the creation of the following 24 posts in lieu of simultaneously abolishing of similar number of existing posts of Captain in the same BPS in FC KP North & FC KP South subject to fulfillment of all codal formalities and meeting the budget from within allocated budget"*

Of these posts, fifteen pertain to FC KP (North) and nine to FC KP (South), and they include the posts of Accounts Officer and Education Officer (BS-17) held by the petitioners. The concurrence has been accorded by the Finance Secretary himself in his capacity as Chairman of the Austerity Committee. The objection concerning the pendency of the matter before the Austerity Committee thus stands addressed, subject to fulfilment of the conditions attached to the concurrence.

7. As regards the rules, the Ministry of Interior forwarded the draft recruitment rules for the Civil Gazetted Officers of HQ FC KP (North) to the Establishment Division vide Office Memorandum dated 13.06.2025. That memorandum also refers to a judgment of the Peshawar High Court directing the Ministry to frame rules providing a service structure for such officers. The Establishment Division returned the case on 16.06.2025 so that it could first be processed for the concurrence of the FPSC, in accordance with the sequence prescribed in its Office Memorandum dated 20.04.2023. The case has since been placed before the FPSC. Vide letter dated 17.09.2026, bearing the subject "Approval of Recruitment Rules in respect of Civil Gazette Officer (BPS-17)-HQs Frontier Corps KP (North) and HQs Frontier Corps KP (South)", the FPSC has called upon the Headquarters of FC KP (North) to furnish, within one week, the documents enumerated therein, which include the sanction of posts endorsed by the Finance Division and the draft rules on the prescribed format. As the subject of that letter shows, the rules for both FC KP (North) and FC KP (South) are presently at the stage of consultation with the FPSC,

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whereafter they are to be placed before the Establishment Division for vetting and approval, and thereafter notified.

8. It is, thus, evident that financial concurrence to the creation of the posts has been conveyed, subject to the stipulated conditions, and that the framing of the rules is in progress before the competent fora. These developments show progress towards redress of the petitioners' grievance; they do not, by themselves, establish that the relief sought has been fully granted, as the rules have yet to be finalised and notified. Moreover, the framing of recruitment rules is a function of the Executive. This Court cannot itself frame the rules or substitute its policy preferences for those of the competent authority. The Hon'ble Supreme Court has consistently held that the determination of eligibility criteria and the framing of service rules is essentially an administrative matter falling within the exclusive domain and policy-making of the Government, and that interference therewith by the Courts is not warranted (see *Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Hayat Hussain and others* (2016 SCMR 1021), followed in *Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Zahoor Ahmed Khalil and another* (2021 SCMR 816)). This does not exclude judicial review on a recognised legal ground. What the petitioners may legitimately expect, however, is that the process, which is now at an advanced stage, is carried to its logical conclusion within a reasonable time and in accordance with law. Section 24-A of the General Clauses Act, 1897 requires a power conferred by or under an enactment to make an order or give a direction to be exercised reasonably, fairly and justly, and for the advancement of the purposes of that enactment (see *Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others* (1998 SCMR 2268). One aspect of the letter of the FPSC also merits notice. Item (ix) of the list therein requires a certificate that the subject matter is not pending before any court of law. The pendency of this petition ought not to become an impediment in the very process which the petitioners seek to have completed.

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9. As regards the question of territorial jurisdiction noticed in the order dated 21.03.2024, and pressed by the learned Assistant Attorney General on 24.09.2026, the petitioners do not assail any order passed by an authority at Peshawar. Their grievance is the inaction of the Ministry of Interior, the Establishment Division and the Finance Division, in relation to the processing and approval of the proposed posts and rules at Islamabad. In *Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others* (PLD 1997 SC 334), the Hon'ble Supreme Court observed that *"a High Court has power to issue a direction to a person performing within its territorial jurisdiction functions in connection with the affairs of the Federation, a Province or a local authority … to do anything he is required by law to do"*. The objection, therefore, does not prevail. In view of what has been held in paragraphs 6 to 8 above, it is not necessary to dilate upon the other grounds urged in the petition.

10. For the foregoing reasons, this petition is **disposed of** with a direction to respondent Nos.1 and 2 to take the requisite steps, in coordination with the concerned authorities, to bring the pending process of framing and finalization of the recruitment rules to its logical conclusion and to consider the petitioners' adjustment against the posts for which financial concurrence has been conveyed, subject to the stipulated conditions and completion of the requisite formalities. The exercise shall be undertaken in accordance with law and as expeditiously as possible.

(AYYAZ SHAUKAT)
JUDGE

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