

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil appeal No.240 of 2019
(PLA filed on 13.12.2018)

Abid Mahmood son of Mushtaq Hussain, r/o
Rawli, Tehsil Harighal, District Bagh.

.....APPELLANT

VERSUS

1. Commissioner Revenue Poonch Division
Rawalakot.
2. Deputy Commissioner Bagh.
3. Selection Committee through Deputy
Commissioner Bagh.

.....RESPONDENTS

(On appeal from the judgment of the High
Court dated 28.11.2018 in writ petition
No.1210 of 2016)

FOR THE APPELLANT: Miss Rahat Farooq
Raja, Advocate.

FOR THE RESPONDENTS: Ex-parte

Date of hearing: 08.01.2020

JUDGMENT:

Raja Saeed Akram Khan, J.—The captioned appeal by leave of the Court has been filed against the judgment of the High Court dated 28.11.2018, whereby the writ petition filed by the appellant, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that the appellant, herein, filed a writ petition before the High Court, alleging therein, that the Government of Azad Jammu and Kashmir has reserved 20% quota for appointment of the children of Government employees vide notification dated 26.05.2003. The father of the petitioner-appellant, herein, was serving as Driver in the Revenue Department who has been retired from service and now the petitioner-appellant is entitled to

be appointed against the 20% quota reserved for the children of Government employees. The appellant further claimed that a post of Junior Clerk is available in the department and since 2003 more than 20 Junior Clerks have been appointed but not a single appointment has been made against the quota reserved for the children of Government employees. He sought direction for his appointment as Junior Clerk in the light of the Government notification dated 26.05.2003. The learned High Court admitted the writ petition for regular hearing and after necessary proceedings dismissed the same through impugned judgment dated 28.11.2018, hence, this appeal by leave of the Court.

3. Miss Rahat Farooq Raja, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case which is not

sustainable in the eye of law. She contended that the learned High Court dismissed the writ petition mainly on the ground that the notification dated 26.05.2003, on the strength of which the appellant is claiming the appointment, has been withdrawn, whereas, the appellant filed writ petition on 15.04.2016, and the Government withdrew the said notification on 18.10.2017, during the pendency of writ petition. She added that at the time of filing of writ petition the appellant fulfilled the qualification required for appointment against the post of Junior Clerk, however, during the pendency of writ petition while making amendment in the rules the qualification has also been enhanced. She contended that a legal right had accrued to the appellant and on the ground of subsequent developments made during the pendency of writ petition he cannot be deprived of his right.

She further added that the learned High Court without considering the record has observed that nothing is available on record to show that the disputed post falls in the quota reserved for the children of employees. In this regard, the learned counsel referred to the verification issued by the office of Deputy Commissioner available at page 19 of the paper book. The learned counsel also referred to and relied upon the case law reported as *Fazal-e-Rabbi Khan v. Azad Government of the State of Jammu and Kashmir through Chief Secretary and 4 others* [2013 PLC (C.S) 357], *Khurran Shahzad Khan v. Secretary Agriculture, Animal Husbandry and others* [2018 SCR 14] and *Syed Adnan Ejaz Gillani and 14 others v. District Education Officer and 16 others* [2018 SCR 245] and prayed for acceptance of appeal.

4. We have heard the ex-parte arguments of the learned counsel for the appellant and gone through the record along with the impugned judgment. The perusal of the record shows that the appellant filed writ petition on 15.04.2016 and sought direction for his appointment as Junior Clerk against the quota reserved by the Government vide notification dated 26.05.2003, for the children of the Government employees. The learned High Court while dismissing the writ petition has held that the notification on the strength of which the appellant is claiming the appointment has been withdrawn, however, the scrutiny of the record shows that when the appellant filed writ petition, the notification dated 26.05.2003, was in existence and the same was withdrawn on 28.10.2017, during the pendency of writ petition. From the record it also postulates that at the time of filing the

writ petition the requisite qualification for appointment against the post of Junior Clerk was fixed as FA and during the pendency of writ petition the qualification has been enhanced while making amendment in the rules vide notification dated 17.04.2017; the learned High while relying on the subsequent amendments made in the rules has observed in the impugned judgment that the appellant, herein, did not fulfill the basic requirement of the post in question. After going through the controversy involved in the matter and the findings recorded by the High Court, we agree with the argument of the learned counsel for the appellant that the learned High Court while passing the impugned judgment failed to adhere to the dictum laid down by this Court in a number of pronouncement that the Court has to consider the facts prevailing at the time of filing of lis and when a right is accrued to a

person that cannot be taken away through a repealing law. In this regard, the learned counsel has rightly relied upon the case law reported as *Fazal-e-Rabbi Khan v. Azad Government of the State of Jammu and Kashmir through Chief Secretary and 4 others* [2013 PLC (C.S) 357], *Khurran Shahzad Khan v. Secretary Agriculture, Animal Husbandry and others* [2018 SCR 14] and *Syed Adnan Ejaz Gillani and 14 others v. District Education Officer and 16 others* [2018 SCR 245]. The learned High Court has also observed in the impugned judgment that the petitioner did not bring anything on record from which this Court can ascertain that the post in question falls in the quota reserved for the children of the Government employees, however, from the letters issued by the offices of the Commissioner, Deputy Commissioner and Assistant Commissioner available in the High

Court record and the verification issued by the office of the Deputy Commissioner it is clear that the post against the said quota was very much available at the relevant time, but the learned High Court failed to appreciate the record in a legal manner.

Thus, in view of the above, we accept this appeal and while setting aside the impugned judgment issue the direction to the concerned authorities to fill in the post of Junior Clerk reserved for 20% quota in the light of the rules/policy existing at the time of filing of writ petition within a period of 2 months positively from the communication of the judgment of this Court. No order as to costs.

JUDGE

JUDGE

Muzaffarabad,
09.01.2020