SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Masood Ahmed Sheikh, J.

Civil Appeal No. 395 of 2015

(PLA filed on 30.11.2015)

Sobia Mahmood d/o Raja Mahmood Khan, r/o Dhirkot, Tehsil Dhirkot, District Bagh.

.... APPELLANT

VERSUS

1. Public Service Commission, through its Secretary having his office at New Secretariat, Lower Chatter, Muzaffarabad.
2. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary having his office at New Secretariat Complex, Lower Chatter, Muzaffarabad.
3. Secretary Education (Colleges), Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat, Lower Chatter, Muzaffarabad.
4. D.P.I. (Colleges), Azad Jammu & Kashmir, having his office at Lower Chatter, Muzaffarabad.
5. Principal, Girls Inter College Harigehl, District Bagh.
6. Raja Naveed Ahmed s/o Muhammad Khursheed, r/o Nandraie, District Bagh, Ad-hoc Lecturer Physics, Govt. Inter College Kafalgarh, District Bagh.
7. Mr. Adnan Aziz, s/o Abdul Aziz Khan r/o Panyali, District Bagh, Ad-hoc Lecturer

Physics, Govt. Inter College Thoub, District Bagh.

8. Mr. Mirza Anwar-ul-Haq s/o Muhammad Younas Khan, r/o Kharal Maldyalan, Ad-hoc Lecturer Physics, Girls Inter College Nariola, District Bagh.
9. mr. Ghulam Mustafa s/o Nazir Hussain Khan, r/o Shujah Abad, Ad-hoc Lecturer Physics, Govt. Girls Inter College Kothian, District Bagh.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 26.10.2015 in petitions No. 1193, 1295, 1296, 1300, 1320, 1324, 1325, 1332, 1333, 1348, 1400, 1553, 1599 and 1758 of 2015

FOR THE APPELLANT: Raja Sajjad Ahmed Khan, Advocate.

FOR THE RESPONDENTS: Mr. Mansoor Pervaiz Khan, Advocate-General.

Date of hearing: 18.2.2016.

JUDGMENT:

Masood Ahmed Shiekh, J.— The captioned appeal by leave of the Court arises out of the judgment of the High Court dated 26.10.2015, whereby among other writ petitions, the writ petiton No. 1332 of 2015, filed by Sobia

Mahmood, appellant, herein, has also been dismissed in limine.

2. The brief facts of the case are that the appellant, herein, filed writ petition No. 1332 of 2015 in the High Court against the respondents, herein, to the effect that she being a first class Sate Subject, domicile holder of the District Bagh and qualified as M.Sc. Pyhsic, was appointed as ad-hoc Lecturer of Physics B-17 in Government Girls Inter College Harigehal, vide notification dated 30.4.2013. Her appointment was extended from time to time. She was granted last extension vide notification dated 4.3.2015. The Public Service Commission vide advertisement No.1/2012 advertised 14 posts of Lecturers Physics (Female) B-17, in February, 2013 and one post was advertised against the quota of the District Bagh. The appellant participated in test and interview against the quota of District Bagh and was placed at serial No. 2, of the Waiting List prepared by the Public Service Commission. However, she could not be

appointed due to non-availability of any other post. It is averred that there were 20 vacant posts of Lecturers Physics, however, for mala-fide reasons the requisition of all posts were not sent to the Public Service Commission. It is stated that through the impugned notification dated 20.6.2015, by terminating ad-hoc appointment of petitioner, a candidate recommended by the Commission was appointed. It is maintained that against female posts of Lecturers B-17, males were appointed by the Government-respondent. It is further stated that through notification dated 16.10.2009, 7.17% quota was allocated for District Bagh, hence, at least 2 posts were falling against the aforesaid Unit, hence, the petitioner solicited her appointment on regular basis against any withheld post. A further prayer made in the writ petition was for setting aside the impugned notification dated 26.6.2015, to the extent of paragraph 8 thereof through which ad-hoc service of the appellant was terminated

and selectee of the Commission was appointed. The official respondents filed para-wise comments stating therein that the appellant, herein, has no locus standi to file the writ petition and also controverted the other version of the petitioner, appellant, herein, taken in the writ petition. The learned High Court, after necessary proceedings among others writ petitions also dismissed the writ petition of the appellant, herein, in limine through the impugned judgment dated 26.10.2015.

3. Raja Sajjad Ahmed Khan, Advocate, the learned counsel for the appellant, argued that the impugned judgment of the High Court suffers from misinterpretation of relevant law and the facts, hence, the same is not maintainable. He maintained that the case of the appellant before the High Court was based on just a single point that four male candidates have been appointed in the female college. The appellant being qualified, successfully passed the examination of Public Service Commission,

therefore, she should have been appointed in the said female institution. He maintained that this point was specifically alleged in para 8, grounds 'C' and 'I' in the writ petition, but the same has not been attended by the High Court. The learned counsel in support of his contention referred to a notification issued on 30.4.2013 by the Secretariat Higher Education, wherein, respondents No. 6 to 9, herein, mentioned at serial Nos. 121 to 124, were impleaded by the appellant, herein, in her writ petition before the High Court. Through the said notification dated 30.4.2013, the respondents mentioned at serial No. 121 to 124 were appointed on ad-hoc basis in the female institutions as Lecturer of Physics in grade BPS-17. It was evident from the list placed before the High Court that these four posts were available/vacant. The official respondents have deliberately withheld those posts, against which the appellant could have been appointed. The High Court in the impugned judgment has not attended this

crucial aspect and dismissed the writ petition in limine without taking into consideration the vital point of legal importance, hence, the impugned judgment of the High Court is not tenable.

4. On the other hand, Mr. Mansoor Pervaiz Khan, the learned Advocate-General, while representing the official respondents has forcefully defended the impugned judgment of the High Court and maintained that no illegality has been pointed out by the appellant in the impugned judgment, therefore, the impugned judgment warrants no interference by this Court. He placed reliance on an earlier unreported judgment of this Court titled *Shela Khizar vs. AJK Govt. and others* (Civil PLA No. 431 of 2015), and contended that the instant appeal involves the same points as have been involved in the referred case and the referred petition for leave to appeal was dismissed, therefore, in the light of dictum of this Hon'ble Court in the supra case, the instant appeal is also liable to be dismissed.

5. We have heard the learned counsel for the parties and also gone through record made available. The claim of the appellant, in her writ petition before the High Court was that at the time of advertisement No.1/2012, almost 20 posts of Lecturers Physics B-17, were available, but the requisition of all the available posts was not sent to the Public Service Commission and if all the available posts had been requisitioned, she could have been appointed against any one of them. The department while filing comments refuted the claim of the appellant, herein, stating therein that at the time of advertisement No.1/2012, 14 posts on permanent basis were available, which were requisitioned to the Public Service Commission, out of which one post was allocated for the female candidates of District Bagh, against which one Nafeesa Manzoor daughter of Manzoor Khan was appointed on the recommendations of Public Service Commission. In response to ground No.4 of the writ petition, it is stated that after appointment and joining of

Nafeesa Manzoor, the candidates falling in the waiting list are not entitled to be appointed permanently against any post according to the principle laid down in the judgment titled *Azad Govt. and 2 others vs. Muhammad Qadir Javid and another* (2014 SCR 479). In the waiting list pertaining to District Bagh, the name of the appellant, was mentioned at serial No.2, therefore, after the appointment of the recommended candidate, the ad-hoc service of the appellant has rightly been terminated. In support of the contents of the comments, an affidavit has also been filed on behalf of the department. Although, the appellant has asserted in her writ petition that some posts were withheld by the department at the time of advertisement, but she could not brought on record in support of her version from which it can be ascertained that she has really been treated in an unjust manner.

6. Moreover, from the perusal of record, it is also evident that the notification dated 30th

April, 2013 challenged by the appellant by way of writ petition before the High Court was an unattested photocopy, which is against the provisions of Rule 32 of the High Court (Procedure) Rules, 1984. The provisions of Rule 34 are mandatory and non-compliance of the said rules results into dismissal of the writ petition. On this sole ground, the writ petition filed by the petitioner before the High Court was also not competent. Reliance may be made to an unreported judgment of this Court titled *Shellah Khizar & others vs. AJK Government and others* (Civil PLA No. 431 of 2015, decided on 2.2.2016). The matter involved in the referred judgment was of same nature as is in the instant case. In para 25 of the referred case it has been held as under:-

> "25. The learned High Court dismissed the writ petitions on the ground that certified copies of the impugned order dated 26th June, 2015 have not been annexed with the writ petitions,

> which is against the provisions of rule 32 of the High Court (Procedure) Rules, 1984. The provisions of Rule 32 are mandatory and non compliance of the rule 32 will result into dismissal of the writ petition."

No irregularity or illegality has been pointed out by the appellant in the impugned judgment of the High Court. The impugned judgment is a well reasoned judgment which is based on the facts and law, hence, the same warrants no interference by this Court.

In the light of above stated reasons and dictum laid down by this Court in the referred judgment, finding no force in this appeal, it is hereby dismissed. No order as to cots.

JUDGE CHIEF JUSTICE

Mirpur
29.2.2016.

Sobia Mahmood vs. Public Service Commission & others.

ORDER:

Judgment has been signed. It shall be announced by the Registrar after notice to the learned counsel for the parties.

CHIEF JUSTICE JUDGE

Mirpur
29.2.2016