SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

Mohammad Azam Khan, C.J.

Ch. Muhammad Ibrahim Zia, J.

Civil Appeal No. 285 of 2015

(PLA filed on 11.05.2015)

1. Muhammad Mahfooz, Senior Science Teacher, Government High School Khuiratta, District Kotli.
2. Habib-ur-Rehman, Senior Science Teacher, Government Middle School Poona, Tehsil Samahni, District Bhimber.
3. Rashid Aziz, Senior Science Teacher, Government Girls High School Khuiratta, District Kotli.
4. Muhammad Zaheer Khan, Senior Science Teacher, Government Degree College, Panjan, District Kotli.
5. Muhammad Azeem, Senior Science Teacher, Government Inter College Gulpur, District Kotli.
6. Muhammad Sadiq, Senior Science Teacher, presently posted as Assistant Education Officer Doongi Sarhota, District Kotli.
7. Sikandar Hayat Khan, Senior Science Teacher, Government High School Khankah Kotchra, District Kotli.

8. Zaheen Sarwar, Senior Teachress, Government Girls Middle School, Dhanna, District Kotli.

…. APPELLANTS

VERSUS

1. Azad Jammu & Kashmir Government through Chief Secretary, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Secondary Education (Schools), Muzaffarabad.
3. D.P.I Schools (Male), Muzaffarabad.
4. D.P.I Schools (Female), Muzaffarabad.
5. District Accounts Officer, Kotli.
6. Muhammad Mansha Khan, Subject Specialist, Government Higher Secondary School Kamroti, District Kotli.
7. Nisar Ali, Subject Specialist, Government Higher Secondary School Rehrra, District Bagh.
8. Afzal Hussain, Subject Specialist, Government Higher Secondary School Parai-Amban, District Kotli.

….. RESPONDENTS

(On appeal from the Judgment of the Service Tribunal dated 16.04.2015 in Service Appeal No. 133/2013)

FOR THE APPELLANTS: Kh. Attaullah Chak, Advocate.

FOR RESPONDENTS NOS. 7-8: Syed Sarosh Gillani, Advocate.

Date of hearing: 14.04.2016

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— The captioned appeal by leave of the Court has been addressed against the judgment of the Service Tribunal dated 16.04.2015, whereby the appeal filed by the appellants, herein, has been dismissed.

2. The controversy in this case relates to the promotion of Senior Science Teachers as Subject Specialists. The brief facts of the case are that vide Government notification dated 11.01.2013, respondents No. 6 to 8 were promoted on officiating basis as Subject Specialists (English). According to the version of the appellants, the promotion has been

made on the basis of seniority list published on 26.12.2012. The appellants feeling aggrieved, filed an appeal before the Service Tribunal. The learned Service Tribunal, after necessary proceedings dismissed the appeal vide impugned judgment dated 16.04.2015, hence this appeal by leave of the Court.

3. Kh. Ataullah Chak, Advocate, the learned counsel for the appellants narrated the facts of the case and submitted that the judgment of the Service Tribunal is based upon misconception of facts. The sole reason advanced is that the appellants' academic degrees are not recognized by the Higher Education Commission. He produced the original degrees of the appellants for examination of the Court and submitted that the same are recognized by the Higher Education Commission. He further submitted that the Service Tribunal has also fell in error while not resolving the question of seniority as the appellants herein challenged the seniority position and in this regard they furnished documents, annexures "A/2" and "B", appended with the memo of appeal before this Court. The Service Tribunal was

not correct in holding that the document of seniority list has not been appended with the appeal. Thus, the judgment of the Service Tribunal is against law and not maintainable.

4. Conversely, Syed Sarosh Gillani, Advocate, the learned counsel for respondents Nos. 7 and 8 seriously opposed the appeal on the ground that the appellants possess no valid recognized academic degrees. As per their claim they obtained the academic degrees from *Al-khair* University but the degrees of said University have not been recognized by the Higher Education Commissioner. Therefore, the appellants have no cause of action to challenge the promotion order of respondents.

5. We have considered the arguments of the learned counsel for the parties and also examined the record made available. Although, the learned Service Tribunal has dismissed the appeal but at the same time keeping in view the nature of the notification dated 11.01.2013 directed the departmental authority for processing the case of promotion of eligible teachers by referring the matter to the

Selection Board, within a period of one month. It appears that the appellants have filed this appeal merely on unfounded apprehensions as neither the learned Service Tribunal has determined any seniority position nor recorded findings regarding the status of degrees. Both the questions have been left open for determination and consideration by the concerned Selection Authority / Selection Board.

6. So far as the argument of the learned counsel for the appellants that the Service Tribunal has misconceived that the seniority list has not been challenged rather the same has been challenged, is cornered, the learned counsel in this regard referred to the copy of the document which finds place on record as Annexure "A/1". The perusal of this document reveals that it is not a seniority list rather it is mere the particulars of Senior Secondary Schools Teachers for appointment as subject specialists. Neither in this document any seniority position is mentioned nor determined. According to rules, the seniority position is always determined in the seniority list which has to be duly notified by the

competent authority. Mere particulars submitted for appointment as subject specialists cannot be treated as a seniority list. In this regard the Service Tribunal has rightly observed that no seniority list / departmental order determining the seniority position is appended with the appeal.

7. The learned counsel for the appellants produced the original academic degrees of the appellants which have been examined by us. It is found that the same are duly verified and authenticated by the Higher Education Commission. The learned Service Tribunal kept in view the nature of the impugned current charge appointment order which under the provisions of Rule 10-B of Azad Jammu and Kashmir (Appointment and Conditions of Service) Rules, 1977 can only be remained operative for less than 6 months' period. Thus, the order which by operation of law at the time of judgment of the Service Tribunal could not be deemed operative, hence, the Service Tribunal has rightly in this state of affairs directed the authority to act according to law by initiating the promotion matter of the eligible

teachers through Selection Board within a period of one month. As, neither the judgment of the Service Tribunal adversely affects any seniority position of the appellants nor there is any adverse findings regarding the status of their degrees, therefore, the Service Tribunal has rightly directed for processing the matter of promotion of eligible Teachers, which is more appropriate remedy to be provided in such like cases.

With the above observations no further deliberation is required in this appeal, therefore, the same stands disposed of accordingly. No order as to costs.

Muzaffarabad,
15.04.2016 JUDGE CHIEF JUSTICE
(J-I)