SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, J.

Raja Saeed Akram Khan, J.

Civil Appeal No.256 of 2015

(PLA filed on 30.07.2015)

1. Raja Muhammad Arif, Section Officer Works Department, Azad Govt. of the State of Jammu & Kashmir, having office at New Secretariat, Chatter, Muzaffarabad.

2. Mumtaz Ahmed, Section Officer/Assistant Secretary Board of Revenue Azad Govt. of the State of Jammu & Kashmir, having office at New Secretariat, Chatter, Muzaffarabad.

….APPELLANTS

VERSUS

1. Muhammad Yaqoob Janjua, Section Officer, presently Private Secretary to Advisor Mangla Dam Affairs, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

2. Syed Ali Afzal Shah, Section Officer, Prime Minister Inspection Team, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

3. Khawaja Shabeer Ahmed, Section Officer, Elementary Education, Secretariat, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

4. Liaqat Ali Gillani, Section Officer, Population Welfare Secretariat, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

5. Muhammad Sharif Abbasi, Section Officer, Physical Planning, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

6. Muhammad Hussain, Section Officer, Higher Education, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

….. REAL-RESPONDENTS

7. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, Azad Kashmir, Muzaffarabad.

8. Selection Board No.3 through Chairman Selection Board, Secretary Services & General Administration Department, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

9. Services & General Administration Department, Azad Govt. of the State of Jammu & Kashmir, New Secretariat, Muzaffarabad.

10. Muhammad Hanif Shah, retired Section Officer, presently Lower Plate, Muzaffarabad.

11. Abdul Qayum Awan, Section Officer, retired presently resident of Awan Patti, Tehsil and District Muzaffarabad.

12. Muhammad Rafiq Chaudhry, Section Officer, presently posted in Prime Minister Secretariat, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.

13. Abid Hussain Chaudhry, Section Officer, presently posted in Food Secretariat, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad.

……PROFORMA-RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 31.12.2013 in Service Appeal No.1219 of 2012)

FOR THE APPELLANTS: Raja Amjid Ali Khan, Advocate.

FOR THE RESPONDENTS: Ex-parte.

Date of hearing: 15.04.2016.

Judgment:

Raja Saeed Akram Khan, J.— The supra tiled appeal by leave of the Court has been filed against the judgment of the Service Tribunal dated 31st December, 2013, whereby the appeal filed by the respondents, herein, has partly been accepted while setting aside the notification dated 23.10.2012, to the extent of private secretaries and superintendents with the direction to the official respondents to issue fresh order for regular promotion of private secretaries and superintendents to the post of section officer in the light of the direction of the Supreme Court by determining the seniority of the incumbents.

2. The facts in brief for disposal of the instant appeal are that the appellants and some other private secretaries and superintendents (who were already serving as officiating Section Officers) were promoted on regular basis as Section Officers (B-17) vide notification dated 23.10.2012. The said notification was challenged by the Private-respondents, herein, through an appeal in the Service Tribunal on 03.11.2012. The learned Service Tribunal while partly accepting the appeal vide impugned judgment dated 31.12.2013, set-aside the notification dated 23.10.2012 to the extent of private secretaries and superintendents. Against the judgment of the Service Tribunal, proforma-respondents No.12 and 13, herein, filed appeal before this Court. This Court vide judgment dated 18.06.2015 set-aside the judgment of the Service Tribunal to their extent. Now, the Appellants, herein, have challenged the legality of the impugned judgment of the Service Tribunal dated 31.12.2013 on the ground that they were not party before the Service Tribunal, therefore, the

notification dated 23.10.2012 cannot be set-aside to their extent, which is the subject-matter of this appeal.

3. Raja Amjid Ali Khan, Advocate, the learned counsel for the appellants, submitted that the appellants were not party before the learned Service Tribunal as well as before this Court, therefore, the cancellation of notification dated 23.10.2012 to their extent by the Service Tribunal is not warranted under law. He further submitted that the appellants, herein, were promoted as Section Officers under relevant Rules upon the recommendations of Selection Board vide notification dated 23.10.2012. He added that in pursuance of the said notification, valuable right has been accrued in favour of the appellants which cannot be snatched away. He further submitted that opportunity to contest and substantiate his case before the Court is a legal right of a person and nobody can be deprived from the same. He contended that the learned Service Tribunal set-aside the notification dated 23.10.2012 to the

extent of promotion of private secretaries and superintendents vide its judgment dated 31.12.2013 without adhering to the fact that the appellants, herein, who were also promoted as Section Officers vide said notification, are not party in the appeal. In this way, the appellants have been condemned unheard. He further contended that proforma-respondents, herein, filed an appeal before this Court against the judgment of Service Tribunal. The same was accepted by this Court vide its judgment dated 18.06.2016 but the appellants, herein, remained un-aware of the judgment passed by the Service Tribunal. They came to know about the same after the judgment passed by this Court on 18.06.2015. He lastly argued that the judgment of the Service Tribunal dated 31.12.2013 has been passed in sheer violation of the settled principles of administration of justice as Service Tribunal acted beyond its jurisdiction.

4. We have heard the ex-parte arguments of the learned counsel for the appellants and perused the record. According to the admitted facts, the

notification dated 23.10.2012 was assailed before Service Tribunal while filing appeal by the respondents. The learned Service Tribunal accepted the appeal filed by the respondents with the following findings:-

> "10. In the appeal, prayer has been made for setting aside the impugned notification to the extent of respondents No.4 to 7 only. But in this case the direction of the Hon'ble Court has not been complied with at the time of ordering regular promotion, therefore, the appeal is accepted and the impugned notification is hereby set aside to the extent of promotion of Private Secretaries and Superintendents. The official respondents are directed to issue fresh orders of regular promotion of Private Secretaries and Superintendents to the post of Section Officer in the light of the direction of the Hon'ble Supreme Court by determining seniority of the incumbents. The seniority shall be determined by showing date of regular promotion of the incumbents keeping in view the date of occurrence of vacancy, the cadre to which the vacancy goes and seniority of the incumbent in the lower grade/cadre. No order as to costs."

The judgment of the Service Tribunal was assailed before this Court through an appeal. This Court accepted the appeal and set aside the judgment passed by the Service Tribunal dated 31.12.2013 to the extent of the respondents, herein. Now the appellants, herein, filed the instant appeal for setting aside the judgment of Service Tribunal dated 31.12.2013 which has already been set aside in the previous round of litigation in the case titled *Muhammad Rafique Chaudhry & another vs. Muhammad Yaqoob Janjua & others* (Civil Appeal No.100 of 2014).

5. We are afraid that at this belated stage, grant of relief claimed will meant to review the judgment passed by this Court while hearing the appeal which is not warranted under law. The proper course was to approach this Court by filing review petition within the prescribed period of limitation but the same has not been adopted. The argument of the learned counsel for the appellants that without impleading the appellants as party in

the proceedings, the notification dated 23.10.2012 cannot be set aside to their extent, cannot be considered at this stage as the matter has been finally decided by this Court.

In the light of above discussion, we are of the view that no relief can be granted to the appellants in this appeal. Resultantly, the appeal of the appellants is hereby dismissed with no order as to costs.

Muzaffarabad.
.04.2016. **JUDGE** **JUDGE**