SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT
Ch. Muhammad Ibrahim Zia, J.
Raja Saeed Akram Khan, J.

Civil Appeal No. 297 of 2015
(PLA filed on 29.04.2015)

Raja Mumtaz Ahmed Rathore, Additional Secretary, Azad Jammu and Kashmir Legislative Assembly Secretariat, Muzaffarabad.

…. APPELLANT

VERSUS

1. Speaker, Legislative Assembly, Azad Jammu and Kashmir, Muzaffarabad.
2. Selection Committee, Azad Jammu and Kashmir Legislative Assembly (for selection to the posts B-18 and above), Muzaffarabad.
3. Tariq Zia Abbasi, Senior Additional Secretary, Legislative Assembly, Azad Jammu and Kashmir, Muzaffarabad.

…. RESPONDENTS

(On appeal from the judgment of the High Court dated 24.03.2015 in Writ petition No. 1400/2013)

FOR THE APPELLANT: Barrister Humayun Nawaz Khan, Advocate.

FOR THE RESPONDENTS: Sardar Karam Dad Khan and Ch. Shoukat Aziz, Additional Advocate-General.

Date of hearing: 12.04.2016.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— This appeal by leave of the Court has arisen out of the judgment of the High Court dated 24.03.2015 through which the writ petition filed by the appellant, herein, has been dismissed with costs.

2. According to the summary of the facts, the appellant was appointed as Staff Officer B-18 vide notification dated 17.03.1997. He remained performing his duties as such till his appointment as Reference and Research Officer. According to his version on 22.09.2002 he was qualified to be promoted as Additional Secretary B-19 but without considering him Sardar Muhammad Fayyaz Khan and Amjad Latif Abbasi were promoted as Additional

Secretaries. He assailed the promotion orders of aforesaid officials through an appeal before the Service Tribunal which was dismissed, however, on appeal this Court accepted the appeal on 07.04.2011 while observing that the appellant (Raja Mumtaz Ahmed Rathore) was qualified to be promoted as Additional Secretary B-19 on 22.09.2002. In compliance with the judgment of this Court he was promoted as Additional Secretary vide notification dated 11.05.2011. He was also given retrospective effect from 22.09.2002 by the Speaker on 16.01.2012. After retirement of Abdul Qayyum Durrani, Senior Additional Secretary B-20, Mr. Tariq Zia Abbasi, respondent No. 3, was appointed as Senior Additional Secretary B-20 vide notification dated 03.09.2009. The appellant filed a writ petition before the High Court claiming therein that in view of the Azad Jammu & Kashmir Legislative Assembly (Administration Division) Recruitment Order 2000 as amended vide notification dated 16.04.2002, the promotion to the post of Senior Additional Secretary B-20 shall be made on the basis of selection on merit

from amongst Additional Secretaries with 5 years' service as such or 17 years service in B-17 and above. It was claimed that as he was eligible to be promoted to the post of Senior Additional Secretary B-20, therefore, it was enjoined upon the respondents to determine the seniority of the Additional Secretaries. It was further claimed that he submitted an application before he Speaker on 08.03.2013 for determination of seniority in accordance with the dictum of the Supreme Court but the said application was not attended by the Speaker, whereupon, the petitioner submitted another application to the Speaker on 17.05.2013 for the same purpose but the applications have not been decided. The petitioner prayed for a direction to the respondent (Speaker, Legislative Assembly) to decide the representations filed on 08.03.2013 and 17.05.2013. The learned High Court after necessary proceedings dismissed the writ petition through the impugned judgment with costs on the sole ground that the applications on the basis of which the

petitioner seeks direction to Speaker Legislative Assembly have not been made at all.

4. Barrister Humayun Nawaz khan, Advocate, the learned counsel for the appellant submitted that the impugned judgment of the learned High Court is against the law and administration of justice. The High Court has failed to apply judicial mind and properly attend the propositions involved in this case. This Court in the judgment dated 07.04.2011 finally resolved the vested right of the appellant regarding the promotion in grade B-19 and consequently the appellant was entitled to be promoted in grade B-20 but due to failure of the respondents. he firstly filed representation before the concerned authority which remained un-rebutted and unresolved, hence, he approached the High Court with the following prayer:-

> "It is therefore, respectfully submitted that the Respondent may kindly be directed that while implementing the judgment of the Hon'ble Supreme Court dated 07.04.2011 and keeping in view the item 2 of Notification dated 16.04.2002, the Petitioner's Representations dated

> 08.03.2013 and 17.05.2013 may kindly be decided without wasting any further time. Any other relief admissible under law may also be granted. Affidavit in support of contents of Writ Petition is appended herewith."

He further submitted that the learned High Court in the impugned judgment unnecessarily entered into the inquiry of receipt of the applications filed by the appellant and on the sole ground the writ petition has been disposed of without resolving the real controversy. He submitted that in fact the matter of promotion has been finally resolved by this Court in the previous judgment and this aspect has been totally ignored by the High Court. As according to rules against the post of Senior Additional Secretary B-20, the promotion from amongst the Additional Secretaries has to be made and as the appellant is most senior Additional Secretary, specially in the light of previous judgment of this Court, hence, he deserves for his due promotion. Neither the authority has settled the issue of seniority nor implemented the judgment of this Court in letters and spirit. Thus, the

writ petition was maintainable. He further submitted that according to law, the High Court was under the obligation to grant the other relief as spelt out from the pleadings of the parties. Therefore, this appeal is liable to be accepted.

5. Conversely, Ch. Shoukat Aziz, Additional Advocate-General and Sardar Karam Dad Khan, Advocate, the learned counsel for the respondents seriously opposed the appeal and submitted that the appellant approached the Court with unclean hands by committing tampering in the record. Therefore, such person does not deserve for any discretionary relief according to the principle of law enunciated by this Court in this regard. He has committed fraud as no representation or application has been filed or pending before the authority. Even otherwise, under rules any such representation is neither competent nor maintainable. According to rules, the promotion has to be made on the basis of merit. The judgment of this Court has already been implemented in letters and spirit and this Court has not resolved or directed in relation to determination of seniority. It is further

argued that respondent No. 3 has been promoted as Senior Additional Secretary B-20 vide notification dated 03.09.2009 and the appellant has not challenged the vires of this notification which has attained the finality, thus, even on this ground he has got no cause of action and locus standi to file the writ petition or instant appeal. If, the appellant had any reason to challenge the notification of respondent No. 3, he could have challenge the same before proper forum within prescribed time. Therefore, this appeal is not maintainable and the same is liable to be dismissed.

6. We have considered the arguments of learned counsel for the parties and also examined the record made available. The learned High Court has dismissed the writ petition on the sole ground that no application or representation has been filed by the appellant as alleged in the writ petition. The appellant in this regard has made clarification in ground "D" of memo of appeal which is reproduced as follows:-

> "d. That the Speaker (respondent No. 1) without any legal justification procrastinated

the matter by not deciding the petitioner's representations dated 08.03.2013 and 17.05.2013 upon which the petitioner was constrained to file the writ petition before the High Court, however, to frustrate the process of Court, the record of receipt register was tampered/forged by the concerned officials which was ultimately made a base for dismissal of petitioner's writ petition. It is important to mention that a clear forgery and tampering with the receipt register was made which was evident on face of it as page(s) were being torn out and handwriting was not matching with connected pages. Moreover, receipts relied by the petitioner were clearly countersigned by recipient but the other receipts (purportedly of same numbers but different dates) were not countersigned by the recipient which conclusively proved the tempering by the respondents, attracting famous quote 'a man may lie but documents don't'. These important aspects escaped consideration of the Honorable Chief Justice of High Court".

Leaving aside all other aspects, on this proposition according to appellant's own version

mentioned in the ground (reproduced hereinabove) this matter requires detailed inquiry and probe regarding tampering of record. Surely, such like disputed questions of fact cannot be resolved in writ petition. Leaving aside the proposition of submitting or non-submitting of alleged applications or representations, when the learned counsel for the appellant was confronted that under what law such jurisdiction is competent, he could not satisfy the Court. The appellant claims that he has filed representation and in this regard he has referred to the document annexed as Annexure "PM" which speaks that:

"درخواست بمراد ترقیاب کئے جانے راقم در گریڈ بی۔ 20 از مورخہ 22-9-2007"

He has also referred the document (Annexure "PM/1") the title of which is:

"درخواست بمراد تعین فرمائے جانے سنیارٹی مابین ایڈیشنل سیکرٹریز"

According to section 12 of the special law i.e., the Azad Jammu and Kashmir Legislative Assembly Secretariat (Recruitment, Terms and Conditions) Act, 1976, the matters relating to terms and conditions of service not provided for by this Act,

specially right of appeal or representation, shall be governed by the time being in force and applicable to the employees holding corresponding posts in the Government Secretariat. Admittedly, according to spirit of section 12 the matters of right of appeal and representation have to be dealt under the provisions of section 21 of Azad Jammu and Kashmir Civil Servants Act, 1976. Under this section the representation lies only against the order from which the civil servant became aggrieved. Under the proviso of this section no representation lies in the matters relating to determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade. Thus, there is no statutory provision of law recognizing such like representation. As under the provisions of section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974 while exercising the writ jurisdiction the High Court has to direct any person dealing with the affairs of Azad Jammu and Kashmir to act according to law but as in the instant case the claim of the appellant is not supported from any statutory provision or principle of

law, thus, in such like situation even on merit no writ can be issued.

7. The claim of the appellant yet from another angle is not admissible under law. According to the contents of his applications dated 08.03.2013 and 17.05.2013 it appears that he sought redressal of his grievance due to promotion of respondent No. 3 as Senior Additional Secretary vide notification dated 03.09.2009. According to his own stated facts, he has submitted these applications in the year 2013, after almost 3 and half years' period. Whereas, according to the statutory provisions of section 21 of Civil Servants Act, 1976 the limitation provided for filing representation against the order aggrieved from is 60 days. Moreover, according to the provisions of section 21 of Civil Servants Act the representation against the order aggrieved from has to be made to the authority next above the authority which made the order. The promotion order of respondent No. 3 as Senior Additional Secretary B-20 dated 03.09.2009 has been made by the Speaker, Azad Jammu and Kashmir Legislative Assembly. The appellant himself

claims that he has filed representations before the Speaker, thus, even from this angle such applications/representations have no legal recognition or status.

8. So far as the question of implementation of the judgment of this Court is concerned, it also appears to be misconceived as this Court in paragraph 9 of the judgment dated 07.04.2011 has declared the appellant entitled for consideration to be promoted as Additional Secretary B-19 from the date he was qualified to be so promoted and it was mentioned that he was qualified to be promoted as Additional Secretary on 22.09.2002. In that judgment, neither any proposition of seniority list nor the promotion as Senior Additional Secretary B-20 was involved. The judgment of this Court has already been implemented in letters and spirit vide amended notification dated 16.01.2012. Thus, the question of implementation of judgment of this Court does not arise.

9. It appears that in fact the appellant indirectly wants to get rid of the promotion order of

respondent No. 3 as Senior Additional Secretary. As according to the enforced law any civil servant aggrieved from any final order, has to seek remedy within prescribed limitation before appropriate forum and such order cannot be set at naught as ancillary relief to be granted in extraordinary writ jurisdiction, specially, in the matters of terms and conditions of civil servants conferring exclusive jurisdiction upon the Service Tribunal, the writ jurisdiction of the High Court is curtailed. In this state of affairs, the writ petition filed by the appellant being not maintainable has been rightly dismissed by the High Court. The appellant has failed to make out any legal valid ground for interference by this Court. `

Therefore, fining no force this appeal stands dismissed. No order as to costs.

Muzaffarabad,
14.04.2016. JUDGE (J-I) JUDGE (J-II)

Raja Mumtaz Ahmed VS Speaker & others

ORDER:

The judgment has been signed. The same shall be announced by the Registrar, after notifying the learned counsel for the parties.

Muzaffarabad,
14.04.2016. JUDGE (J-I) JUDGE (J-II)