SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Muhammad Azam Khan, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.307 of 2015
(PLA filed on 14.7.2015)

1. Vice Chancellor, the University of Azad Jammu & Kashmir, Muzaffarabad.
2. Selection Board through its Chairman, the University of Azad Jammu and Kashmir, Muzaffarabad.
3. Syndicate, University of Azad Jammu and Kashmir through the Vice Chancellor, the University of Azad Jammu and Kashmir, Muzaffarabad.

….APPELLANTS

VERSUS

1. Professor Dr. Mirza Shahid Baig, Meritorious University Professor, BPS-21, University of Azad Jammu & Kashmir, Muzaffarabad.

….. RESPONDENT

2. Chancellor, the University of Azad Jammu & Kashmir, Muzaffarabad.

…..PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 13.5.2015 in Writ Petition No.1800 of 2013)

FOR THE APPELLANTS: Mr. Farooq Hussain Kashmiri, Advocate.

FOR RESPONDENT NO.1: Raja Sajjad Ahmed Khan, Advocate.

Date of hearing: 4.5.2016.

Judgment:

Raja Saeed Akram Khan, J.— The supra titled appeal by leave of the Court has been directed against the judgment passed by the High Court on 13.5.2015, whereby the writ petition filed by respondent No. 1, herein, has been accepted.

2. The brief facts of the case are that respondent No. 1, herein, filed a writ petition in the High Court alleging therein that he was promoted as Meritorious Professor, BPS-21 on the recommendations of the Selection Board, vide notification dated 18.9.2004. He claimed that apart from him two other Professors; Dr. Yousaf Ali and Professor Dr. Ghulam Ghous were

serving as Meritorious University Professors, BPS-21. In the year 2007, in the light of the policy issued by the Government of Pakistan, all the teaching posts were upgraded by one step in the University of Azad Jammu and Kashmir and, likewise, the posts of Professors, BPS-20 were upgraded in BPS-21, vide notification dated 24.9.2007. He claimed that as respondent No. 1, herein, and the other two professors mentioned hereinabove had already been serving as Meritorious Professors in BPS-21, therefore, they were entitled to be promoted and upgraded in BPS-22 in compliance of the aforementioned policy. The Selection Board of the University of Azad Jammu and Kashmir in its meeting held on 1.1.2009, keeping in view the policy of one step up-gradation recommended for up-gradation of the posts of all meritorious professors from BPS-21 to BPS-22. The recommendations of the Selection Board were approved by the Syndicate

on 3.1.2009. The Chancellor of Azad Jammu and Kashmir University, vide order dated 18.6.2011, approved the recommendations of the Syndicate for grant of grade, BPS-22 to the Meritorious University Professors. It has further been alleged that in spite of all the above mentioned approvals and recommendations, the formal notification regarding the up-gradation in grade, BPS-22 has not been issued. Professor Dr. Yousaf Ali Chaudhary and Professor Dr. Ghulam Ghous filed a writ petition in the High Court on 29.9.2011. The learned High Court on 8.11.2013 while accepting the writ petition issued the direction to the respondents, therein, to issue the notification for up-gradation to BPS-22 from the date of approval of the Selection Board and the Syndicate, i.e. 3.1.2009. Feeling aggrieved, Dr. Professor Haleem Khan and Professor Mushtaq Sajid challenged the judgment of the High Court before this Court by

filing petition for leave to appeal, which was dismissed, vide order dated 6.5.2014. It has further been alleged that the judgment of the High Court, dated 8.11.2013 has been implemented to the extent of Dr. Yousaf Ali and Dr. Ghulam Ghous and they have been promoted in grade, BPS-22, whereas, petitioner-respondent No.1, herein, was declared to be promoted in grade, BPS-22. The learned High Court after necessary proceedings, accepted the writ petition filed by respondent No.1, herein, and directed the official respondents, appellants herein, to issue the formal notification for grant of BPS-22 to respondent No. 1, herein, from the date of approval of the Selection Board and the Syndicate, i.e. 3.1.2009 in accordance with law. Hence, this appeal by leave of the Court.

3. Mr. Farooq Hussain Kashmiri, Advocate, the learned counsel for the appellants, argued that the judgment passed by the High Court is

against law and the facts of the case, which is not sustainable in the eye of law. He argued that the direction issued by the High Court is against the spirit of the judgment of this Court and the same has been issued without adhering to the fact that respondent No. 1, herein, was not party before the High Court as well as before this Court, therefore, the benefit of the judgments of the High Court and the Supreme Court cannot be given to him. He argued that the direction issued by the High Court has been implemented in letter and spirit and Dr. Yousaf Ali and Dr. Ghulam Ghous have been promoted in grade, BPS-22. He submitted that the respondent failed to pursue his case and under law every person should be vigilant and not indolent in prosecuting his case before a Court of law. He further submitted that the learned High Court while deciding the writ petition has escaped the notice of this important aspect of

the case. The learned counsel requested for acceptance of the appeal.

4. On the other hand, Raja Sajjad Ahmed Khan, Advocate, the learned counsel for respondent No. 1, strongly opposed the arguments addressed by the learned counsel for the appellants, while submitting that the judgment passed by the learned High Court is perfect and legal, which is not open for interference by this Court. He submitted that only, the question of implementation of the judgment of this Court was involved before the High Court, therefore, the learned High Court has rightly issued the direction to promote the respondent in grade, BPS-22. The learned counsel contended that although, respondent No. 1 was not party in the writ petition titled *Professor Dr. Yousaf Ali & another vs. Hon'ble Chancellor of Azad Jammu and Kashmir & others,* however, the rule of the proprietary

demands that keeping in view the policy of one step up-gradation of all the teaching posts in the University, the respondent should have been promoted in grade, BPS-22, therefore, the question of laches does not arises at all, hence, the instant appeal entails dismissal. The learned counsel has relied upon the case reported as *Azad Govt. & others vs. Sardar Javed Naz & others* [PLD 2016 SC (AJ&K) 1].

5. We have heard the arguments of the learned counsel for the parties at some length and gone through the record made available. The controversy involved in this case is that Professor Dr. Yousaf Ali, Professor Dr. Ghulam Ghous and respondent No. 1, herein, were serving as Meritorious University Professors, BPS-21. In the year, 2007, in the light of the policy issued by the Government of Pakistan, the teaching posts were upgraded by one step. Likewise, all the University Professors serving in

grade, BPS-20 were upgraded in BPS-21, vide notification dated 24.9.2007. In spite of all the approvals and recommendations, the competent authority has not issued the formal notification regarding their up-gradation in grade, BPS-22.

6. Professor Dr. Yousaf Ali Chaudhary and Professor Dr. Ghulam Ghous filed a writ petition in the High Court on 29.9.2011. The learned High Court vide judgment dated 8.11.2013 while accepting the writ petition issued the direction to the respondents, therein, to issue the notification regarding their up-gradation in grade, BPS-22 from the date of approval of the Selection Board and the Syndicate, i.e. 3.1.2009 in the following manner:—

> "8. In view of the approval of Selection Board and Syndicate the petitioners are entitled to get BPS-22 from 3.1.2009 and the respondents No. 2 to 4 are duty bound to issue the notification of up-gradation in favour of petitioners in

> accordance with the law. The act of the respondents not to issue the notification of petitioners with regard to up-gradation to BPS-22 seems to be violative of relevant law and Constitution.
>
> In the light of what has been stated above, by accepting the writ petition, the respondents are directed to issue notification in favour of petitioners in BPS-22 from the date of approval of the Selection Board and Syndicate i.e., 03.01.2009 in accordance with law."

The judgment of the High Court was further challenged by both the contestant parties by filing petitions for leave to appeal before this Court, which were dismissed vide order dated 6.5.2014. The judgment of the High Court dated 8.11.2013 was implemented to the extent of Dr. Yousaf Ali and Dr. Ghulam Ghous, whereas, respondent No.1, herein, was not promoted in grade, BPS-22.

7. Respondent No. 1, herein, filed a writ petition in the High Court with the following prayer:—

> "Prayer:
>
> In view of the above mentioned circumstances, it is therefore prayed on behalf of the petitioner that by accepting instant writ petition, respondents may very kindly be directed to promote the petitioner in BPS-22 by issuing the promotion/up-gradation notification in the light of recommendation/approval of the Selection Board and Syndicate. Any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case may very kindly be granted in the best of interest of justice."

The learned High Court after necessary proceedings, accepted the writ petition filed by respondent No.1, herein, and directed the official respondents in the following manner:—

"Even otherwise, the authorities of the University, who have been designated as such by the University Act have been implemented in line of the respondents. It has already been observed that if this petition is not maintainable even then the judgments earlier passed by this Court and upheld by the apex Court are declaratory judgments and those are liable to be implemented by each and every organ of the State as has been commanded in section 42(B) of the Interim Constitution Act, 1974. The other contention of the learned Advocate that policy on the basis of which grade 22 was awarded has been withdrawn by the competent authority is not tenable because an accrued right cannot be taken back due to repeal of law or withdrawal of a policy especially so when similarly placed other candidates have been benefited on that policy. Section 56(C) of the Interim Constitution Act read with Section 6 of the General Clauses Act, protects accrued rights in case of repeal of law. The next contention of the Syed Mushtaq Hussain Gillani is that attested copies of the

documents have not been appended by the petitioner with his petition is also not attracted in this case because the relief on the basis of these documents has been given in the cited cases and documents are admitted. The other points raised in the written arguments hardly require any deliberation in view of the judgment of the apex Court.

The upshot of the above discussion is that petition is accepted and the official respondents are directed to issue formal notification and grant BPS-22 to the petitioner from the date of approval of the Selection Board and Syndicate, i.e., 03.01.2009 in accordance with law."

8. It is apparent from the record that the respondent was promoted as Meritorious Professor, BPS-21 on the recommendations of the Selection Board, vide notification dated 18.9.2004. A meeting of Selection Board was held on 1.1.2009, in which the respondent along with Professor Dr. Yousaf Ali and Professor Dr. Ghulam Ghose were recommended for BPS-22.

It is also spelt out from the record that the recommendations of the Selection Board were approved by the Syndicate on 3.1.2009. The Chancellor of the University of Azad Jammu and Kashmir, vide order dated 18.6.2011, approved the recommendations of the Syndicate for grant of grade, BPS-22 to the Meritorious University Professors. It is also apparent from the record that Professor Dr. Yousaf Ali and Professor Dr. Ghulam Ghose have been promoted in grade, BPS-22 in pursuance of the judgment of this Court dated 6.5.2014, whereas, respondent No.1, herein, was not promoted in grade, B-22. Under the Constitutional provision, the judgment of this Court is binding upon each and every organ of the State and no deviation can be made from it. The pronouncement of the Supreme Court on a point of law is the law declared, and unless it is altered or overruled by the Supreme Court itself, there is no option left with all the executive and judicial authorities including the president and

the Prime Minister except to implement the same. The learned counsel for respondent No. 1 has rightly relied upon a case reported as *Azad Govt. & others vs. Sardar Javed Naz & others* [PLD 2016 SC (AJ&K) 1], wherein in paragraph No. 12 of the judgment, it has been held as under:—

> "12. As after detailed discussion, we have observed in the preceding paragraphs, that the directions issued by this Court in Bashir Ahmed Mughal's case (Supra), have not been complied with in letter and spirit, therefore, the findings recorded by the High Court that through the impugned legislation it appears that the legislature tried to frustrate the judgment of the apex Court, are not without substance. It may be observed here that under the Constitutional provision, the judgment of this Court is binding upon each and every organ of the State and no deviation can be made from it irrespective of the fact that the Authority is President or the Prime Minister of the State. The pronouncement of the Supreme Court on

> a point of law is the law declared, and unless it is altered or overruled by the Supreme Court itself, there is no option left with all the executive and judicial authorities including the president and the Prime Minister except to implement the same. It may also be observed here that it cannot be allowed to erode or nullify the judgment of this Court through executive or administrative instrument. In this regard, the Constitutional provision, i.e., section 42-A, of the Act, 1974 is comprehensive in nature and self-supplementary which need not to be supported by any authority."

In this scenario, we agree with the findings recorded by the learned High Court. The case of the respondent is at par with the Professors who have been up-graded in grade, BPS-22, in the light of the policy issued by the Government of Pakistan, therefore, the proper course for the authority was to issue the formal notification in favour of the respondent for up-gradation promotion in grade, BPS-22.

In the light of what has been discussed above, we do not find any substance in this appeal. The appellants failed to substantiate any error of law made in the judgment of the High Court. The order passed by the High Court is perfect and in accordance with law needs no interference by this Court. Resultantly, this appeal is dismissed with no order as to costs.

Muzaffarabad.
. .2016. **JUDGE** **CHIEF JUSTICE**