

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

Mohammad Azam Khan, C.J.
Ch. Muhammad Ibrahim Zia, J.

Civil Appeal No. 332 of 2015
(PLA filed on 16.05.2015)

1. Azad Government of the State of Jammu and Kashmir, through its Chief Secretary, new Secretariat Complex, Lower Chatter, Muzaffarabad.
2. Secretary (Education) Schools, Azad Govt. of the State of Jammu and Kashmir, New Secretariat Complex, Lower chatter, Muzaffarabad.
3. The District Education Officer (Female) Mirpur Azad Kashmir.

.... APPELLANTS

VERSUS

1. Azra Khalil, Primary Teacher, Govt. Girls High School Aisar Pind Kalan, District Mirpur Azad Kashmir.

..... RESPONDENT

- 1, Alisha Sultan O/O Muhammad Malik R/o Khana Abad Pind Khural Appointed as Primary Teacher on contract basis Govt. Girls High School Pind

Kalan Aisar Tehsil & District Mirpur Azad Kashmir.

2. Headmistress, Government Girls High School Pind Kalan Aisar, District Mirpur Azad Kashmir.
3. District Accountant officer, District Mirpur Azad Kashmir.
4. Director Public Instructions Schools(Female) Azad Govt of the State of Jammu and Kashmir, New District Headquarter Complex, Muzaffarabad.

..... PROFORMA RESPONDENTS

(On appeal from the Judgment of the Service Tribunal dated 13.03.2015 in Service Appeal No. 826 of 2014)

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

FOR THE RESPONDENTS: Mr. Sajid Hussain Abbasi, Advocate.

Date of hearing: 06.06.2016

ORDER:

Ch. Muhammad Ibrahim Zia, J.— This appeal by leave of the Court has been addressed against the judgment of the Service Tribunal dated

13.03.2015, whereby the appeal filed by respondent No. 1, herein, has been accepted.

2. The brief and necessary facts of the case as stated are that respondent No. 1 was appointed as Primary Teacher in the Education Department. In the year 1989, the departmental rules were framed whereby the qualification for the Primary Teachers was prescribed as Matric. The Government of Azad Jammu and Kashmir decided to retire all the teachers who could not improve their qualification. Vide notification dated 13.08.2014 respondent No. 1 was retired from service. Feeling aggrieved, she filed an appeal before the Service Tribunal. The learned Service Tribunal vide impugned judgment dated 13.03.2015 accepted the appeal and set-aside the impugned notification dated 13.08.2014, hence this appeal by leave of the Court.

3. Mr. Mansoor Pervaiz Khan, Advocate-General, the learned counsel for the appellants argued that the impugned judgment of the learned Service Tribunal is against the law and facts. The proposition involved has already been finally resolved

by this Court while disposing of number of cases in the judgment titled *Taskeen Naz vs. Fehmida Begum & others* (Civil Appeal No. 65 of 2014 decided on 19.05.2015) wherein the retirement orders of the middle pass teachers who despite quite lengthy service failed to fulfill the required qualification, have been held valid. The case of the respondent also falls in the same category, hence, the impugned judgment of the Service Tribunal is violation of principle of law laid down in the referred judgment.

4. Conversely, Mr. Sajid Hussain Abbasi, Advocate, the learned counsel for the respondent submitted that the referred judgment of this Court is not applicable to the case of respondent as she is improving her educational qualification. Only last semester has to be passed by her, therefore, the judgment of the Service Tribunal is quite legal one and this appeal is liable to be dismissed.

5. We have considered the arguments of learned counsel for the parties and also examined the record made available. According to the admitted facts the respondent was inducted into service as

Primary Teacher having middle pass qualification but despite passage of decades period she has not improved her educational qualification and failed to pass matriculation examination. Consequently, vide order dated 13.08.2014 she was retired from the service. The identical proposition came under consideration before this Court in Taskeen Naz's case (supra), wherein, after detailed deliberation, the retirement orders of primary teachers were held valid and it was observed as follows:-

"13. As hereinabove reproduced provisions clearly authorise the Authority to retire the civil servants in the public interest, thus, in view of the peculiar facts of these appeals, it hardly requires any further deliberation that the retirement orders of middle pass Primary Teachers are quite in the public interest. The time has gone when only reading and writing was considered as education. We are passing through the era of global changes and life has now become quite dependent on the modern inventions and other accessories. Today's generation or children's requirement is not mere to attain the ability

of reading or writing but for their survival they will have to compete with the world and this requires the educational parameters compatible with the modern age. Thus, it is the basic requirement that for meeting the new era's requirements the basic educational curriculum must have to fulfil the required standards which includes the teaching of global sciences and other subjects like computers and information technology etc. Surely, such syllabus cannot be taught by the teachers who are middle pass and despite remaining teachers for pretty long time of 25 years they could not succeed to pass matriculation examination. Mere providing them an opportunity to attain the age of superannuation and ruining the future of the new generation, is neither the spirit of law nor in the public interest. Thus, the decision taken by the Government in the public interest according to the peculiar facts of these cases, is quite legal and valid."

The principle of law laid down by this Court is fully applicable to the case in hand. The impugned judgment of the Service Tribunal is inconsistent with the principle of law enunciated by this Court in the

referred judgment. Therefore, while accepting this appeal and vacating the impugned judgment of the Service Tribunal, the appeal filed by the respondent stands dismissed. No order as to costs.

Muzaffarabad,
. .2016

JUDGE
(J-I)

CHIEF JUSTICE