

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No. 331 of 2015  
(PLA filed on 24.08.2015)

Muhammad Rafique, Naib Qasid, Directorate  
Colleges, Muzaffarabad.

.... APPELLANT

VERSUS

1. Attiq-ur-Rehman s/o Muhammad Nazir (Late),  
Naib Qasid, Directorate Colleges, Caste Gujjar  
r/o Kalas Seridara, Tehsil and District  
Muzaffarabad.
2. Director Colleges Muzaffarabad, having his  
office in District Complex Muzaffarabad.
3. Deputy Director, Colleges Muzaffarabad,  
having his office District Complex,  
Muzaffarabad.
4. Assistant Director Colleges having his office in  
District Complex Muzaffarabad.
5. Selection Committee through its Chairman  
Director Colleges, District Complex  
Muzaffarabad.

6. Abdul Shakoor s/o Mohkum Din r/o Podemar,  
Chokidar Model Science College Uppar Chatter,  
Muzaffarabad.

..... RESPONDENTS

(On appeal from the Judgment of the High Court  
dated 25.06.2015 in Writ Petition No. 95/2006]

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- FOR THE APPELLANT: Mr. Abdul Hamid Khan  
Shahid, Advocate.
- FOR RESPONDENT NO. 1: Mr. Manzoor Hussain  
Raja, Advocate.
- FOR RESPONDENT NO. 6: Kh. Muhammad Nasim,  
Advocate.

Date of hearing: 16.06.2016.

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, J.**— This appeal by leave of the Court has been filed against the judgment of the High Court dated 25.06.2015, whereby the writ petition filed by respondent No. 1, herein, has been accepted.

2. The summary of the facts is that the father of respondent No. 1 was serving as Naib

Qasid in Directorate Colleges Muzaffarabad. After more than 22 years service he died in the earthquake of 8<sup>th</sup> October, 2005. The Government of Azad Jammu and Kashmir framed a policy to adjust children of deceased Government employees serving in grades B-1 to B-5 on 06.02.2006. On the basis of aforesaid policy respondent No. 1 applied against the vacant post of his father on 28.12.2005 followed by another application on 10.01.2006. The official respondents through order dated 14.02.2006 promoted the appellant, herein, as Naib Qasid. The post of Chowkidar which fell vacant due to promotion of the appellant, herein, was filled by appointment of respondent No. 6. Feeling aggrieved, respondent No. 1 challenged the legality of the order dated 14.06.2006 by filing writ petition before the High Court. The learned High Court after necessary proceedings, accepted the writ petition and declared the promotion order of the appellant, herein, as without lawful authority. The writ petition to the extent of private respondent No. 6 was dismissed and the official respondents were

directed to advertise the disputed post. Dissatisfied, the appellant has filed the instant appeal by leave of the Court.

3. Mr. Abdul Hamid Khan Shahid, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that according to the record and admitted facts the appellant is a permanent civil servant, whereas, respondent No. 1 claims that he is entitled to be appointed against the post which fell vacant due to death of his father. Although, the learned High Court set-aside the promotion order of the appellant for accommodation of respondent No. 1, but at the same time in case of operation of impugned judgment the appellant has to be reverted to his previous post occupied by respondent No. 6 whose appointment has been validated by the High Court. Thus, through the impugned judgment the appellant, who is a permanent civil servant, has been deprived of his vested legal rights without any legal justification. The impugned judgment on the face of it is illegal. He further submitted that

according to the Government policy dated 06.02.2006 the children of the civil servants who died in the earthquake have to be accommodated but it is not necessary that in all the cases they will be accommodated against the post held by their fathers. If at all the accommodation of respondent No. 1 is necessary, he can be accommodated against the post which became available due to promotion of the appellant. Therefore, by recalling the impugned judgment the appointment order of the appellant be restored.

4. Mr. Manzoor Hussain Raja, Advocate, the learned counsel for respondent No. 1 submitted that respondent No. 1 is struggling for his rights since more than a decade period. Admittedly, his father died in the earthquake during duty. Same like, his mother also died in the earthquake. In this regard, the death certificates are also annexed with the writ petition. According to the Government policy dated 06.02.2006 respondent No. 1 has legal right to be appointed on priority basis but he has been deprived despite availability of a number of

posts. So far as the argument of learned counsel for the appellant that respondent cannot claim the appointment only against the post of his father, is concerned, respondent No. 1 has not confined his request only against the post held by his father but he wants to be appointed in the light of laid down policy.

5. Kh. Muhammad Nasim, Advocate, the learned counsel for respondent No. 6 submitted that the appellant is a permanent civil servant and respondent No. 1 also has legal rights but as respondent No. 6 has been appointed on merit out of the list on the basis of which two other candidates falling at second and third position have also been appointed but they have not been arrayed as parties in the writ petition. If at all on account of adjustment of respondent No. 1 anyone has to be relieved that will be the junior most and not respondent No. 6. Respondent No. 1 has been appointed on the basis of merit after advertisement of the post in due course of law, therefore, his order has been rightly protected by the High Court.

He referred to the case reported as *Syed Imdad Ali Shah & others vs. Azad Govt. & others* [2003 SCR 95].

6. We have considered the arguments of learned counsel for the parties and also examined the record made available. The factual proposition among the parties is admitted. The appellant, who is a permanent civil servant, was promoted through departmental order dated 14.02.2006 against the post which became available due to death of father of respondent No. 1. The different orders placed on record reveal that not only this but number of other posts became available in the department. The claim of respondent No. 1 is also an admitted fact that his father died during the earthquake while serving as the civil servant of the category regarding which the Government has formulated the policy dated 06.02.2006. In this context, the writ petition of respondent No. 1 is maintainable.

7. So far as the claim of respondent No. 6 is concerned, factually it is correct as he has been appointed after advertisement of the post and

determination of the merit. The perusal of the record reveals that not only respondent No. 6 but two other candidates who have secured second and third position on merit list have also been appointed. It appears that due to negligence of departmental authority a complicated and complex situation has been created. According to the facts as brought on record, respondent No. 1 filed number of applications for his appointment. The first one was filed on 28.12.2005 and the second on 10.01.2006. The departmental authority while ignoring the applications of respondent No. 1 issued promotion order of the appellant on 14.02.2006 and appointment order of respondent No. 6.

8. So far as the argument of learned counsel for respondent No. 6 that two other candidates have also been appointed who have not been arrayed as parties in the writ petition, is concerned, it appears to be afterthought because this factual proposition has not been raised in the written statement before the High Court neither on behalf of respondent No. 6 nor on behalf of departmental



authority. In this context, respondent No. 1 cannot be penalized on this ground.

9. In view of the record and admitted facts, the impugned judgment of the High Court is not sustainable as on one hand the promotion order of the appellant, who is a permanent civil servant has been recalled, due to which he has to be reverted to the previous post, now occupied by respondent No. 6, whereas, on the other hand the appointment order of respondent No. 6 been declared valid. The appellant has been deprived of his legal right of service, hence, his grievance is justified.

10. Same like, the claim of respondent No. 1 is also genuine and legal. It is established and admitted that his father was serving as Naib Qasid, who died during earthquake and according to enforced policy respondent No. 1 has a right to be inducted in service. In fact, the matter has become complicated due to failure of the departmental authority to attend the grievance of respondent No. 1 at proper time, whereas, respondent No. 6 who has been appointed on merit after advertisement of

the post in due course has more than 8 years' service in his credit. In this context, his claim of vested legal rights is also justified.

11. In this state of affairs, while accepting this appeal and partially setting-aside the impugned judgment of the High Court, the promotion order of the appellant is restored and kept intact. As in the Education Department the posts become available due to promotion, retirement etc. and it is not difficult to adjust a single person, therefore, the departmental authority is directed to appoint/adjust respondent No. 1 against any of the posts of Naib Qasid/Chowkidar within a period of one month. However, if there is no post of such category, in that case the service of respondent No. 6 has to be terminated while appointing respondent No 1.

This appeal stands accepted in the above terms. No order as to costs.

Muzaffarabad,  
17.06.2016

JUDGE  
(J-I)

CHIEF JUSTICE