

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT

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

Civil Appeal No. 278 of 2015
(PLA filed on 22.06.2015)

1. Azad Govt. through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Services and General Administration Department of AJ&K through Secretary S&GAD having his office at new Secretariat, Muzaffarabad.
3. Accountant General of AJ&K having his office at AG Office Sathra, Muzaffarabad.

.... APPELLANTS

VERSUS

1. Badar Munir, Assistant Commissioner presently Additional PSO to the Prime Minister of AJ&K, PM Secretariat, Muzaffarabad.

.... RESPONDENT

2. Addl. Chief Secretary (General) having his office at New Secretariat, Muzaffarabad.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the Service Tribunal dated 18.04.2015 in Service Appeal No. 458 of 2014)

FOR THE APPELLANTS: Raja Ikhlaq Hussain Kiani,
Additional Advocate-
General.

FOR RESPONDENT NO. 1: Syed Asim Masood
Gillani, Advocate.

Date of hearing: 09.11.2016

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— Vide government notification dated 12.02.2014, the previous service rendered by respondent No. 1 as Section Officer (BPS-17) from 12.01.2007 to 08.01.2008 (11 months and 26 days) has been ordered to be counted for the purpose of length of service. Respondent No. 1, filed a service appeal in the Service Tribunal to the effect that the service rendered by him as section officer and ad-hoc Lecturer since 1999 has not been included. The learned Service Tribunal vide impugned judgment accepted the appeal and amended the notification dated 12.02.2014 to the extent that the continuous ad-hoc service of appellant (therein) i.e., 7 years, 3 months and 16 days rendered in the Education Department be included/counted for the purpose of

length of service. Feeling aggrieved, the appellants have filed the instant appeal by leave of the Court.

2. Raja Ikhlaq Hussain Kiani, Advocate, the learned counsel for the appellants after narration of facts of the case submitted that the impugned judgment of the Service Tribunal is against the law, hence, not sustainable. According to the statutory provisions and principle of law, for the purpose of length of permanent service in a department the ad-hoc service rendered in the other departments cannot be counted. The learned Service Tribunal has not considered this aspect of the matter and wrongly issued direction for counting the ad-hoc service rendered in the Education Department for the purpose of length of service. Therefore, this appeal merits acceptance.

3. Conversely, Syed Asim Masood Gillani, Advocate, the learned counsel for respondent No. 1 raised the preliminary objection regarding competency of government appeal. He submitted that the Government is bound to act according to law but the powers have been discriminately exercised on the basis of pick and choose and favoritism. He referred to number of notifications dated 25.07.2006, 08.08.2008,

09.04.2009, 13.03.2013 and 29.04.2013 (placed on record with the concise statement of the respondent) according to which the ad-hoc service rendered in different departments by several civil servants, who are holding permanent posts in different departments, has been counted for the purpose of length of service. He submitted that the appellants have no cause of action as their conduct is against the constitutionally guaranteed fundamental rights.

4. We have heard the learned counsel for the parties and gone through the record made available. Without discussion of merits of the case, the point agitated on behalf of the respondent that the appellants have no cause of action in the light of their conduct with reference to hereinabove referred notifications according to which the benefit of including the ad-hoc service for the purpose of length of service has been extended in favour of several civil servants of different departments; has substance. The appellants have no reasonable explanation for taking such stand which is contrary to their conduct. According to the celebrated principle of law, no one can blow hot and cold in the same breath. As per the sated facts, the argument

advanced on behalf of the appellants is not available to them because vide notifications dated 25.07.2006, 08.08.2008, 09.04.2009, 13.03.2013 and 29.04.2013 they have acted in contrary. The conduct of the appellants disentitled them from seeking relief against the respondent.

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

Muzaffarabad,
09.11.2016

JUDGE

JUDGE