

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(APPELLATE JURISDICTION)

PRESENT:

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

Civil appeal No.113 of 2015
(PLA filed on 31.01.2015)

Kamran Hafeez, Superintending Engineer,
Department of Local Government and Rural
Development Azad Jammu and Kashmir,
Muzaffarabad.

....APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Minister for Local Government and Rural Development, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
3. Chief Secretary, Azad Government of

the State of Jammu and Kashmir having his office at New Secretariat, Muzaffarabad.

4. Additional Chief Secretary (General), Chairman Rules Framing Committee, Azad Government of the State of Jammu and Kashmir having his office at New Secretariat, Muzaffarabad.
5. Secretary Services and General Administration Department Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
6. Secretary Local Government and Rural Development, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
7. Selection Board No.1 through Chief Secretary having his office at New Secretariat, Muzaffarabad.
8. Ghulam Murtaza Khan, Retired Grade (B-19) Officer, Department of Local Government and Rural Development through Secretariat Local Government and Rural Development having his office at New Secretariat, Muzaffarabad.

9. Sardar Nusrat Aziz, Divisional Director, Local Government and Rural Development, Mirpur, Additional Charge Director General, Local Government and Rural Development Azad Jammu and Kashmir, Muzaffarabad.
10. Sardar Gul Zaman Khan, Divisional Director Local Government and Rural Development, Muzaffarabad Division, Muzaffarabad.
11. Syed Zaheer Hussain Gardezi, Superintending Engineer Local Government and Rural Development, Muzaffarabad.

.... RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 23.12.2014 in service appeal No.142 of 2014)

FOR THE APPELLANT: Barrister Hamyun Nawaz Khan, Advocate.

FOR THE RESPONDENTS: Raja Muhammad Hanif Khan, Advocate.

Date of hearing: 06.12.2016

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal by leave of the Court has been directed against the judgment of the Service Tribunal dated 23.12.2014, whereby the appeal filed by the appellant, herein, has been dismissed.

2. The facts as emerged from this appeal are that the appellant is a permanent employee of Local Government and Rural Development Department and working as Superintending Engineer, BPS-19. The appellant was promoted as Superintending Engineer vide notification dated 12.05.2009 on officiating basis and thereafter he was confirmed in grade BPS-19 on 21.02.2012 with effect from 01.07.2010. The appellant is senior most amongst the officers of grade BPS-19 in the department. The respondents introduced amendments in the departmental rules to the extent of the post of Director General Local

Government and Rural Development vide notification dated 14.02.2014. Through the impugned notification the appellant has been compelled to serve under the junior most officers, of the department. The amendment incorporated in the relevant rules is based on discrimination, malice and also contrary to the pronouncements of the superior judiciary. The appellant prayed for setting aside the notification dated 14.02.2014. The learned Service Tribunal after necessary proceedings dismissed the appeal vide impugned judgment dated 23.12.2014, hence, this appeal by leave of the Court.

3. Barrister Hamyun Nawaz Khan, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that the learned Service Tribunal

failed to understand the real controversy involved in the matter. He added that the amendment was introduced in the relevant rules only to defeat the right of promotion of the appellant, but this aspect of the case escaped the notice of the learned Service Tribunal. He contended that the replication on behalf of the appellant has not been taken into consideration by the Service Tribunal, neither the correct statistics of proportionate of posts regarding both the cadres, i.e technical and non-technical, were observed by the Service Tribunal which clearly proves and justifies 52% quota for technical officer and 48% quota for non-technical officers. He added that as per establishment of divisions and districts as well as for the 12 constituencies of refugees settled in Pakistan, the proportionate may become 57% for technical officer and 43% for non-technical officer which were even not rebutted

by any of the respondents. He contended that equal opportunity for both the cadres is the only solution to avoid the heartburn of the civil servants, whereas, through the impugned notification 67% quota has been reserved for non-technical officers and 33% for technical officer without any justification. He lastly submitted that an option for filling up the post in question through transfer of any officer of BPS-20, from any Government Department has also been introduced in the rules which may deprive the senior officer of grade, BPS-19, of the Local Government and Rural Development Department of their right of promotion, but this aspect also escaped the notice of the Service Tribunal. He lastly submitted that the judgment of this Court delivered in the *Kamran Hafeez's* case [2014 SCR 676], has not been adhered to while making amendment in the rules. He relied

upon the cases reported as *Syed Shabir Shah Gillani v. Imtiaz Ahmed Abbasi & 5 others* [2014 SCR 418], *Minister Forest and 3 others v. Aurangzeb and 12 others* [2014 SCR 848].

4. On the other hand, Raja Muhammad Hanif Khan and Sardar Karam Dad Khan, Advocates, the learned counsel for the respondents strongly opposed the arguments advanced by the learned counsel for the appellant. They submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. They contended that under section 8 read with section 23 of the Civil Servants Act, 1976 it is the sole prerogative of the Government to decide as to what post shall be the selection post and which one shall be non-selection post. There are two cadres in the Local Government and Rural Development Department, i.e. Administrative and

Engineering. Through the impugned amendment equal chance has been provided to the officers of both the cadres for promotion to the post of Director General. They also added that the existing departmental rules provide that there are two separate functional units in the Local Government Department, i.e. Administrative and Engineering. Both the functional units have separate seniority list. The appellant is an officer of the functional unit "Engineering" and the private respondents are the officers of functional unit "Administrative". They added that the seniority is always fixed on the basis of principle to the effect that the officer who is senior in lower grade shall also be senior in higher grade. All the officers of functional unit of Administrative were appointed/promoted in BPS-17 earlier than the appellant, therefore, the question of seniority amongst appellant and the

respondents does not arise. They lastly submitted that it is settled principle of law that rules cannot be framed/amended at the sweet-will of any civil servant and the same is sole prerogative of the Government. The rules can only be declared illegal if the same have been enacted in conflict with the statute. They relied upon the cases reported as *Rizwan Muzaffar v. Azad Government & 8 others* [2010 SCR 156], *Qazi Ghulam Sarwar v. Azad Government through its Chief Secretary, Civil Secretariat Chatter, Muzaffarabad and 3 others* [2013 SCR 1054], *Syed Rasheed Hussain Shah v. Azad Govt. & 6 others* [2014 SCR 883] and *The State of Mysore v. M.H. Bellary* [AIR 1965 SC 868].

5. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. The controversy involved in the

matter revolves around the notification dated 14.02.2014; therefore, we deem it proper to reproduce here the same. The relevant portion of the notification supra reads as under:-

Notification

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| S.N o. | Name of Department | Functional Unit | Name of post and Pay Scale | Appointing Authority | Minimum Qualification for | | Method of Recruitment |
|-----------|---|--------------------|----------------------------------|-------------------------|---------------------------|--------------------------|---|
| | | | | | Initial Recruitment | Promotion or transfer | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | Local Government & Rural Development Department | General | Director General BPS-20 | Govt. | By Promotion | | i)67% by promotion on the basis of selection on merit from amongst the Divisional Director BPS-19 and Department having 17 years Service in BPS-17 and above ii. 33% by promotion the basis on merit from amongst the Superintending Engineer BPS-19 in the Department having 17 years service in BPS-17 and above Or iii) By transfer of a suitable officer from any Government Department Secretariat working in BPS 20 |

..... "

It appears from the aforesaid notification that while making addition/insertion in the Azad Jammu and Kashmir Local Government & Rural Development Service Rules, 1983 a method has been provided for appointment against the post of Director General Local

Government and Rural Development. The record reveals that the Government upgraded the post of Director Local Government from grade, BPS-19 to BPS-20 and also re-designated it as Director General Local Government and Rural Development Department, however, the rules were not framed to the extent of the said post. Later on, while making addition in the relevant rules the post of Director General has been declared as selection post (amongst 2 functional units i.e. "Administrative" and "Engineering"). It postulates from the addition made in the rules that a chance has been provided to both the aforesaid cadres for promotion against the said post. The notification supra was challenged by the appellant before the Service Tribunal by way of appeal. The learned Service Tribunal dismissed the appeal through the impugned judgment. The version of the appellant is that

the amendment in the rules has been made just to deprive the appellant of his right of promotion, moreover, the judgment passed by this Court in *Kamran Hafeez's case* [2014 SCR 676] has not been taken into consideration while making the amendments in the rules. To appreciate the version of the appellant at first we intend to examine the judgment supra. It will be useful to reproduce here the relevant portion of the same which reads as under:-

"14. We are conscious of the fact that in absence of the prescribed mode or rules, the post cannot be kept vacant for an indefinite period. In such an eventuality, while following the principle of law laid down in the case reported as *Syed Sajid Hussain v. Ch. Muhammad Latif & others*, [1992 SCMR 468], Ghulam Murtaza Khan, will continue to perform the functions till framing of rules and permanent appointment of a person

in accordance with law. We also deem it necessary to direct that as the office of Director General Local Government is one of important assignments of great public importance, therefore, the authorities are directed to prescribe the mode in the departmental rules expeditiously and according to spirit of law, permanently appoint an eligible person.”

After going through the judgment supra, it appears that no specific direction was issued by this Court regarding the fixation of quota for the distinct cadres of the department, i.e. ‘Administrative and Engineering’. Thus, in our view, it cannot be said that the addition in the rules has been made in departure of the judgment of this Court.

6. The next point agitated by the counsel for the appellant that the addition/amendment in the relevant rules has

been made just to deprive the appellant of his right of promotion, is also not convincing in nature. Nothing has been brought on the record that what was the mala-fide on the part of the department to deprive a single person of his right of promotion and for the purpose the department has done a hectic exercise. It may be observed here that law is almost settled on the proposition that rules cannot be framed/amended at the sweet-will of a person/party. It is the sole prerogative of the authority concerned to frame or amend the rules, moreover, in this regard, no direction/dictation can be issued to the authority concerned to frame or amend the rules in such like manners. It may also be observed here that the rules can only be challenged when the same have been framed/amended in conflict with the provisions of parent Act or the Constitution, whereas, no

such eventuality is available in the case in hand. Reliance may be placed on a case reported as *Syed Rasheed Hussain Shah v. Azad Govt. and 6 others* [2014 SCR 883], wherein, this Court has held as under:-

“9. It may be observed that the departments of Fisheries and Wildlife were merged by amending Rules of Business by the Authority while exercising powers under section 58 of the Interim Constitution Act, 1974 and thereafter relevant Rules were amended accordingly. The vires of the Rules have not been challenged at the relevant time. Moreover, the Rules making Authority is fully competent to amend the same and the act of the Authority cannot be declared illegal until the same is in conflict with the powers of parent Act or the Constitution. The learned counsel for the appellant failed to substantiate his claim that the

amendment incorporated in the Rules is inconsistent with the provision of the Act or Constitution, therefore, in absence of the the same cannot be declared ultravires. Even otherwise, Rules cannot be framed/amended at the sweet-will of a party and it is the sole prerogative of the Authority concerned to frame or amend the same, therefore, the argument of the learned counsel for the appellant in this regard has no substance, hence the same is hereby repelled."

The learned counsel for the appellant submitted that proper proportionate has not been adhered to while fixing the quota for two distinct cadres. We are afraid, that no law permits to frame/amend the rules at the entire satisfaction of a civil servant or for the benefit of a particular person. In this regard, the learned counsel for the respondents has rightly

relied upon the case reported as *Rizwan Muzaffar v. Azad Government & 8 others* [2010 SCR 156], wherein while dealing with the proposition this Court has held as under:-

“We may observe that rules making powers vest in the Govt. Under section 23 of Civil Servants Act 1976, the Govt. is competent to enhance, alter or amend the prescribed qualification for a particular post.”

It has further been held in the judgment supra that:

“10. We have also examined the application moved by the father of respondent No.4 to the Prime Minister. We agree with the contention of Kh. Muhammad Nasim that rules cannot be framed for the benefit of a particular person. It is ordered by the Prime Minister on application that “the request made in the application appears to be

genuine, the rules shall be reconsidered by the committee". This practice is not appreciable. However, after examining the rules we are of the view that fundamental rights of the appellant have not been violated. A person cannot claim a vested right for promotion to a particular post with the claim that the rules be framed in such a manner so that he may be promoted. In the impugned rules the Govt. has fixed such qualification which is necessary for relevant field. No fundamental rights of the appellant have been infringed."

In the case in hand, the appellant has to prove that the amendment made in the rules through notification dated 14.02.2014, is inconsistent with the provisions of the Local Government Act or the Constitution, but he failed to substantiate any such eventuality, hence, the impugned addition/insertion made in the rules

cannot be declared illegal/ultra vires the Constitution. The learned Service Tribunal attended and resolved all the points involved in the matter intelligently while assigning the strong reasons, therefore, interference by this Court is not warranted under law.

7. The case law referred to and relied upon by the learned counsel for the appellant having distinguishable facts and features is not applicable in the case in hand, therefore, need not be discussed.

In view of the above, this appeal having no substance is hereby dismissed with no order as to costs.

Mirpur,

JUDGE

JUDGE

____.12.2016