

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Review Jurisdiction]

PRESENT:

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

Civil review No.22 of 2015
(Filed on 21.05.2015)

Rabia Bashir, Junior Technical Teacher,
Government Girls Middle School, Saroal,
District Bagh.

.... PETITIONER

VERSUS

1. Azad Government of the State of Jammu and Kashmir through its Chief Secretary, having his office at New Secretariat, Lower Chatter, Muzaffarabad.
2. D.P.I. Schools Elementary, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
3. Director Education (Technical) Schools, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
4. Divisional Director Schools, Poonch Division.

5. District Education Officer, Schools Elementary and Secondary (Female), Bagh.
6. District Accounts Officer, Bagh.
7. Headmistress, Government Girls Middle Schools, Saroal, Bagh.
8. Mrs. Raqia Khatoon d/o Said Hussain Khan, r/o Akbar abad Thub, p/o Bagh, District Bagh.
9. Secretary Education Schools, Azad Government of the State of Jammu and Kashmir having his office at new Secretariat, Lower Chatter, Muzaffarabad.
10. Divisional Director Schools, Muzaffarabad.
11. District Education Officer, Schools (Secondary), Bagh.
12. Selection Committee through Chairman Selection Committee, Technical Education Department Schools, Muzaffarabad.

.... RESPONDENTS

(In the matter of review from the judgment of this Court dated 12.05.2015 in civil appeal No.327 of 2014)

FOR THE PETITIONER: Kh. Attaullah Chak,
Advocate.

FOR RESPONDENT NO.8: Sardar Abdul Sammie
Khan, Advocate.

Date of hearing: 13.01.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— This review petition has been filed for review of the judgment of this Court dated 12.05.2015, whereby the appeal filed by the petitioner, herein, has been dismissed.

2. The relevant facts necessary for disposal of this appeal are that the petitioner, herein, filed a writ petition in the High Court, alleging therein, that she was appointed on 09.09.2008, as Junior Teacher (Technical), B-9 on temporary basis. The petitioner moved an application to the Government for her confirmation against 5% quota reserved for sons/daughters of teachers. During the pendency of the petitioner's application, the

Education Department advertised some posts of Junior Technical Teachers. The petitioner also applied for one of the posts and after obtaining test/interview, she was confirmed against 5% quota allocated for teachers' sons/daughters by the Divisional Director Schools, Muzaffarabad on the recommendations of the Selection Committee vide order dated 19.10.2009. Meanwhile, the Government vide notification dated 02.03.2010, exempted the petitioner from selection process. During the pendency of the writ petition, respondent No. 8 also filed a separate writ petition praying therein that the writ petition filed by the petitioner may be set aside and she may be appointed as Junior Technical Teacher, (B-9) in place of the petitioner. After consolidating both the writ petitions, the learned High Court, vide judgment dated 16.09.2014, while accepting

the writ petition filed by respondent No.8, herein, directed the official respondents to appoint her against the disputed post, whereas, the writ petition filed by the petitioner, herein, was dismissed with costs. The judgment of the High Court was challenged before this Court. This Court vide judgment dated 12.05.2015, dismissed the appeal, hence, this review petition.

3. Kh. Attaullah Chak, Advocate, the learned counsel for the petitioner argued that while handing down the judgment under review some important points involved in the matter escaped the notice of this Court. He submitted that the petitioner has completed almost more than 6 years' service but this Court has not considered this aspect of the case. The authority advertised the post against the quota of teachers' sons/daughters and nobody challenged the said advertisement.

The petitioner got the merit position and her appointment was made in accordance with law but this Court while passing the impugned judgment has also not appreciate this aspect of the case in its true perspective. Moreover, for the appointment against the post of Technical Teacher under the relevant rules the diploma is not the requirement rather two years training or equivalent qualification from a recognized institution is mandatory, whereas, this Court while passing the judgment under review has held that for the post of Junior Teacher (Technical), B-9, the requisite qualification is Matric with two years diploma from a recognized institution. In this way, the findings recorded by this Court are contrary to the relevant rules which is an error apparent on the face of record, hence, the impugned judgment is liable to be reviewed.

4. On the other hand, Sardar Abdul Sammie Khan, Advocate, the learned counsel for respondent No.8, strongly opposed the arguments advanced by the learned counsel for the petitioner. He submitted that the judgment under review has been passed in accordance with law after considering the relevant law and the facts of the case. The petitioner failed to substantiate any error apparent on the face of record; therefore, this review petition is liable to be dismissed. He also submitted that this Court in a number of pronouncements has held that review is not permissible mere on the ground that a party is not satisfied from the judgment.

5. We have heard the arguments of the learned counsel for the parties and gone through the record along with the judgment under review. After going through the judgment under review, it is spelt out that the

argument of the learned counsel that the petitioner was appointed against 5% quota reserved for the sons/daughters of the teachers in accordance with law but this Court has not considered this aspect of the case, is ill-founded. This Court after considering this aspect of the case has held that the appointment/confirmation order of the petitioner against 5% quota reserved for sons/daughters of the teachers was issued without lawful authority; moreover, the selection process also seems non-transparent.

6. The other argument of the learned counsel for the petitioner is that the findings recorded by this Court regarding non-possession of requisite diploma of two years by the petitioner are contrary to the relevant rules as in the rules the word 'diploma' has not been used. We do not agree with this contention for the simple reason that without

possession of diploma it cannot be proved that a candidate has completed two years training from a recognized institution. The degree, diploma, certificate, etc. are the documents on the basis of which it can be said that the person who applied for the post possesses the requisite qualification. The short courses certificates brought on record by the petitioner do not come within the ambit of two years training from recognized institution. It appears that the petitioner wants a different conclusion from the one reached by the Court which is not permissible under law. This Court may review its judgment on the ground of an error apparent on the face of record or any other ground similar to those mentioned in Order XLVII, Rule 1, of the C.P.C. but the review is not permissible on the ground that a party is not satisfied from the judgment. This Court in a recent unreported judgment titled *Abdul*

Karim v. Sain & others (civil review No.26 of 2016 decided on 16.01.2017) while showing displeasure on the practice of frequently filing review petition without pointing out any error apparent on the face of record, has observed that:-

“7. Here we may observe that it has become a practice that without any error apparent on the face of record and without bringing on record a new fact or new evidence, lawyers frequently file review petitions from the judgments of this Court as this Court is hearing the appeal from its own judgment. Despite recording observations in a number of judgments frivolous and baseless review petitions like appeals are filed from the judgments of this Court, which amount to misconduct on the part of the advocates and wastage of precious time of the Court. If this practice is continued, we will be

constrained to impose heavy penalty on the counsel filing frivolous review petition.”

In the case in hand the review petition has also been filed in routine without pointing out any error apparent on the face of record or bringing on record a new fact or new evidence which is not an healthy practice rather it amounts to wastage of precious time of the Court.

Resultantly, this review petition is dismissed with costs.

Mirpur, **JUDGE**
___ .01.2017

CHIEF JUSTICE

Rabir Bashir v. Azad Govt. & others

ORDER:-

The judgment has been signed. The same shall be announced by the Registrar after notifying the learned counsel for the parties.

Mirpur,

CHIEF JUSTICE

JUDGE

___ .01.2017