

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.83 of 2015
(PLA filed on 10.01.2015)

Amjad Ali Khokhar s/o Abdul Laif Khokhar r/o Lower Dherian Muzaffarabad, presently appointed as Data Entry Operator on temporary basis in the office of Executive Engineer, Buildings Division, having his office at New District Complex Muzaffarabad.

.....APPELLANT

VERSUS

1. Chief Engineer Building/Public Health Engineering (North), having his office at New Secretariat, Muzaffarabad.
2. Departmental Selection Committee for appointment of Junior Clerk (B-7) through its Chairman i.e. Chief Engineer Buildings/Public Health Engineering (North), having his office at New Secretariat, Muzaffarabad.
3. Syed Ghulam Mrtaza s/o Ghulam Hussain illegally appointed as Junior Clerk in the office of Chief Engineer, having his office at New Secretariat, Muzaffarabad.

....RESPONDENTS

[On appeal from the judgment of the High Court
dated 11.11.2014 in Writ Petition No.1405/2013]

FOR THE APPELLANT: Sahibzada Mehmood
Ahmed and Mr.
Muhammad Aslam
Raza, Advocates.

FOR RESPONDENT No.3: In person.

FOR THE INTERVENER: Mr. Tahir Aziz Khan,
Advocate.

Date of hearing: 14.11.2016.

JUDGMENT:

Mohammad Azam Khan, C.J.- Through a writ petition filed on 18th September, 2013, the appellant, herein, challenged the order dated 13th September, 2013, whereby respondent No.3 was appointed as Junior Clerk (B-7). He also challenged the order dated 16th September, 2013, whereby the recommendations of the Selection Committee were declared invalid and it was ordered that the post shall be advertised afresh. The writ petition was dismissed through the impugned judgment on 11th November, 2014, hence this appeal by leave of the Court.

2. Arguments in the appeal were heard on 6th October, 2016. While drafting the judgment, it came in our notice that one, Muhammad Adil has been appointed through order dated 13th September, 2013, against such post which was not advertised. He was appointed on the recommendations of the Selection Committee. The recommendations of the Selection Committee were not approved by the Chief Engineer and declared invalid, therefore, we issued a notice to Muhammad Adil. He has appeared through a counsel and filed the concise statement.

3. Mr. Muhammad Aslam Raza, Advocate, counsel for the appellant submitted that the post of Junior Clerk was advertised by the Chief Engineer P.W.D./Public Health Engineering (North) on 7th February, 2013. In the result of test and interview the appellant was placed at serial No.2 in the merit list, whereas one, Muhammad Adil was placed at serial No.1 in the merit list, who was appointed against the post vacated by one Qaiser Latif, who was promoted as Senior Clerk on 13th September, 2013 and

respondent No.3 Syed Ghulam Murtaza was appointed against the vacant post which was advertised. He submitted that the merit list was validly issued. Another post fell vacant due to promotion of Qaiser Latif, therefore, being at No.2 position in the merit list, the appellant was entitled for appointment. The learned counsel further argued that the order dated 16th September, 2013 is invalid and not maintainable, because the Selection Committee conducted the test and interview after advertisement of the post, therefore, process conducted by the Selection Committee cannot be cancelled. The High Court failed to consider this aspect of the case. He requested for acceptance of appeal.

4. Respondent No.3 appeared in person and submitted that he will rely on the arguments addressed by Raja Ikhlaq Hussain Kiani, Advocate, who was his counsel when the arguments were heard on 6th October, 2016. It was argued by Raja Ikhlaq Hussain Kiani, Advocate, that the judgment of the High Court is perfectly legal. Only one post fell vacant

and appointment against the said post was made. The recommendations of the Selection Committee were declared invalid on the ground that the Selection Committee was not duly notified, it has no value, therefore, the recommendations were rightly set aside and the post was also ordered to be re-advertised.

5. Mr. Tahir Aziz Khan, Advocate, who appeared on behalf of Muhammad Adil s/o Abdul Rasheed, submitted that Muhammad Adil applied for the post of Junior Clerk (B-7), which was advertised on 7th February, 2013. After test and interview he was appointed on the recommendations of the Selection Committee under rule, law and on merit on 13th September, 2013. His appointment has not been challenged by anyone. He is holding the post in a lawful manner. The recommendations and the merit list were not cancelled. He further submitted that appointment of Muhammad Adil has not been made disputed at any stage by the respondents. The official respondents have no right to cancel the recommendations of the Selection Committee. The

appointment of respondent No.3 was illegal, while the appointment of Muhammad Adil has been made in accordance with law, therefore, the notice be discharged.

6. We have heard the learned counsel for the parties and perused the record.

7. The Chief Engineer P.W.D./Public Health Engineering (North) issued an advertisement for recruitment against one post of Junior Clerk (BPS-7) which was published in Daily *Sada-e-Chanar*, on 7th February, 2013. The appellant amongst others applied for the said post. In the result of test and interview, he was placed at No.2 position in the merit list. The Chief Engineer through order dated 13th September, 2013 appointed Muhammad Adil s/o Abdul Rasheed against the post which became vacant due to promotion of Qaiser Latif and respondent No.3 was appointed against the post which was held by him since 20th January, 2012 on temporary basis. The following order was passed on 13th September, 2013:-

"آزاد حکومت ریاست جموں و کشمیر مظفرآباد
دفتر چیف انجینئر تعمیرات عامہ عمارات/پبلک ہیلتھ انجینئرنگ (نارتھ)
حکم:

حسب سفارش محکمانہ سلیکشن کمیٹی و بمنظوری جناب
چیف انجینئر تعمیرات عامہ عمارات/پبلک ہیلتھ انجینئرنگ (نارتھ) آزاد حکومت
ریاست جموں و کشمیر مظفرآباد بذیل ترقیابیاں/تعییناتیاں عمل میں لانی جاتی ہیں:
1. مسٹر قیصر لطیف جونیئر کلرک دفتر مہتمم تعمیرات عامہ مکینیکل
ڈویژن مظفرآباد کو مطابق سنیاڑی/موزونیت کی بناء پر بحیثیت سینئر کلرک
بی-09 ترقیاب کرتے ہوئے دفتر مہتمم تعمیرات عامہ پبلک ہیلتھ انجینئرنگ
ڈویژن باغ میں سینئر کلرک کی خالی آسامی کے خلاف تعینات کیا جاتا ہے۔

2. مسٹر محمد عادل ولد عبد الرشید ساکنہ گوجرہ تحصیل و ضلع
مظفرآباد کو دفتر مہتمم تعمیرات عامہ مکینیکل ڈویژن مظفرآباد میں جونیئر کلرک
بی-07 کی خالی ہونے والی آسامی کے خلاف بحیثیت جونیئر کلرک بی-07 مع
مروجہ الاونسز تعینات کیا جاتا ہے۔

3. مسٹر سید غلام مرتضیٰ ولد سید غلام حسین شاہ ساکنہ بٹلیاں تحصیل
و ضلع مظفرآباد جو دفتر ہذا میں جونیئر کلرک کی خالی آسامی کے خلاف زیر
نمبر 94-592 مورخہ 20-01-2012 قطعی عارضی بنیادوں پر زائد از ڈیڑھ
سال تعینات چلا آ رہا ہے کو اسی آسامی کے خلاف بحیثیت جونیئر کلرک بی-07
تعیینات /ایڈجسٹ کیا جاتا ہے۔
نمبر شمار 2 اور 3 اندر ایک ماہ بذیل سرٹیفکیٹس متعلقہ میں جمع کروانے کے
پابند ہوں گے۔
حکم ہذا کا اطلاق تاریخ حاضری سے ہو گا۔

1. چال چلن سرٹیفکیٹ
2. میڈیکل
سرٹیفکیٹ
3. مصدقہ تعلیمی اسناد
4. پشتی سرٹیفکیٹ/ڈومیسائل سرٹیفکیٹ

ایڈمن آفیسر
دفتر چیف انجینئر تعمیرات عامہ عمارات /پبلک ہیلتھ (نارتھ)
مظفرآباد"

8. In the para-wise comments filed before the High Court, the department has submitted that the Selection Committee which conducted the test and interview was constituted against Order/Notification No.PP&H/3136-37, dated 21.04.2010. In the light of this Government notification the Selection Committee for the posts of BPS (7) to (10) consists of the following members:

- 1- متعلقہ چیف انجینئر تعمیرات عامہ عمارات/پبلک ہیلتھ چیئرمین
- 2- متعلقہ ناظم تعمیرات عامہ متعلقہ
- 3- سیکشن آفیسر فزیکل پلاننگ و ہاؤسنگ ممبر
- 4- ایڈمن آفیسر متعلقہ تعمیرات عامہ عمارات/پبلک ہیلتھ ممبر /سیکرٹری

The committee which conducted the test and interview was consisting of the following members:-

1. ناظم تعمیرات عامہ پبلک ہیلتھ انجینئرنگ سرکل مظفرآباد چیئرمین
2. ڈائریکٹر ڈیزائن دفتر چیف انجینئر عمارات (نارتھ) ممبر
3. سیکشن آفیسر فزیکل پلاننگ و ہاؤسنگ ممبر
4. ایڈمن آفیسر دفتر چیف انجینئر عمارات (نارتھ) ممبر/سیکرٹری

As such, the committee which conducted the test and interview was constituted against the clear provision of the notification dated 21st April, 2010. The official respondents further stated that the fairness of the test and interview was also objected by the candidates, therefore the authority cancelled the formation of the committee and all the proceedings conducted by the said committee were also cancelled being against law and the rule from the date of its constitution. Furthermore, the committee was not notified. The order dated 16th September, 2013 through which the

recommendations have been declared illegal and cancelled is reproduced as under:-

"آزاد حکومت ریاست جموں و کشمیر مظفر آباد
دفتر چیف انجینئر تعمیرات عامہ (عمارات/ہبلک ہیلتھ انجینئرنگ)
نارتھ
نمبر 25-6922 سی ای/عمارات/پی ایچ ای/نارتھ/انتظامیہ/2013
مورخہ 16.06-2013

حکم:

سفارشات کمیٹی (جو نوٹیفائیڈ نہیں تھی) بسلسلہ انتخاب آسامی
جونئر کلرک دفتر چیف انجینئرنگ تعمیرات عامہ عمارات/ہبلک ہیلتھ انجینئرنگ (نارتھ)
سے مجاز اتھارٹی (چینرمن سلیکشن کمیٹی) نے اتفاق نہ کرتے ہوئے اور ان سفارشات
کو قرار دیتے ہوئے متذکرہ آسامی کو دوبارہ مشتہر کیے جانے کی
منظوری صادر کی ہے۔

حکم ہذا جناب چیف انجینئر تعمیرات عامہ عمارات/ہبلک ہیلتھ
انجینئرنگ (نارتھ) (مجاز اتھارٹی) کی منظوری سے صادر کیا جاتا ہے

ایڈمن

آفیسر

دفتر انجینئر تعمیرات عامہ (عمارات/ہبلک ہیلتھ انجینئرنگ)

نارتھ مظفر آباد"

The perusal of the notification shows that the process of selection was conducted by such committee which was not validly constituted and duly notified, therefore, the authority was justified in cancelling the recommendations of the selection committee and the proceedings conducted by the said committee.

9. The perusal of the order dated 13th September, 2013 reveals that two appointment orders have been issued through the said order. Muhammad

Adil was appointed as Junior Clerk on the recommendations of the Selection Committee against a post which fell vacant due to promotion of Qaiser Latif, while respondent No.3 was appointed as Junior Clerk against the vacant post which was occupied by him on temporary basis since 20th January, 2012. He was appointed/adjusted against the said post. The advertisement published in the newspaper on 7th February, 2013 in unequivocal terms says that the advertisement has been issued for one post of Junior Clerk while through order dated 13th September, 2013 two appointment orders have been issued. The perusal of the order makes it abundantly clear that one post was occupied by respondent No.3 on temporary basis since 20th January, 2012 which was the only vacant post for which the advertisement was issued on 7th February, 2013, therefore, the advertisement was only for the post which was occupied by respondent No.3. No other post of Junior Clerk was lying vacant. The other post became vacant on 13th September, 2013 when Qaiser Latife, Junior

Clerk was promoted as Senior Clerk and Muhammad Adil was appointed against the said post. It is correct that Muhammad Adil was at No.1 position in the merit list but the recommendations of the Selection Committee were cancelled through notification dated 16th September, 2013 and it was ordered that the post shall be advertised afresh. Moreover, he was appointed in the result of the recommendations of the said Selection Committee which was not notified against such post which was not advertised.

10. We have also considered the argument of Mr. Tahir Aziz Khan, Advocate that appointment of Muhammad Adil was not challenged by anybody. He was appointed on the recommendations of the Selection Committee. The Selection Committee was not constituted in accordance with the notification dated 21st April, 2010. It was not notified. The Chief Engineer who is the Chairman of the relevant Selection Committee, cancelled the recommendations of the committee which was not notified, on 16th September, 2013. Apart from the fact that the post was

not advertised, the appointment of Muhammad Adil was not a valid appointment because the recommendations of the committee were cancelled on the ground that the committee was not notified, therefore, there was no valid appointment order in favour of Muhammad Adil. Moreover, Muhammad Adil has also not challenged the notification dated 16th September, 2013, through which the recommendations were set aside. It is a celebrated principle of law that when the basic order is found illegal the subsequent order shall *ipso facto* falls to the ground. The basis of the appointment order is the recommendations of the Selection Committee and the Chief Engineer who according to the notification 21st April, 2010 is the Chairman of the relevant selection committee, declared that the committee was not notified and declared invalid, therefore, the very appointment order is violative of law and not maintainable.

11. It may be observed here that under rule 17 of the Azad Jammu & Kashmir Civil Servants (Terms and Conditions of Service) Rules, 1977, no

appointment order can be passed without advertising the post. There is a plethora of case law on the point. In the case reported as *Rashid Hussain vs. Gul Afsar Khan & 3 others* [1999 SCR 435], it was observed as under:-

“...It is mandatory requirement of rule 17 of the Azad Jammu & Kashmir Civil Servants (Terms and Conditions of Service) Rules, 1977 that all posts in grade one and above have to be advertised in the newspapers before making appointments. Since the post was not advertised, the recommendation of the Selection Committee is of no consequence. Therefore, the appointment of Gul Afsar was illegal.”

Again, in the case reported as *Muhammad Ayub vs. Chief Conservator of Forests and 4 others* [2002 SCR 537], it was observed as under:-

“...Rule 17 of the Rules, 1977 is mandatory in nature, thereafter, after the enforcement of these rules no post in the service of Azad Jammu & Kashmir can be filled in without advertising the same and without allowing the eligible desirous candidates to compete on merits.....”

The post against which the appointment order of Muhammad Adil has been made was not advertised. Although, the appointment of Muhammad Adil has not been challenged by anyone but the order dated 13th September, 2013 through which the appointments of respondent No.3 and Muhammad Adil were made, has been challenged and from the record we have drawn the conclusion that the appointment of Muhammad Adil is shown to have been issued on the recommendations of the Selection Committee which were not approved by the Chief Engineer and these were cancelled on 16th September, 2013, therefore, the appointment orders of Muhammad Adil and respondent No.3, Ghulam Murtaza are not sustainable.

The result of the above discussion is that the appeal is accepted, the appointment orders of both; Muhammad Adil and Ghulam Murtaza being not maintainable are hereby quashed. Since, the posts have become vacant, therefore, the authority is

directed to immediately advertise the posts and make
the appointments in accordance with law.

CHIEF JUSTICE
Muzaffarabad.
__/ __2016.

JUDGE