SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

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

Civil Appeal No. 35 of 2016
(PLA filed on 29.7.2015)

1. Inspector General Police, Muzaffarabad, A.K.
2. Superintendent Police, Reserve, Muzaffarabad, A.K.

.... APPELLANTS

VERSUS

1. Rizwana Kousar, Lady Constable No. 1574, Polie Reserve, presently dismissed, r/o Roperi P/o Brhing, Tehsil and District Bhimber.
2. Shabana Kousar, Lady Constable No. 1245, Police Reserve, presently dismissed, r/o Mohra Sudha, Tehsil and District, Bhimber.

..... RESPONDENTS

3. Senior Superintendent Police, Mirpur, A.K.

..... PROFORMA RESPONDENT

(On appeal from the judgment of the Service Tribunal dated 30.5.2015 in Service Appeals No. 143 and 144 of 2015)

FOR THE APPELLANTS:	Mr. Raza Ali Khan, Advocate General.
FOR RESPONDENTS NO. 1 & 2:	Mr. Khalid Rashid, Chaudhry, Advocate.

Date of hearing: 21.11.2016.

JUDGMENT:

Mohammad Azam Khan, C.J—The titled appeal by leave of the Court arises out of the consolidated judgment of the Service Tribunal dated 30th May, 2015, whereby the appeals filed by the respondents, have been accepted and they have been reinstated in the service.

2. The precise facts of the case are that the respondents, herein, were appointed as lady constables against the posts in Mangla Dam Raising Project for Chinese' security vide order dated 6.5.2006 for two years. Thereafter, the services of the respondents were terminated vide departmental orders dated 28.11.2012 and 29.11.2012. The respondents, herein, challenged the said termination orders through separate

appeals before the Service Tribunal. The learned Service Tribunal, after necessary proceedings, while setting aside the termination orders, reinstated the respondents to the service through the impugned consolidated judgment dated 30.5.2015, hence, this appeal by leave of the Court.

3. Mr. Raza Ali Khan, Advocate General, submitted that the judgment of the Service Tribunal is against law and the record. The appeal before the Service Tribunal was not maintainable because the respondents were appointed as constables on contract basis in Mangla Dam Raising Project for a period of two years. He argued that in the appointment order it was specifically mentioned that appointment are made for a period of two years. Under section 4 of the Azad Jammu & Kashmir Civil Servants Act, 1976, only a civil servant can file appeal in the Service Tribunal and a contract employee is not a civil servant. He relied upon the cases reported as *Maj. (Retd.) Majid Hussain,*

Director Estate, Mirpur, University of Science & Technology (MUST), Mirpur and 52 others vs. Vice-Chancellor, Mirpur University of Science and Technology (MUST), Mirpur and 49 others (2013 SCR 1026) and *Muhammad Rehman and another vs. Azad Govt. and 8 others* (2014 SCR 298).

4. Mr. Khalid Rashid Chaudhry, Advocate, the counsel for respondents No. 1 and 2 argued that the judgment of the Service Tribunal is perfectly legal. He referred to appointment order of the respondents and argued that the appointment order is against permanent posts and not a contract orders. It is laid down in the orders that the respondents shall be temporary employees for a period of two years. A temporary employee if performs his duties satisfactorily, he is confirmed against the post after completion of period of probation. The respondents were civil servants and the appeal before the

Service Tribunal was competently filed. The learned counsel further submitted that the appointing authority of the respondents is S.S.P., whereas the termination order has been passed by the Deputy Director, Reserve Police. The order is not passed by the competent authority, therefore, the same is not maintainable. The learned counsel while relying on rule 12.8 and 37.7 of Police Rules, 1934 submitted that if the respondents were not trained police constable then it was the duty of the authority to make arrangement for their training. The service of respondents could not be terminated on the ground that they are not trained. The termination order was passed without hearing the respondents, which is bad in law.

5. We have heard the learned counsel for the parties and also perused the record. For resolving the question, whether the respondents were the civil servants or not

and the Service Tribunal had jurisdiction in the matter or not. It appears appropriate to consider the appointment order, which is reproduce as under:-

"از دفتر سینئر سپرنٹنڈنٹ پولیس ضلع مظفر آباد

حکم

چائنیز سیکورٹی منگلا ڈیم میں نئی تخلیق شدہ لیڈیز پولیس کی 02 آسامیوں پر بھرتی کے لیے ذیل امیدواران (۱) رضوانہ کوثر دختر فیض محمد سکنہ موہڑہ سدھا تحصیل و ضلع بھمبر آزاد کشمیر۔ (۲) شبانہ کوثر دختر بشیر احمد سکنہ روپیری تحصیل و ضلع بھمبر آزاد کشمیر نے درخواست دیں۔

لیڈیز پولیس کی کنٹھیلان کی آسامیوں پر بھرتی کے لیے محکمانہ تشکیل شدہ کمیٹی نے بعد از ٹیسٹ و انٹرویو ذیل امیدواران (۱) رضوانہ کوثر دختر فیض محمد سکنہ موہڑہ سدھا تحصیل و ضلع بھمبر آزاد کشمیر۔ (۲) شبانہ کوثر دختر بشیر احمد سکنہ روپیری تحصیل و ضلع بھمبر آزاد کشمیر کا ٹیسٹ انٹرویو لے کر ان کو بطور لیڈیز کنٹھیلان بھرتی کے لیے موزوں قرار دیتے ہوئے تقرری کی سفارش کی۔

لہذا حالات بالا مندرجہ بالا امیدواران کو مورخہ 06.05.2006 قبل دوپہر سے چائنیز سیکورٹی پولیس منگلا ریزنگ پراجیکٹ میں لیڈیز کنٹھیلان کی نئی تخلیق شدہ آسامیوں کے خلاف در سکیل بی۔۵ موجودہ الاؤنسز بطور لیڈیز کنٹھیلان بھرتی کیا جاتا ہے۔ جن کی یہ تقرری عرصہ دو سال کے لیے عارضی تصور ہوگی۔ جو مورخہ 06.05.2006 سے تنخواہ موجودہ الاؤنسز TA/DA چائنیز سیکورٹی پولیس منگلا کے بجٹ سے حاصل کریں گی۔

مندرجہ بالا بھرتی ہونے والی لیڈیز کنٹھیلان چائنیز سیکورٹی پولیس منگلا حاضر رئیس گی۔ انچارج لائن سٹور کیپر ان لیڈیز کنٹھیلان کو سرکاری وردی تحت ضابطہ تقسیم کریں گے۔

بدرج آرڈر بک احکام جاری ہوں۔

دستخط/-----
سینئر سپرنٹنڈنٹ پولیس
ضلع میرپور"

A reading of the appointment order of the respondents dated 6th May, 2006, makes it

abundantly clear that the appointment order has been issued against the newly created posts for the Chinese security in Mangla Dam Raising Project. The posts were not of regular police service. The respondents were appointed as constables after the test and interview. Their appointment order was for a specific period of two years on temporary basis. It is mentioned in the order that the respondents shall receive salary with allowances, T.A. and D.A. from the budget of Chinese Security Police Mangla Dam Raising Project. It is clear from the appointment order of the respondents that the same was issued against the posts created in Chinese Security Police Mangla.

6. Sections 13 and 14 of the Police Act, 1862, and sub-rule 1, to 3 of Rule 2.9 and sub-Rules 4 and 5 of Rule 2.9 of the Police Rules, 1974 recognize the additional police force for the projects. Whenever, a project of national importance is started and there is need for security of the project, additional police is

employed on the cost of project. The matter of the recruitment of additional police for the project on the cost of project came under consideration of this Court in the case reported as *Muhammad Asif Khan and 173 others vs. Azad Government of the State of Jammu & Kashmir through its Chief Secretary Muzaffarabad and 14 others* (PLJ 2014 SC (AJ&K) 163) in the circumstances that the police constables were recruited in City Development Project Muzaffarabad for Chinese' security for a period of two years. During completion of the project some posts of police constables were advertised in the police department, whereupon the incumbents of the posts filed writ petition that as they have already passed test and interview, they may be adjusted against the posts which have been advertised. The writ petition was dismissed. An appeal was filed in this Court. This Court resolved the question of status of additional police in para 6 of the

referred judgment, which is reproduced as under:

> "6. We have heard the learned counsel for the parties and perused the record. The matter needs interpretation of Sections 13 and 14 of the Act and sub-Rules 1 to 3 of Rule 2.9 and newly introduced sub-Rules 4 and 5 of Rule 2.9 of the Rules. Before proceeding further we deem it necessary to go through the provisions of Sections 13 and 14 of the Act and sub-Rules 1 to 3 and newly introduced sub-Rules 4 and 5 of Rule 2.9 of the Rules. For proper appreciation these are reproduced as under:--
>
> > '13. **Additional Police Officers employed at costs of individuals**.—It shall be lawful for the inspector General of Police, or any Deputy Inspector General or for the District Superintendent, subject to the general direction of the Magistrate of the District, on the application of any person showing the necessity thereof, to depute any additional number of police officers to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the district Superintendent, and shall be at the charge of the person making the application:
> >
> > Provided that it shall be lawful for the person on whose application such deputation shall have been

made, on giving one month's notice in writing to the Inspector General, Deputy Inspector General or Assistant Inspector General or to the District Superintendent, to require that the' police officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.'

14. **Appointment of additional force in the neighborhood of railway and other works.**— whenever any railway, canal or other public work, or any manufactory or commercial concern shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector General that the employment of an additional police force in such place is rendered necessary by the behavior or reasonable apprehension of the behavior or reasonable apprehension of the behavior of the persons employed upon such work, manufactory or concern, it shall be lawful for the Inspector General, with the consent of the Provincial Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue, and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work manufactory or concern, for the payment of the extra force so

rendered necessary, and such person shall thereupon cause payment to be paid accordingly.'

'2.9. **Additional Police under Sections 13 & 14**—(1) Sections 13 and 14 of the Police Act V of 1861, regulate the employment of police officers at the costs of individuals, and the appointment of police officers in the neighborhood of railway and others works. Such police are designated "Additional Police" whether extra policemen in excess of regular establishment are enlisted or not.

(2) If extra men are enlisted, they shall be deemed part of the district Police force and shall, if suitable and eligible, be absorbed in the regular establishment as vacancies occur, being replaced by new enlistments, who are subject to discharge on reduction of the additional police.

(3) Superintendents are required to give early information to Deputy Inspectors-General of their inability to provide for additional police coming under reduction in order that arrangements may be made to absorb them in other districts where vacancies may exist.'

(4) Additional Police shall be recruited in as many numbers, as approved for the respective project on contract basis. Approval of Inspector General of Police shall be obtained for such

> recruitments required to be made on contract basis.
>
> (5) These recruitments shall purely be project specific and shall not in any case confer any right towards permanent absorption."

The question of posts of project came under consideration by this Court in the case reported as *Muhammad Rehman and another vs. Azad Govt. and 8 others* (2014 SCR 298). It was observed in para 9 and 10 of the report as under:-

> "9. …According to law, when the project is not continuing and the posts are not available, the respondents/employer cannot be forced by the Courts to continue the services of the employees without any post. Even according to law enforced in Azad Jammu & Kashmir dealing with the Civil servants. In case of abolishment or reduction of any post, the services of permanently inducted Civil servants can be terminated. Section 10 of the Azad Jammu & Kashmir Civil Servants, Act, 1976 is very much clear. Thus, the prayer of the appellants that their services should not be terminated, in the light of the facts of the case is not maintainable.
>
> 10. As for the next point agitated that the Government should be directed to adjust the appellants against the post

> of Sub-Engineers (Civil) lying vacant in the normal budget of the communication and Works Department is concerned, the appellants have not brought on record any such statutory provision to justify their contention. Even according to our own study, there is no such legal method that the persons who are appointed purely on contract basis, the courts can issue direction for their permanent induction against the post lying vacant in equal grade with the mode prescribed for appointment under the statute. Such like legal and factual propositions have been brought before this Court time and again. This Court after due deliberation and taking into consideration the whole scheme of law and statutory provisions, has refused the remedy beyond law."

7. It is beyond doubt that in the instant case appointments of the respondents were not made in regular police service. Their appointment order was issued against the posts which were created in Mangla Dam Raising Project for Chinese' security for a specified period of two years, as such, the respondents do not fall in the definition of the civil servant. An appeal in the Service Tribunal under section 4 of the Service Tribunal Act, 1975 may be filed by a civil servant alone. The respondents were not

civil servants, therefore, the appeals before the Service Tribunal were not competent. The Service Tribunal has no jurisdiction in the matter. It was observed by this Court in the case reported as *Abdul Rashid vs. AKMIDC and 3 others* (2002 SCR 530) as under:-

> "4. The disputes relating to the terms and conditions of the Civil servants have been given exclusively within the jurisdiction of the Service Tribunal in the light of section 47 of the Azad Jammu and Kashmir Interim Constitution Act, 1974. In section 4 of the Service Tribunal Act, 1975, a civil servant who holds a civil post in the service of Azad Jammu & Kashmir or is employed in connection with the affairs of the State can raise his grievance in respect of his terms and conditions through an appeal before the Service Tribunal. However, a person who is on deputation to the service of Azad Jammu and Kashmir in connection with the affairs of the Government from the Council or the Federation or any Province of Pakistan or Authority and a person who is employed on contract or on work-charge basis and paid from contingencies, cannot invoke the appellate jurisdiction of the Service Tribunal…"

The appeals before the Service Tribunal were not competently filed, merited dismissal on the same ground. Resultantly, the appeal is accepted and the

judgment of the Service Tribunal is set aside. The appeals before the service tribunal are dismissed.

8. Before parting with, we may observe that in the case reported as *Muhammad Asif Khan and 173 others vs. Azad Government of the State of Jammu & Kashmir, through its Chief Secretary, Muzaffarabad and 14 others* (PLJ 2014 SCR (AJ&K) 163) while interpreting section 13 and 14 relating to additional police force, we have observed that extra police enlisted are entitled for appointment in regular police against available vacancies after judging eligibility and suitability. Therefore, the authorities shall consider the experience and after judging eligibility and suitability of respondents, they be adjusted in regular police when vacancies occur in the police department.

With the above observation, the appeal is accepted with no order as to costs.

CHIEF JUSTICE JUDGE

Mirpur
26.11.2016.