SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

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

Civil Appeal No. 194 of 2016
(PLA filed on 10.06.2016)

Khaqan Ahmed s/o Muhammad Hafeez Khan, Form Attendant Fish Hatcher Chikar, District Hattian Bala.

…. APPELLANT

VERSUS

1. Government of Azad Jammu and Kashmir through its Chief Secretary of Wild Life & Fisheries Block F, District Judicial Complex, Muzaffarabad.
2. Director of Wild Life & Fisheries Block F, District Judicial Complex, Muzaffarabad.
3. Deputy Director of Wild Life and Fisheries Block F, District Judicial Complex, Muzaffarabad.
4. Muhammad Nadeem Khan s/o Muhammad Saeed r/o Jabar Btang Chikar, Tehsil Chakar, District Hattian Bala.

….. RESPONDENTS

(On appeal from the order of the High Court dated 16.05.2016 in Writ Petition No. 887/2012)

FOR THE APPELLANT: Sahibzada Mehmood Ahmed, Advocate.

FOR RESPONDENT NO. 4: Kh. Shoukat Ganai, Advocate.

FOR RESPONDENTS No.1-3: Mr. Raza Ali Khan, Advocate-General.

Date of hearing: 14.02.2017

JUDGMENT:

Ch. Muhammad Ibrahim Zia, J.— This appeal by leave of the Court arises out of the judgment of the High Court dated 16.05.2016, whereby the writ petition filed by respondent No.4, herein, has been accepted.

2. According to the summary of the facts respondent No.4 by filing a writ petition before the High Court claimed that he was appointed on temporary basis vide order dated 15.07.2010 as Form Attendant in place of his father who died during the

service. The said post was later on advertised. After conducting test and interview, he secured first position. He claimed that instead of appointing him the appellant, herein, has been was appointed vide order dated 21.12.2011 which is liable to be set-aside. He sought a direction for his appointment against the disputed post. The learned High Court, while accepting the writ petition directed the official respondents to appoint respondent No.4 in view of his merit position, hence this appeal by leave of the Court.

3. Sahibzada Mehmood Ahmed, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that the impugned judgment of the High Court is against law, facts and record of the case. The whole proceeding of selection committee is fake, tampered and against law. Respondent No.4 is not eligible for appointment as he is lacking the required qualification. He failed to produce the required certificate alongwith his application. The produced certificate was prepared after the last date of submission of the application.

Moreover, the certificate is fake, tampered and forged. The proceeding of the committee are totally against law as one Kamran Ahmed has filed affidavit that he has not participated in the test and interview, whereas, in the merit list he is shown as the participant. The learned High Court totally ignored all these aspects. He further argued that the High Court also summoned the record and perused the same but amazingly despite the proof of fact that the whole act of appointment of respondent No.4 is against law and based upon forged and tampered document, the impugned judgment has been passed which resulted into miscarriage of justice. Therefore, while accepting this appeal and setting-aside the impugned judgment of the High Court a direction of appointment of the appellant be issued.

4. Mr. Raza Ali Khan, Advocate-General, the learned counsel for the official respondents submitted that the matter relates to the contesting candidates and according to the appointing authority the certificate produced by respondent No.4 was found forged and tampered, however, regrettably the

written statement could not be brought on record of the High Court which resulted into drawing the wrong conclusion. Apparently, the arguments of learned counsel for the appellant find support from the record, however, the authority will follow the direction of the Court.

5. Kh. Shoukat Ganai, Advocate, the learned counsel for respondent No.4 forcefully defended the impugned judgment of the High Court and submitted that the same is consistent with the record. The post has been advertised and respondent No.4 obtained first position, hence, he has been appointed on merit. The arguments of learned counsel for the appellant are misconceived. So far as the question of production of tampered record is concerned, it is mere an oral argument. There is no inquiry or proof of the fact, thus, this appeal has no substance and the same is liable to be dismissed.

6. We have considered the arguments of learned counsel for the parties and gone through the record made available. Amazingly, neither the counsel for the parties nor the High Court has

minutely examined the record and applied judicial mind. The High Court passed the impugned judgment after summoning the original record and examining the same, we for our on satisfaction also summoned the original record and examined the same. The examination of the record, specially, the signatures of respondent No.4 on service book, applications, written paper etc. do not match and there is lot of difference. It appears that he can hardly write his name and is unable to write any text. Therefore, the written paper attributed to him, which is placed on the record, appears to be forged document. His signatures on the service book prove that he cannot write or answer any question as shown in the process of selection. Thus, it is proved from the record that the act of selection committee to place the name of respondent No.4 at first position is against law and facts.

7. The record also shows that the appellant, herein, also filed an application before the authority to call the respondent No.4, herein, for examination of his writing power but the authority has not done

the needful. When the learned counsel for the respondent was asked whether he is available for such test, he replied that the respondent is abroad in Saudi Arabia.

8. As the whole process of selection appears to be fake and against the law, therefore, the authority is directed to take necessary action according to rules and law dealing with the subject for induction against the disputed post.

In view of the above, we are constrained to accept this appeal and set-aside the impugned judgment of the High Court. Consequently, the writ petition filed by respondent No.4 stands dismissed.

Muzaffarabad,
16.02.2017 JUDGE JUDGE