

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No.348 of 2014)  
(PLA filed on 20.6.2014)

Aroosa Munir d/o Munir Akhtar Khan, Junior Science  
Teachress, Government Girls Middle School, Markat  
Kot, 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. Additional Secretary General, Services & General Administration Department, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
3. Director General, Anti Corruption Establishment, Azad Jammu and Kashmir having his office at New Secretariat, Muzaffarabad.
4. Secretary Education, Schools, Azad Government of the State of Jammu and Kashmir having his office at New Secretariat, Muzaffarabad.
5. Divisional Director Schools (female) Muzaffarabad Division having his office at Old Secretariat, New District Complex, Muzaffarabad.
6. District Education Officer (female) Muzaffarabad having his office at Old Secretariat, Muzaffarabad.
7. Headmistress, Government Girls Middle School, Markaz Kot, Muzaffarabad.
8. Accountant General of Azad Jammu and Kashmir having his office at Sathra, Muzaffarabad.

....RESPONDENTS

(On appeal from the order of the High Court dated  
18.6.2014 in writ petition No.1338 of 2014)

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FOR THE APPELLANT: Miss Kokab Al-Saba  
Roohi,  
Advocate.

FOR THE OFFICIAL  
RESPONDENTS: Mr. Raza Ali Khan,  
Advocate-General.

*Date of hearing:* 6.3.2017.

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— The above titled appeal by leave of the Court has arisen out of the order passed by the High Court on 18.6.2014, whereby the writ petition filed by the appellant, herein, has been dismissed in limine.

2. The brief facts of the case are that the appellant, herein, is a permanent resident of village Kachili, District Muzaffarabad. The Education Department has advertised some posts of the Junior Science Teachers for appointment in the different constituencies of the District Muzaffarabad. The appellant applied for the appointment against the post of the

Junior Science Teacher in constituency No. 4, District Muzaffarabad. After test and interview, the name of the appellant was placed at serial No. 5 of the merit list in constituency No. 4, Muzaffarabad. The Secretary Education (Schools), respondent No. 4, herein, issued the appointment order of the appellant on 7.10.2013. The Chief Secretary of the Azad Government of the State of Jammu & Kashmir held an inquiry regarding the illegal appointment order of the appellant. The inquiry report dated 9.6.2014, shows that the appellant was appointed as the Junior Science Teacher without fulfilling the requisite academic qualification of B.Sc. The Secretary Elementary & Secondary Education, Muzaffarabad vide letter dated 13.6.2014, directed the Directors Elementary and Secondary (female and male) to proceed in accordance with the inquiry report dated 9.6.2014. Feeling dissatisfied, the appellant filed

a writ petition in the High Court against the letter dated 13.6.2014 and the inquiry report dated 9.6.2014. The learned High Court dismissed the writ petition in limine vide impugned order dated 18.6.2014. Hence, this appeal by leave of the Court.

3. Miss Kokab Al-Saba Roohi, Advocate, the learned counsel for the appellant, argued that the conclusion made by the learned High Court is based on misreading and non-reading of evidence. She argued that the learned High Court has wrongly held that the appellant has an opportunity to submit her academic credentials before the inquiry committee, whereas, the inquiry committee has already submitted its report and no proceedings are pending before the inquiry committee. She contended that the official respondents are going to terminate the services of the appellant but the learned High Court has not taken into consideration this

important aspect of the case. She further contended that after test and interview the name of the appellant was placed at serial No. 5 of the merit list, therefore, the appointment order of the appellant was issued after due process of law but the learned High Court failed to take into account this important aspect of the case. She submitted that after joining the service a valuable right has been accrued in favour of the appellant which cannot be taken away without assigning any cogent reasons and the proper remedy available to the appellant was before the High Court. She argued that no opportunity of hearing was provided to the appellant, therefore, the principle of '*audi alteram partem*' has grossly been violated. She forcefully argued that the appellant is permanent employee of the Education Department and she is performing her duties as Junior Teacher at Government Girls Middle

School, Markaz Kot, with entire satisfaction of the department and there is no complaint against her. She lastly argued that the official respondents conducted the inquiry report with malafide intention to accommodate the person of their own choice.

4. On the other hand, Mr. Raza Ali Khan, Advocate-General, while representing the official respondents, argued that the impugned order passed by the learned High Court is perfect and legal, therefore, no interference is required by this Court. He argued that the appellant submitted the application for her appointment against the post of Junior Science Teacher on 13.3.2013, whereas, she passed the B.Sc. examination on 13.5.2013. He further argued that at the time of submission of the application, the appellant was not eligible to be appointed or applied against the post of Junior Science Teacher. At this stage, when the learned

Advocate-General was confronted with the situation that there are serious lapses on the part of the department who entertained the application of the appellant who otherwise was not eligible to be appointed against the said post, he very candidly conceded the position and submitted that the officials who issued the illegal appointment order of the appellant should be proceeded, however, he failed to bring on record anything from which it could be ascertained that any action was taken against the such officials. He lastly argued that the appointment order of the appellant was made against the rules and regulations, therefore, the same may be cancelled.

5. We have heard the arguments of the learned counsel for the appellant and the learned Advocate-General at some length and gone through the record made available. To meet the argument addressed by the learned

counsel for the appellant, we have examined the record minutely. It appears from the record that the Education Department has advertised some posts of the Junior Science Teachers for appointment in different constituencies of the District Muzaffarabad, and the requisite qualification for the posts was B.Sc. The record shows that the appellant submitted the application for the appointment against the post of Junior Science Teacher on 13.3.2013, whereas, she passed the B.Sc. examination on 13.5.2013. This fact has not denied by the counsel for the appellant before this Court meaning thereby that at the time of submission of the application, the appellant was not holding the degree of B.Sc.

6. The appellant succeeded to get the appointment order dated 7.10.2013, while showing herself at serial No. 5 of the merit list. In this state of affairs, it can safely be observed



that the same cannot be possible without the connivance of the concerned officers/authority who has not scrutinized the academic documents at the time of the appointment of the appellant. The learned Advocate-General, while appearing before the Court has fairly not supported the conduct of the officers who issued the illegal appointment order of the appellant. The learned Advocate-General also submitted that the officers who are involved in such like illegal practice are required to be dealt with in accordance with law. The appellant approached the learned High Court to pre-empt the wisdom of the inquiry committee, whereas, no final findings have been recorded by the inquiry committee, therefore, the learned High Court has rightly observed that the appellant has an opportunity to submit her academic credentials before the inquiry committee and explain her case at the relevant forum.

7. The argument of the learned counsel for the appellant that after issuance of the appointment order dated 7.10.2013, a valuable right has been accrued in favour of the appellant, is ill-founded as no illegal order can be protected. It may be observed that such like order which on the face of it, is illegal does not create any right, therefore, the learned High Court while passing the impugned order has rightly dismissed the writ petition in limine. It is settled principle of law that no one can invoke the extraordinary writ jurisdiction for protection of the ill-gotten-gain. Reliance may be placed on a case reported as *AJ&K Government & 4 others vs. Mohi-ud-Din Islamic University and 2 others* [2014 SCR 382] wherein it has been held as under:—

“14. Now we advert to the argument advanced by the learned counsel for the appellants that the writ jurisdiction cannot be invoked to protect the ill-

*gotten-gain*. As we have observed in the preceding para that MOU/agreement dated 14.9.2006 was not executed in accordance with law, therefore, the benefits derived by the respondents under this agreement can be termed as *ill-gotten-gains*. It is now settled that the writ jurisdiction of the High Court cannot be invoked to protect the *ill-gotten-gains*.....”

9. In the light of what has been discussed above, we do not find any illegality and infirmity in the impugned order passed by the learned High Court, therefore, no interference is called for by this Court. Resultantly, the appeal is dismissed with no order as to costs.

Before parting with the judgment, we would like to observe here that the appellant who was not even eligible to apply for the post of Junior Science Teacher was appointed against the said post. *Pima facie*, it appears from the record that the authority while deviating from

the rules and regulations issued the illegal appointment order of the appellant dated 7.10.2013, just to give her undue benefit, therefore, the conduct of such officials cannot be overlooked. Let a copy of this order be communicated to the Secretary Education with the direction to proceed under law and to hold the independent inquiry against the officials who issued the appointment order of the appellant within a period of two months, positively. The Secretary Education after fixing the liabilities of the officers who involved in such like illegal practice, shall also submit the outcome of the inquiry report before this Court through Registrar of this Court.

Muzaffarabad.

\_\_\_3.2017

**JUDGE**

**CHIEF JUSTICE**

Date of announcement: 15.03.2017