

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.131 of 2016)
(PLA filed on 19.2.2016)

Muhammad Inzmam-ul-Haq, s/o Amrez Khan, r/o Kotli,
Tehsil & District Dhirkot, Bagh.

....APPELLANT

VERSUS

1. Selection Committee for Junior Clerk, B-7 through
Chairman Selection Committee/Senior Civil Judge,
Bagh,
2. Senior Civil Judge, District Bagh,
3. District & Sessions Judge, Bagh.

....RESPONDENTS

(On appeal from the order of the High Court dated
22.12.2015 in writ petition No.1933 of 2015)

FOR THE APPELLANT:

Raja Sajjad Ahmed
Khan, Advocate.

FOR THE RESPONDENTS:

Nemo.

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 judgment passed by the High Court on 22.12.2015, 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, filed a writ petition in the High Court alleging therein that the father of the appellant is permanent employee of the Subordinate Judiciary and is serving as the Junior Clerk/*Nazir*, B-7, in the Court of Civil Judge, *Dhirkot*. It has been alleged that the Senior Civil Judge, *Bagh* advertised a post of the Junior Clerk vide advertisement dated 9.9.2015. The Government of Azad Jammu and Kashmir vide notification dated 26.5.2003 reserved 20% vacancies in all the Government departments in the cadre of Junior Clerk, Driver, *Naib Qasid*, *Mali*, *Farrash*, Water Carrier and *Chowkidar* for the children of such Government servants who are

either still serving in the respective department/cadre or had retired from the said department/cadre in grade, B-1 to B-5. It has further been alleged that the post Junior Clerk is falling against 20% quota reserved for the children of the Government servants. The learned High Court after necessary proceedings dismissed the writ petition in limine vide impugned judgment dated 22.12.2015. Hence, this appeal by leave of the Court.

3. Raja Sajjad Ahmed Khan, Advocate, the learned counsel for the appellant, argued that the judgment impugned passed by the learned High Court is against law and the facts of the case which is not sustainable in the eye of law. He argued that the learned High Court failed to take into consideration the notification dated 26.5.2003, through which 20% vacancies in the different cadres have been reserved for the children of Government servants who are still serving in the department in grade, B-1 to B-5.

He contended that no one was appointed against 20% quota reserved for the children of Government servants but the learned High Court failed to adhere to the notification dated 26.5.2003, in its true perspective. He further contended that at the time of filing of the application the father of the appellant was serving as the Junior Clerk, therefore, the findings recorded by the learned High Court that the father of the appellant has been promoted, therefore, he has no locus standi to file the writ petition is against the record. He averred that the father of the appellant despite promotion falls in the cadre of Junior Clerk but the learned High Court has not taken into consideration this important aspect of the case. The learned counsel lastly argued that it was enjoined upon the official respondents to advertise the post after determination of the quota but they failed to do so.

4. We have heard the arguments of the learned counsel for the appellant and gone

through the record made available. The controversy involved in the matter is regarding the interpretation of the notification dated 26.5.2003, which is available at pages 9 & 10 of the paper-book, already reproduced by the High Court while delivering the judgment. We would also like to reproduce the same for better appreciation, which reads as under:—

"AZAD GOVT. OF THE STATE OF JAMMU AND KASHMIR MZD. SERVICES AND GENRAL ADMINISTRATION DEPARTMENT

'Muzaffarabad'
Dated 26th May 2003

NOTIFICATION:-

No.S&GAD/R-4(347)99. IN exercise of the powers conferred by Section 23 of the Azad Jammu & Kashmir, Civil Servants Act, 1976, the President, AJ&K is pleased to direct that notwithstanding anything contained to the contrary in any other rules, 20% vacancies in the cadre of Junior Clerk, Driver, Naib Qasid, Mali, Farrash, Water Carrier and Chowkidar in all Government departments shall stand reserved for the children of such Government servants in BS 1 to 5 who are either still serving in the respective department/cadre or had retired from the said department/cadre in BS 1 to 5. The eligibility criteria for selection to reserved posts would be as follows:-

S.No.	Nomenclature of Post	Criteria for Selection
1.	Junior Clerk (B-5)	All the posts of Junior Clerk falling in this quota will be filled strictly on merit as per recruitment policy in vogue.

2.	Driver (B-4)	Only those candidates who possesses valid driving licence shall be eligible for the post of Driver. All eligible candidates shall be administered a driving test by the respective departmental selection committees. Those performing better would be selected.
3.	Naib Qasid/Mali/Farrash/Water Carrier/Chokidar (B-1)	The length of service of the parent whose son is a candidate shall be the sole criteria for determining inter-se merit of the applicants.

If none is available for appointment against the reserved quota, these posts shall be filled up through direct recruitment on the basis of open merit.

(Muhammad Rashad Hanif Qureshi)
SECTION OFFICER SERVICES (R) "

After going the above said notification supra, it reveals that the Government of Azad Jammu & Kashmir reserved 20% vacancies in all the Government departments in the cadre of Junior Clerk, Driver, Naib Qasid, Mali, Farrash, Water Carrier and Chowkidar for the children of such Government servants who are either still serving in the respective department/cadre or had retired from the said department/cadre in grade, B-1 to B-5.

5. The father of the appellant was serving in grade, B-7, and on the recommendations of the selection committee, he has been promoted against the post of Assistant/Nazir, B-14 vide order dated 20.8.2015. Admittedly, the father of the appellant was not holding the post of the Junior Clerk at the time of publishing of the advertisement of the post. The language of the notification dated 26.5.2003 is unambiguous and the heading of the notification supra itself postulates that 20% quota reserved for the children of Government servants in grade, 1-5. The office memorandum dated 8th September, 2007 available at page 11 of the paper-book further clarify the position that the post of Junior Clerk, B-5 was upgraded in B-7. Moreover, the learned High Court in paragraph 3 of the impugned judgment has observed as under:—

“3. The writ petition has been resisted by respondents through comments wherein it is stated that father of petitioner is an

employee of District Judiciary, however, he is not Junior Clerk B-07 and performing his functions as Assistant/Nazir B-14, therefore, petitioner has got no locus-standi to file the instant writ petition and prayed for dismissal of writ petition in limine.”

After going through the above said paragraph, we are justified to hold that the learned High Court while interpreting the notification dated 26.5.2003, has not committed any illegality, therefore, no interference is called for by this Court. The argument raised by the learned counsel for the appellant that the learned High Court failed to adhere to the notification dated 26.5.2003, is not convincing in nature. We do not find any illegality or infirmity in the judgment passed by the learned High Court which is well reasoned and has been passed after attending all the controversial questions in a comprehensive manner.

Resultantly, this appeal has no force.

The same is dismissed with no order as to costs.

Muzaffarabad.

___3.2017

JUDGE

CHIEF JUSTICE

Date of announcement: 15.03.2017