

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT

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

Civil Appeal No. 377 of 2015
(PLA filed on 05.05.2016)

Mst. Shahida Bibi d/o Abdul Malik wife of Kafeel Ahmed Shah r/o Ghan Chatter at present resident of Bayan, Tehsil and District Muzaffarabad.

.... APPELLANT

VERSUS

1. Secretary Education (Schools), Muzaffarabad.
2. Director Schools (Elementary), Muzaffarabad.
3. Divisional Director Schools, Muzaffarabad Division, Muzaffarabad.
4. District Education Officer Schools (Elementary) Female, Muzaffarabad.
5. Selection Committee through its Chairman District Education Officer Schools (Elementary) Female, Muzaffarabad.
6. Mst. Uzma Imtiaz wife of Sajid Mughal r/o Mera Kalan, Primary Teachress, Primary School Gali Bayan, Tehsil and District Muzaffarabad.
7. Mst. Naheed Gillani d/o Syed Nazir Hussain Shah r/o Tariqabad, Tehsil and District Muzaffarabad, Primary Teachress, Primary School Gali Bayan, Tehsil and District Muzaffarabad.
8. Mst. Syeda Rabia Jahfri, wife of Kaffayat Hussain Shah r/o village Kardala, Primary Teacher Government Girls Primary School Bayan.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 03.03.2015 in Writ Petition No. 815/2008)

FOR THE APPELLANT: Mr. M. Noorullah Qureshi,
Advocate.

FOR RESPONDENTS NO.6-8: Mr. Amjad Hameed
Saddiqui, Advocate.

Date of hearing: 06.03.2017

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.— This appeal by leave of the Court has arisen out of the judgment of the High Court dated 03.03.2015, whereby the writ petitions filed by the appellant, herein, have been dismissed.

2. The factual matrix of the case is that the appellant, herein, filed two writ petitions before the High Court with the claim that the respondents through advertisement No.AK-781 invited applications for induction as primary teachers. She applied for appointment against one of the posts. According to her version, after test and interview the result was not announced. She managed to know

through her own sources that the appointments of respondents, herein, have been made. She claimed that she is Matric PTC, whereas, the respondents have never passed PTC. She prayed for setting-aside the appointment orders of the respondents dated 30.08.2008 and 28.09.2009. She also sought a direction for her appointment being fully qualified. After necessary proceedings, the learned High Court dismissed both the petitions through the impugned judgment, hence this appeal by leave of the Court.

3. Mr. Muhammad Noorullah Qureshi, Advocate, the learned counsel for the appellant after detailed discussion of necessary facts seriously objected to the impugned judgment of the High Court on the main ground of non-consideration of legal and factual propositions involved. He submitted that the preparation of merit list and the process of selection is non-transparent. The merit list has not been prepared and kept secret, therefore, the whole process is liable to be set-aside. The most stressed point advanced by him in his arguments is that according to the Government notification dated

09.02.1994 the female primary teachers have to be appointed on the basis of Local Council and the Local Council means the Ward of Union Council in which the institution is situated or vacancy falls vacant. Respondents No.6 to 8 are not resident of Local Council, hence, they are not eligible to be appointed. The whole process of selection and appointment of the respondents is violative of law, whereas, the appellant deserves to be appointed on the basis of merit being resident of Local Council. All these material propositions have been ignored by the High Court, thus, the impugned judgment is not maintainable. Consequently, while accepting this appeal the appointment order of the respondents be recalled and a direction for appointment of the appellant on merit against one of the posts be ensured.

4. Conversely, Mr. Amjad Hameed Saddiqui, Advocate, the learned counsel for the contesting respondents seriously opposed the appeal on the ground that the arguments advanced appear to be misconceived, against law and facts. The whole

process of selection has been made according to law. The posts were duly advertised. The appellant failed to be selected on merit. The respondents are highly qualified as B.A., B.Ed, M.A., M.Ed, CT. The appellant's whole case is based upon misconception of facts. She treated the Ward as Union Council which is against law. According to her version the post fell vacant in Union Council, Muzaffarabad and she is resident of village Bayyan. Her claim that the merit list has to be prepared on the basis of Ward is against law. She has got no legal cause of action, thus, this appeal has no substance and the same is liable to be dismissed. He referred to the case reported as *Rashida Awan vs. District Education Officer and others* [2007 SCR 406].

5. We have considered the arguments of the learned counsel for the parties and examined the record made available. The appellant's first ground that she is Matric PTC, whereas the respondents are not having qualification of PTC, thus, they are not eligible for appointment, appears to be result of misconception as the respondents are highly qualified

being Graduate, Post Graduate and B.Ed and CT. Matric PTC is minimum required qualification, thus, having higher qualification does not make a person ineligible. The counsel for the respondent has rightly relied upon the case reported as *Rashida Awan vs. District Education Officer and others* [2007 SCR 406]. Thus, the argument being against the principle of law enunciated by this Court, has no substance.

6. For appreciation of the most stressed argument on behalf of the appellant, it will be useful to reproduce here the ground "C" of memo of writ petition, which reads as follows:-

"(c) For that Government has created the post of Primary Teachress for Local Councils limits and not on the basis of Union Councils. Petitioner is married with a person who is resident of Local Council Bayan on 02.02.2005, petitioner is having children and from the date of marriage is a permanent resident of Local Council Bayan, whereas respondents No. 6 and 7 belong to Local Councils Mera Kalan and Tariqabad respectively. Their villages are 8 to 25 k.m. away from petitioner's local council. As per the policy of Government issued vide Notification dated 09.02.1993, it is binding on authorities to appoint female Primary Teachress in her own local council, if candidate is not available from concerned local council than from adjacent local council. In the matter in hand no candidate is appointed from local council Bayan, Bandi

Fateh Jang or Timber Ghan Chatter which are adjacent local councils, so this policy is badly violated, therefore, orders impugned are quite against law and cannot be maintained.”

This argument also appears to have no substance and against law. The appellant has treated the Ward as Local Council. The term Local Council has been defined in the Azad Jammu and Kashmir Local Government Act, 1990 as follows:

“Local Council” means a Local Council constituted under this Act, and includes a Union Council, District Council, Town Committee, Municipal Committee and a Municipal Corporation.”

Thus, in the context of this case, the Local Council means the Union Council and not the Ward within the Union Council. In view of the above stated reasons the appellant has failed to make out any valid legal ground for acceptance of his writ petitions which have been rightly dismissed by the High Court.

Therefore, finding no force this appeal stands dismissed with no order as to costs.

Muzaffarabad,

___.03.2017

CHIEF JUSTICE

JUDGE

Date of announcement: 10-03-2017