

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Review Jurisdiction)

PRESENT

Ch. Muhammad Ibrahim Zia, C.J.

Raja Saeed Akram Khan, J.

Civil Review No. 03 of 2017

(Filed on 11.01.2017)

Safeer Hussain Bhatti, Lecturer Mathematics B-17,
Govt. Post Graduate College for Boys, Muzaffarabad
presently Govt. Boys Degree College Dana..

.... APPELLANT

VERSUS

1. Shakeel Ahmed Lecturer Mathematics B-17, Govt.
Boys Degree College Danna, Tehsil and District
Muzaffarabad presently Govt. Post Graduate
College for Boys Muzaffarabad.

.... RESPONDENT

2. Minister Higher Education, having his office at New
Secretariat, Chatter, Muzaffarabad.

3. Azad Government of the State of Jammu and
Kashmir through its Chief Secretary having his
office at new Secretariat, Muzaffarabad.

4. Secretary Higher Education, Muzaffarabad, having
his office at New Secretariat, Chatter,
Muzaffarabad.

5. Director Public Instructions Colleges,
Muzaffarabad, having his office at "D" Block Old
Secretariat, Muzaffarabad.

6. Divisional Director Colleges Muzaffarabad Division,
having his office at "D" Block, Old Secretariat,
Muzaffarabad.

7. Accountant General of Azad Jammu and Kashmir
having his office at Sathra, Muzaffarabad.

8. Principal Govt. Post Graduate College for Boys,
Muzaffarabad.

.... PROFORMA RESPONDENTS

(In the matter of review of judgment of this Court
dated 08.12.2016 in Civil Appeal No.171/2016)

FOR THE PETITIONER: Raja Shujaat Ali Khan,
Advocate.

FOR RESPONDENT NO. 1: Ch. Muhammad Manzoor,
Advocate.

Date of hearing: 09.03.2017.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.— This petition has been filed for review of judgment of this Court dated 08.12.2016 through which the appeal filed by the petitioner, herein, has been disposed of with the direction to the Service Tribunal to decide the appeal on merit expeditiously.

2. The summary of the case is that vide impugned notification dated 25.05.2016, the petitioner, herein, has been transferred from Govt. Boys Degree College Dana (having stay period of 3 years) to Govt. Post Graduate College, Muzaffarabad in place of respondent No. 1 having stay period of 8 years. Feeling aggrieved from the said order, respondent No. 1 filed an appeal before the Service Tribunal and also moved an application for interim relief. He claimed that he is

serving as Assistant Professor Mathematics, B-18, hence cannot be transferred against the post of Lecturer B-17. The learned Service Tribunal vide impugned order dated 26.05.2016 admitted the appeal for regular hearing and suspended the impugned notification till final disposal of appeal. Against the order of Service Tribunal dated 26.05.2016 the petitioner filed an appeal before this Court which has been disposed of through the judgment under review with the direction to the Service Tribunal to decide the appeal on merit expeditiously, hence this review petition.

3. Raja Shujat Ali Khan, Advocate, the learned counsel for the petitioner submitted that although the impugned judgment has been passed relating to the issue of interim injunction but in his estimation due to the judgment under review his case before the Service Tribunal will be adversely affected. Moreover, all the points formulated at the time of grant of leave have not been resolved in the judgment under review. For consideration of these propositions the review petition merits acceptance.

4. Conversely, Ch. Muhammad Manzoor, Advocate, the learned counsel for the respondent strongly opposed the petition and submitted that in the impugned judgment the matter has not been conclusively decided. This Court has wisely not resolved all the points so that the jurisdiction of the Service Tribunal may not be pre-empted by premature decision of the case. He submitted that this petition has no substance, hence, the same is liable to be dismissed.

5. We have considered the arguments of learned counsel for the parties and gone through the record made available. Through the impugned judgment the issue of interim injunction has been decided with the direction to the Service Tribunal to decide the main appeal without procrastination, thus, it is clear that the appeal on merit has yet to be decided by the Service Tribunal. The argument of learned counsel for the petitioner that in presence of judgment under review his case on merit will be adversely affected before the Service Tribunal, is misconceived as through the impugned judgment the case on merit has not been conclusively decided. The observations have been made on the basis of prima facie opinion formed

in view of the relevant facts and circumstances. However, it is further clarified that the Service Tribunal is at liberty to decide the appeal on merit without taking any inference from the judgment under review.

6. So far as the other question that all the points formed at the time of grant of leave have not been resolved in the impugned judgment is concerned, there is wisdom for not conclusively resolving all the points. If all the points formulated could have been conclusively decided then in that case nothing would have been left to be decided by the Service Tribunal on merit. Therefore, this Court felt advised not to preempt the jurisdiction of the Service Tribunal and avoided to form any opinion amounting to premature decision of the case on merit.

In view of the above reasons and observations this review petition requires no further proceeding, hence, the same stands consigned to record.

Muzaffarabad,
___ .03.2017

CHIEF JUSTICE

JUDGE

Date of announcement: 09-03-2017