

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

(APPELLATE JURISDICTION)

**PRESENT:**

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

Civil appeal No.161 of 201  
(PLA filed on 13.04.2016)

1. University of Azad Jammu and Kashmir Muzaffarabad through its Vice Chancellor having his office at Chehla Campus, Administration Block, Muzaffarabad.
2. Vice Chancellor University of Azad Jammu and Kashmir through Registrar having his office at Chehla Campus Administration Block, Muzaffarabad.
3. Syndicate of University of Azad Jammu and Kashmir through Registrar University of AJ&K having his office at Chehla Campus Administration Block, Muzaffarabad.
4. Selection Board for Appointment of Lecturer and Lab Engineer/Research Associate, B-17, through its Chairman c/o Registrar University of AJ&K having his office at Chehla Campus Administration Block, Muzaffarabad.

....APPELLANTS

**VERSUS**

1. Syed Waqas Ali son of Syed Maqsood Hussain Shah (Contract Lab Engineer, B-17), University of Azad Jammu and Kashmir, Muzaffarabad.
2. Awais Ahmed son of Ghulam Ghous (Contract Research Associate, B-17), AJ&K University, Muzaffarabad.
3. Saba Zaib AJ&K University, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment of the High Court dated 03.03.2015 in writ petition No.265 of 2016)

FOR THE APPELLANTS: Mr.Farooq Hussain  
Kashmiri, Advocate.

FOR THE RESPONDENTS: Sardar M.R. Khan,  
Advocate.

*Date of hearing:* 14.03.2017

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— This appeal by leave of the Court has been directed against the judgment of the High Court dated 03.03.2015, whereby the writ petition filed by the respondents, herein, has been accepted.

2. The facts necessary for disposal of this appeal are that the respondents, herein, filed a writ petition before the High Court, alleging therein, that the Vice Chancellor of the University of AJ&K decided to establish a separate department of Software Engineering in the University of AJK, Muzaffarabad and in this regard issued a notification on 21.10.2013. On recommendations of the Academic Council, the syndicate of the University approved the notification issued by the Vice Chancellor. The University management advertised some teaching positions in different disciplines including the Software Engineering Department vide advertisement dated 01.04.2014. The general instructions available on University Website required that the candidates applying for positions of Software and Electrical Engineer must submit their Pakistan Engineer Council (PEC) accreditation certificate. Both the aforesaid positions including the others, were re-advertised

in "*Daily Nawa-i-Waqat*" on 03.04.2015. The qualification for these posts remained the same as was provided in the general instructions appearing on the website of the University. However, the University of AJ&K advertised different posts including the posts in question for the fourth time in "*Daily Siasat*" on 06.01.2016, in which the prescribed qualification was changed. It was averred that the petitioners-respondents, herein, have already been appointed on contract basis against the disputed posts and the act of the appellants, herein, by changing the criteria, may be termed to deprive them of their vested and accrued rights. They prayed for quashment of advertisement dated 06.01.2016 and also sought a direction that the posts in question be filled according to the criteria laid down by PEC. The learned High Court after necessary proceedings accepted the writ petition vide impugned judgment dated 03.03.2016, hence, this appeal by leave of the Court.

3. Mr. Farooq Hussain Kashmiri, Advocate, the learned counsel for the appellants argued that the learned High Court while passing the impugned judgment failed to appreciate the record in a legal manner. He contended that the Department of Software Engineering was established vide notification dated 18.11.2014, which was issued in pursuance of the decision of syndicate dated 30.09.2014. The posts available in the Software Engineering Department were advertised apart from other posts at different times with the condition of registration certificate with PEC, however, this condition was removed in the last advertisement made on 06.01.2016. The respondents challenged the advertisement on the ground of deletion of condition. The learned High Court failed to adhere to the fact that a Council has been established in Pakistan for regulating the matters in the field of Computer Sciences and Information Technology including the field of Software Engineering, hence, when the

advertisement dated 06.01.2016, was made, the enrollment with PEC was not a compulsory condition. He added that by issuance of writ, the competition has become squeezed instead of providing the opportunity to more suitable candidates for selection. He lastly submitted that the appellants want to initiate the selection process but the impugned judgment has created ambiguity in this regard.

4. On the other hand, Sardar M.R. Khan, Advocate, the learned counsel for the respondents strongly opposed the arguments advanced by the learned counsel for the appellants. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. He contended that it is clear from the notification dated 18.11.2014, that while establishing the separate department of Software Engineering in University of AJ&K, a specific condition was imposed that the department will be established in accordance with the criteria laid down by PEC

and the appointment of faculty members will be made amongst the persons having the registration certificate issued by the PEC. Through the advertisement in question the condition of registration certificate by PEC, has been omitted, therefore, the advertisement was made in violation of notification dated 18.11.2014. He added that the respondents being contract appointee were deserved to be given the chance to appear before the Selection Board against their positions in accordance with the qualification already fixed by the appellants, but the act of the appellants by changing the criteria amounts to deprive the respondents of their vested and accrued right.

5. After hearing the learned counsel for the parties at some length, we examined the concluding paragraph of the impugned judgment to appreciate the stance taken by the appellants that they want to initiate the process of selection but due to the ambiguity created by the learned

High Court while handing down the impugned judgment, they are unable to do the needful. For better appreciation the relevant paragraphs of the impugned judgment are reproduced here which read as under:-

“7. It is worth noting here that a person holding master degree or equivalent in the relevant field from HEC recognized University/ Institution has been held entitled to apply for the job of lecturer Software Engineering BPS-18 and qualification mentioned for Laboratory Engineer Software Engineering BPS-17 has also been mentioned as first class bachelor degree in relevant field of Engineering. The same qualification has been mentioned in the previous advertisements. Posts of lecturer BPS-18 and Laboratory Engineer Software Engineering BPS-17 are lying vacant in the department of Software Engineering and the nomenclature of the posts is also Software Engineering. Obviously, a person holding the degree of Software Engineering is



eligible to be appointed as Lecturer BPS-18 or BPS-17, as the case may be. It is pertinent to mention here that qualification for the posts in question has an overriding effect on the general instruction and if accreditation of a Software Engineering degree with PEC is not provided in general instruction of the impugned advertisement, it hardly makes a difference. Condition mentioned in the qualification clause of the advertisements shows that a candidate should have a master or bachelor degree in the relevant field which obviously means that the relevant field is the Software Engineering. It is, therefore, concluded that a candidate having master degree or equivalent degree in the Software Engineering is eligible to contest for the job of lecturer Software Engineer BPS-18. In the same way, a candidate having 1<sup>st</sup> class bachelor degree in the field of Software Engineering is eligible to apply for the job of Laboratory Engineer Software Engineering BPS-17.

Upshot of the above discussion that the writ petition is accepted and management of the University of AJ&K Muzaffarabad is directed to conclude the process of recruitment of the disputed positions as stated herein above.”

After going through the concluding paragraphs of the impugned judgment, it appears that the learned High Court neither quashed the advertisement dated 06.01.2016 nor passed any adverse order against the appellants, moreover, no ambiguity appears regarding the process of selection. In the impugned judgment, in clear terms it has been provided that the candidate having master degree or equivalent degree in the Software Engineering is eligible to contest for the job of lecturer Software Engineer (BPS-18) and the candidate having 1<sup>st</sup> class bachelor degree in the field of Software Engineering is eligible to apply for the job of Lab Engineer, B-17. When the learned counsel for the appellants was confronted with the situation that in the impugned judgment

the scope for the selection against the disputed posts has been widened and no adverse order has been passed against the appellants, he very graciously submitted that he has no objection if the instant appeal is disposed of in the light of the conclusion drawn by the High Court.

Keeping in view the circumstances of the case and the submission made by the learned counsel for the appellants this appeal is disposed of with the direction to the appellants to complete the process of selection in the light of the conclusion drawn by the High Court in the impugned judgment for the purpose of eligibility in respect of the disputed posts. No order as to costs.

Muzaffarabad,      **JUDGE**      **CHIEF JUSTICE**  
\_\_\_ .03.2017

Date of announcement: 20.03.2017