

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 32 of 2017
(PLA filed on 10.11.2016)

Haroon-ur-Rasheed s/o Mir Zaman Awan, r/o
Challah Bandi, Muzaffarabad, Tehsildar
Revenue Academy, Muzaffarabad.

.... APPELLANT

VERSUS

1. Muhammad Pervaiz Khan, Extra Assistant Commissioner, Current Charge, Jehlum Valley, District Hattian Bala.
2. Waseem Akram, Assistant in the office of Deputy Commissioner, Kotli.
3. Ahmed Subhanni, Extra Assistant Commissioner, Current Charge, District Muzaffarabad.
4. Sohail Khan, Officiating Tehsildar, Board of Revenue Muzaffarabad.
5. Tanveer-ul-Islam, Officiating Tehsildar, Board of Revenue, Muzaffarabad.
6. Muhammad Maroof, Assistant in the Office of Deputy Commissioner Bagh.
7. Javaid Iqbal, Assistant in the office of Deputy Commissioner, Kotli.

..... RESPONDENTS

8. Azad Jammu & Kashmir Govt. through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.

9. Secretary Services and General Administration Department, having his office at New Secretariat, Muzaffarabad.
10. Rules Framing Committee, through its Chairman Additional Chief Secretary General, having his office at New Secretariat, Muzaffarabad.
11. Senior Member Board of Revenue, having his office at New Secretariat, Muzaffarabad.

..... PROFORMA RESPONDENTS

(On appeal from the order of the Service Tribunal dated 28.9.2016 in Service Appeal No. 753 of 2014)

FOR THE APPELLANT: Mr. Amjid Hameed Siddiqui,
Advocate.

FOR RESPONDENTS NO. 1 TO 7: Sardar M.R. Khan, Advocate.

FOR RESPONDENTS NO. 8 TO 11. Mr. Raza Ali Khan,
Advocate-General.

Date of hearing: 14.4.2017.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the order of the Service Tribunal dated 28.9.2016, whereby the application filed by the appellant, herein, for impleading him as party in the line of respondents, has been rejected.

2. The facts necessary for disposal of the instant appeal are that the respondents No. 1 to 7, herein, filed an appeal before the Service Tribunal against the notification dated 15th July, 2014. It was claimed that the appellants have been appointed as Tehsildars on officiating basis. The services of the Revenue Department have been regulated by rules known as "AJ&K Patwaries, Qanoongo, Naib Tehsildar Rules, 1991", whereby a mechanism has been provided for appointment through initial recruitment and promotion. It is claimed that as per aforesaid rules, 30% posts are to be filled in through initial recruitment, whereas, 70% posts have been reserved for departmental promotion. The appellants were inducted into service as Naib Tehsildars on the recommendations of the Public Service Commission in 2012, thereafter, they were promoted on current charge basis as Tehsildars and now they are serving on officiating basis vis-à-vis regular selected candidates. The appeal was admitted for regular

hearing on 6.8.2014, whereby, the impugned notification dated 15.7.2014 to the extent of post of Tehsidlar Col. No.8 sub-clause (2) of serial No.1 was suspended subject to objections from the other side. During pendency of the said appeal in the Service Tribunal, the appellant, herein, filed an application for becoming party in the line of respondents. It was stated in the application that as the applicant is a direct beneficiary of the impugned rules, in case of an adverse order the terms and conditions of the service of the applicant will be adversely affected, therefore, he is a necessary party in the appeal. The respondents filed objections on this application stating therein, that the applicant is not a necessary party because the appellants before the Service Tribunal have challenged the departmental service rules. The learned Service Tribunal vide order dated 28.9.2016 rejected the application, hence, this appeal.

3. Mr. Amjad Hameed Siddique,
Advocate, appearing for the appellant,

vehemently argued that as the rules regulating the services of appellants and the private respondents were challenged before the Service Tribunal, which were suspended by the learned Service Tribunal, therefore, the appellant has a right to defend the rules and was a necessary party. The learned Advocate argued that it was enjoined upon the Service Tribunal to grant the application of the appellant, herein, and provide him an opportunity of hearing.

4. Conversely, M/s Raza Ali Khan, Advocate General and Sardar M.R. Khan, Advocate, appearing for the respondents, contended that the appellant is not a necessary party because no any term and condition of his service was likely to be affected due to ultimate conclusion of the appeal. The learned advocates argued that the application of the appellant, herein, before the Service Tribunal was time barred.

5. We have heard the learned Advocates representing the parties and gone through the

record of the case. The case of the appellant, herein, before the Service Tribunal was that he is a direct beneficiary of the rules under challenge which were suspended by the learned Service Tribunal. If an adverse order is passed by the learned Service Tribunal in the appeal pending before it, then he would suffer. A perusal of the application as well as the rules and the contents of the appeal reveals that the service rules which regulate the service of the appellant, herein, was challenged before the Service Tribunal and have partly been suspended. If the rules are ultimately set aside then the appellant is likely to suffer. The contention of the learned Advocates for the respondents that the appellant is not a necessary party, hence, his application for impleading him in the line of respondents has rightly been rejected, is devoid of any force. The order passed by the learned Service Tribunal appears to have been handed down in violation of the dictum of the Supreme Court laid down in

the case reported as *Samina Kabir vs. Shamim Akhter and 7 others* (2014 SCR 232). The contention of the learned Advocates for the respondents that the appeal is time barred, is also devoid of any force. No limitation is provided for impleading a defendant in appeal.

6. In view of the above, the appeal is accepted and the impugned order dated 28.9.2016 passed by the learned member of the Service Tribunal is set aside. The application filed on behalf of the appellant, herein, before the Service Tribunal is accepted and he is impleaded as party in the line of respondents. The Service Tribunal shall proceed further in accordance with law.

JUDGE
Muzaffarabad.
.4.2017.

CHIEF JUSTICE

Date of Announcement: 19.04.2017