

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Appellate Jurisdiction)

**PRESENT**

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

Civil Appeal No. 338 of 2014  
(PLA filed on 16.05.2014)

Ikhlaq Younis, Security Guard Kundal Shahi Hydro  
Electric Project, District Neelum.

.... APPELLANT

VERSUS

1. Managing Director, Hydro Electric Board,  
having his office at Upper Chatter,  
Muzaffarabad.
2. Director Administration, Hydro Electric Board,  
having his office at Upper Chatter,  
Muzaffarabad.
3. Deleted.
4. Muhammad Shahzad, Junior Clerk,
5. Massawar Hussain, Junior Clerk,
6. Yasir Latif, Junior Clerk.

..... RESPONDENTS

(On appeal from the judgment of the High Court  
dated 17.03.2014 in Writ Petition No. 226/2011)

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FOR THE APPELLANT: Meer Sharafat Hussain,  
Advocate.

FOR THE RESPONDENTS: Mr. Raza Ali Khan,  
Advocate-General.

Date of hearing: 10.03.2017

**JUDGMENT:**

***Raja Saeed Akram Khan, J.***— The titled appeal by leave of the Court has arisen out of the judgment passed by the High Court on 17.3.2014, whereby, the writ petition filed by the appellant, herein, has been dismissed.

2. The crux of the matter is that the appellant, herein, is a permanent employee of the Hydro Electric Board and was serving as the Security Guard. The name of the appellant was placed at serial No. 12 of the seniority list. The appellant was promoted as the Junior Clerk, B-7, on temporary basis subject to recommendations of the selection committee vide order dated 19.9.2008. The temporary order of the appellant

dated 19.9.2008, was challenged by one Riaz Hussain by way of filing the appeal before the learned Service Tribunal. The learned Service Tribunal vide judgment dated 4.5.2010, while accepting the appeal set aside the appointment order of the appellant dated 19.9.2008, with the direction to the department to fill in the post in accordance with the rules after calculating the departmental/promotion quota fixed for employees of B-1 to B-4, under notification dated 8.3.1993. In compliance of the order passed by the learned Service Tribunal on 4.5.2010, the temporary appointment order of the appellant was cancelled vide order dated 13.5.2010. The official respondents instead of advertising the post appointed the private respondents as the Junior Clerks without following the procedure prescribed under law. Feeling aggrieved, the appellant filed a writ petition for seeking the direction to the official

respondents to promote the appellant as the Junior Clerk in compliance with the notifications dated 8.3.1993 and 29.9.1999, which was dismissed vide impugned judgment dated 17.3.2014. Hence, this appeal by leave of the Court.

3. Meer Sharafat Hussain, Advocate, the learned counsel for the appellant, argued that the learned High Court while delivering the impugned judgment failed to appreciate the real controversy involved in the case in its true perspective. He further argued that the appellant while filing the writ petition before the learned High Court sought the direction to promote the appellant as the Junior Clerk according to the notifications dated 8.3.1993 and 29.9.1999, but the learned High Court failed to resolve the legal proposition involved in the case. The learned counsel lastly argued that the learned Service Tribunal directed the official

respondents to calculate the promotion quota fixed for employees of B-1 to B-4, and then fill in the posts against 20% quota reserved for the employees of grade, B-1 to B-4, but the learned High Court has not appreciated the record made available while dismissing the writ petition.

4. On the other hand, Mr. Raza Ali Khan, Advocate-General, while appearing on behalf of the respondents, submitted that no post against 20% quota is available for the employees of grade, B-1 to B-4, therefore, the stance taken by the learned counsel for the appellant is against the record. He further argued that a detailed report submitted by the department which has been made part of the record shows that 20% quota reserved for the employees of grade B-1 to B-4, has already been exceeded and no post of the Junior Clerk is available in the normal budget, therefore, the appellant cannot be appointed as Junior Clerk according to the

rules and regulations. In this way, the learned High Court has not committed any illegality while dismissing the writ petition. He contended that the learned counsel for the appellant failed to bring on record anything in support of his claim. He requested for dismissal of the appeal.

5. We have heard the arguments of the learned counsel for the parties and perused the record made available. The controversy involved in the case is that the Government of the Azad Jammu and Kashmir issued the notifications dated 8.3.1993 and 29.9.1999, through which it was directed that 20% posts of the Junior Clerks shall be filled in by promotion amongst the employees of all categories holding the grade, B-1 to B-4 in the respective office/department/functional unit, who are otherwise eligible for appointment to the post.

6. The appellant was appointed as the Junior Clerk, B-7, on temporary basis subject to

the recommendations of the selection committee vide order dated 19.9.2008. The learned Service Tribunal while setting aside the appointment order of the appellant dated 19.9.2008, has directed the official respondents to make the appointments after allocating 20% quota for the employees of grade, B-1 to B-4. The argument of the learned counsel for the appellant is that the official respondents have made four more appointments as the Junior Clerks on temporary basis and have not implemented the judgment of the Service Tribunal dated 4.5.2010. During the course of arguments, the learned counsel for the appellant stated that a post against the said quota is available for adjustment of the appellant. At this juncture, the learned Advocate-General, sought time to apprise the concerned authority. On 21.2.2017, the learned Advocate-General has submitted a departmental report, which reads as under:—

اخلاق یونس  
 عنوان: رپورٹ نسبت استعمار معزز عدالت العظمیٰ آزادیوں و کشمیر  
 مسٹر محمد اخلاق یونس (ایپلانٹ) نے معزز عدالت العظمیٰ میں 20% کوٹہ کے خلاف بحیثیت جوئر کلرک ترقیاتی کے لئے اپیل دائر کر رکھی ہے، جو کہ بذیل وجوہات کی بناء پر قابل اخراج ہے:-  
 -1 پاور ڈیولپمنٹ آرگنائزیشن کے کارٹل میزانیہ میں جوئر کلرک کی کوئی آسامی فی الوقت دستیاب نہیں ہے۔  
 -2 سکیل بی-1 تا بی-4 کے لئے مخصوص 20 کوٹہ کے خلاف پہلے ہی زائد ملازمن تعینات ہو چکے ہیں۔ لہذا تحت قواعد مسٹر اخلاق یونس (ایپلانٹ) کی ترقیاتی ایپلور جوئر کلرک فی الحال ممکن نہیں ہے۔  
 لہذا ایپلانٹ کی اپیل خلاف حقائق ہونے کی بناء پر خارج فرمائے جانے کی استدعا ہے۔  
 ڈپٹی ڈائریکٹر انتظامیہ  
 پاور ڈیولپمنٹ آرگنائزیشن"

After going through the above report, it reveals that no post of the Junior Clerk is available in the normal budget. It is further revealed from the report that 20% quota reserved for the employees of grade B-1 to B-4, has already been exceeded, therefore, the appellant cannot be appointed as Junior Clerk according to rules and regulations.

7. From the record, it appears that there are 10 posts of Junior Clerks, B-7, in the Power Development Organization, wherein, two posts were required to be filled in on the basis of 20% quota reserved for the employees of grade, B-1 to B-4, whereas, five posts have been filled in



against the said quota, which is already in excess of the quota. When this position was confronted to the learned counsel for the appellant, he failed to satisfy the Court in this regard while submitting that the correct position has not been placed before this Court. We are afraid that in rebuttal of the arguments referred to above by the learned Advocate-General, the learned counsel for the appellant has brought no material on record in this regard. Mere argument of the learned counsel for the appellant that 20% quota reserved for the employees of B-1 to B-4 has not been properly observed, is ill-founded.

8. The learned counsel for the appellant failed to substantiate that the notifications dated 8.3.1993 and 29.9.1999, have not been adhered to in letter in spirit while making the appointments of the respondents. In this regard, we are of the view that the learned High Court

has intelligently resolved the proposition involved in the matter. The learned counsel for the appellant has failed to make out any point to justify his claim. The judgment of the High Court is well reasoned and has been passed after proper appreciation of material brought on record as well as relevant law holding the field.

Resultantly this appeal having no force, is hereby dismissed with no order as to costs.

Muzaffarabad,  
-4.2017

**JUDGE**

**CHIEF JUSTICE**

Date of announcement: 06.04.2017