

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 137 of 2015

(PLA filed on 02.04.2015)

Waqas Iftikhar s/o Iftikhar Ahmed r/o Bhimber,
District Bhimber.

..... APPELLANT

VERSUS

1. The Govt. of Azad Jammu and Kashmir through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Public Service Commission of Azad Jammu and Kashmir through its Secretary having his office at New District Complex, Block-K, Saheli Sarkar Road, Muzaffarabad.
3. Secretary Physical Planning and Housing, having his office at New Secretariat, Muzaffarabad.

.... RESPONDENTS

(On appeal from the judgment of the High Court dated 03.02.2015 in writ petition No. 1134/2013)

FOR THE APPELLANT: Raja Sajjad Ahmed Khan, Advocate.

FOR THE RESPONDENTS: Ch. Muhammad Ismail, Advocate.

Date of hearing: 11.04.2017.

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.— The titled appeal by leave of the Court arises out of the judgment of the High Court dated 03.02.2015, whereby the writ petition filed by the appellant, herein, has been dismissed.

2. The facts forming the background of the instant appeal by leave of the Court are that the appellant, herein, filed a writ petition in the High Court alleging therein that he was appointed as Assistant Engineer (Mechanical) B-17 on ad-hoc basis vide notification dated 23.05.2012. The Public Service Commission advertised three posts of Assistant Engineer (Mechanical) B-17 for permanent appointment. The appellant applied for same. After conducting test and interview, he stood at serial No.7 of the waiting list. The candidates falling at serial No. 1 to 3 of the merit list were appointed, however, one Farooq Ahmed Mir refused to join. The candidates at serial No.2 to 6 have filed their affidavits that they are not interested to be

appointed against the vacant post, thus, the appellant is liable to be appointed. The learned High Court, after necessary proceedings dismissed the writ petition through the impugned judgment, hence, this appeal by leave of the Court.

3. Raja Sajjad Ahmed Khan, Advocate, the learned counsel for the appellant after narration of necessary facts submitted that three vacancies of Assistant Engineer (Mechanical) B-17 were advertised. The Public Service Commission on 15th April, 2013 recommended three candidates, however, out of the recommended candidates one Farooq Ahmed Mir did not join the service, thus, according to rules the appointment has to be made out of waiting list. The Public Service Commission maintained the waiting list of seven candidates. The appellant is at serial No.7, whereas, the candidates from serial Nos.1 to 6 have filed affidavits that they are not interested in service, thus, consequently the appellant has to be appointed. He approached to the High Court. The learned High Court while ignoring the factual and legal proposition illegally

dismissed the writ petition through the impugned judgment which is not maintainable. It is proved from the record that against one post out of the three advertised posts the candidate from the waiting list has to be appointed and the candidates ahead to the appellant filed affidavits that they are not interested, therefore, while accepting this appeal a direction be issued for appointment of the appellant.

4. Conversely, Ch. Muhammad Ismail, Advocate, the learned counsel representing the respondents seriously opposed the appeal on the ground that the same has been filed on misconception of facts. According to appellant's own stated facts the candidate from waiting list has to be appointed. The candidate who is at top in the waiting list i.e., Muhammad Ayyaz, has been appointed, thus, the appellant has got no locus standi or cause of action. This appeal is not maintainable and the same is liable to be dismissed.

5. We have considered the arguments of learned counsel for the parties and examined the record made available. The sole claim of the appellant was regarding issuance of the direction to be appointed against the advertised post which became available due to non-joining of a candidate from merit list. To this extent the facts are admitted, however, the appellant, petitioner before the High Court, claimed that the candidates falling at serial Nos.1 to 6 of the waiting list are not interested and they have submitted affidavits in this context, hence, the appellant is entitled for appointment. As during pendency of the litigation the position has been changed and one Muhammad Ayyaz who is at top of the waiting list has been appointed, thus, no vacancy is available.

In this state of affairs, this appeal has become infructuous, consequently, the same stands consigned to record.

Muzaffarabad,
--.04.2017

CHIEF JUSTICE

JUDGE

Date of announcement: 18.04.2017