

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mohammad Azam Khan, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No.142 of 2016

(PLA filed on 12.05.2016)

1. Asia Tabassam d/o Manzoor Ahmed r/o Nakar Dharian, Union Council Chikar, Tehsil Chikar, District Hattian Bala.
2. Nazia Bibi w/o Azhar Hayat r/o Nagni Kaiser Kot, Union Council Chikar, Tehsil Chikar, District, Hattian Bala.
3. Neelofer Waqar d/o Waqar Ahmed Khan, r/o Nagni Chikar, Union Council Chikar, Tehsil Chikar, District, Hattian Bala.
4. Farzana Bashir w/o Waqas Hafeez r/o Nagni Chikar, Union Council Chikar, Tehsil Chikar, District Hattian Bala.

....APPELLANTS

VERSUS

1. Salma Manzoor d/o Manzoor Hussain r/o Dakhan Paddar, Tehsil Chikar, District Hattian Bala.
2. Nazia Bibi w/o Azkar Ahmed Khan r/o Nagni Kaiser Kot, Tehsil Chikar, District Hattian Bala.

.....RESPONDENTS

3. Secretary Education Schools, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat, Chatter, Muzaffarabad.
4. Director Public Instruction, Elementary and Secondary Education Schools (Female) having his office at New District Complex, Muzaffarabad.
5. DD Elementary & Secondary Education Schools (Female), having his office at New District Complex, Muzaffarabad.
6. District Education Officer, Schools (Female), Hattian Bala.
7. Selection Committee, Education Department Schools, through its Chairman constituted for selection on the post of Primary Teacher (Female) Union Council Chikar, District Hattian Bala, AJ&K.
8. DDEO Schools (Female), District Hattian Bala.
9. AEO Schools (Female), District Hattian Bala.

..... PROFORMA-RESPONDENTS

(On appeal from the judgment of the High Court dated 10.05.2016 in Writ Petition No.1318 of 2016)

FOR THE APPELLANTS: Kh. Muhammad Nasim, Advocate.

FOR RESPONDENTS NO.1&2: Ch. Amjid Ali, Advocate.

FOR OFFICIAL RESPONDENTS: Ch. Shoukat Aziz, Additional Advocate-General.

Date of hearing: 19.05.2016.

JUDGMENT:

Raja Saeed Akram Khan, J.— The supra titled appeal by leave of the Court has been filed against the judgment of the High Court dated 10th May, 2016, whereby the writ petition filed by respondents No.1 and 2, herein, has been accepted.

2. The facts in brief for disposal of the instant appeal are that one post of Primary Teacheress for Union Council Chikar, along with the schedule for test and interview was advertised on 02.07.2015. Thereafter, on 08.12.2015, the dates of test and interview through advertisement were re-scheduled, however, number of posts was increased from one to two. The advertisement dated 08.12.2015, was challenged through writ petition No.379/2016 titled *Nazia Ghafoor Vs Secretary Education Schools and others* before the High Court. The comments were filed by the official-respondents and it was under taken that the disputed posts will be re-advertised accordingly.

The High Court disposed of the writ petition on 29.03.2016, in the light of comments/undertaking filed by the official respondents. Another advertisement was issued on 03.04.2016, wherein, it was provided that test and interview for two posts of Primary Teacheresses for Union Council Chikar shall be conducted on 16th and 18th of April, 2016, respectively. The candidates who have already submitted their applications are not required to file fresh application. Thereafter, on 06.04.2016, a corrigendum was issued in which the dates for test and interview for the posts of Primary Teacheresses were re-scheduled. Respondents, herein, filed writ petition in the High Court on 19.04.2016, challenging the advertisements dated 03.04.2016 & 06.04.2016, for being against law. The learned High Court after necessary proceedings, accepted the writ petition filed by the respondents, herein, hence, this appeal by leave of the Court.

3. Kh. Muhammad Nasim, Advocate, the learned counsel for the appellants argued that the

judgment passed by the High Court is against law and the record of the case. He submitted that the learned High Court fell in error while not taking into account that in the early round of litigation, the High Court directed the department to issue amended advertisement and consequently in compliance of the order of the High Court dated 29.03.2016, the department issued amended advertisement whereby the opportunity was provided to the candidates who have not earlier filed their applications against 2 advertised posts falling in the quota of Union Council, Chikar. Despite this, respondents, herein, challenged the amended advertisements dated 03.04.2016 and 06.04.2016 by filing writ petition. He further submitted that the writ petition filed by respondents, herein, was liable to be dismissed on the ground that no one was affected by the amended advertisements and same were issued in accordance with law upon the direction of the High Court. He contended that the learned High Court fell in error while not considering the fact that the

second post was advertised on the retirement of a primary teacher and the same was rightly advertised in the light of Rule 17 of the AJ&K Civil Servants (Appointment and Conditions of Service) Rules, 1977. He further contended that vide notification dated 29.06.2015, the Government created 1037 posts and in condition No.3, it was laid down that non-gazetted teaching posts will be filled in through National Testing Service (NTS), whereas, the posts in question are not included in the said notification rather these posts became vacant prior to the issuance of the said notification due to retirement of Primary Teacheresses, therefore, the criterion set up for filling the posts created through above referred notification cannot be applied to the posts in dispute. Moreover, the notification cannot supersede the statutory rules and disputed posts can only be filled in under the provisions of AJ&K Civil Servants (Appointment and Conditions of Service) Rules, 1977. He further contended that the selection process of the disputed posts was initiated by the department in

the light of statutory rules referred to herein above, therefore, there was no occasion for the High Court to issue direction that disputed posts shall be filled in through National Testing Service (NTS).

4. On the other hand, Ch. Amjad Ali, Advocate, the learned counsel for respondents, strongly controverted the arguments addressed by the learned counsel for the appellants. He submitted that the judgment passed by the High Court is perfect and legal which is not open for interference by this Court. He further submitted that the appellants were not party before the High Court, therefore, they do not fall in the definition of aggrieved person as no adverse order has been passed against them. He added that the process of selection has not been initiated up till now and mere submission of application in response to the advertisement does not create any legal vested right in favour of appellants, herein. He contended that the advertisement made in the light of undertaking before the learned High Court does not

come within the purview of advertisement as no eligibility criteria has been mentioned in the amended advertisement. He further contended that after advertisement of the post and receiving applications from the candidates, the department intentionally did not complete the selection process just to accommodate their favourite ones. He added that only one week's time was given for submission of applications and change in schedule of test and interview without any reasoning and justification also reveals *mala-fide* intention of the department to fill in the disputed posts on the basis of favouritism. He drew the attention of this Court towards notification dated 26.11.2015, in which it is categorically stated that appointments on the posts of Primary Teachers in Education Department shall be made through National Testing Service (NTS), whereas, on the other hand, the official-respondents through the impugned advertisements were conducting the selection process through departmental selection committee which amounts to adopt two different modes of selection on the

posts falling in the same department under the same cadre which is not warranted under law. He maintained that advertisements were issued in sheer violation of AJK Civil Servants Act, 1976, as according to the said Act the appointments into civil service shall be made by following the prescribed procedure. He added that condition attached to the advertisement (آسامیوں کی تعداد میں کمی بیشی کی جا سکتی ہے) clearly reveals *mala-fide* intention of the official respondents. He referred to the cases reported as *Abdul Rasheed & 85 others Vs. Board of Trustees & 3 others* [2008 SCR 417], *Syed Shabir Shah Gillani Vs. Imtiaz Ahmed Abbasi & 5 others* [2014 SCR 418] and *Messrs Presson Manufacturing Limited and another Vs. Secretary, Ministry of Petroleum and Natural Resources and 2 others* [1995 MLD 15].

5. The learned Additional Advocate-General, supported the arguments addressed by the learned counsel for the appellant while submitting that the notification cannot by-pass the statutory rules

which deal with the appointment of Primary Teachers.

6. We have heard the arguments of both the learned counsel for the parties and learned Additional Advocate-General at some length and gone through the record along with the impugned judgment and case law referred to by the learned counsel for the respondents. The controversy involved in the matter is regarding appointment against the post of Primary Teacheress. Initially a post of Primary Teacheress was advertised for Union Council Chikar vide advertisement dated 02.07.2015. Thereafter, the schedule for test and interview was changed through another advertisement dated 18.12.2015 and number of posts was increased from one to two. The said advertisement was challenged through writ petition in the High Court titled *Nazia Ghafoor Vs. Secretary Education Schools and others* (Writ Petition No.379/2016, decided on 29.03.2016) and on the undertaking given by the official respondents in the

written statement, the writ petition was disposed of. For better appreciation it will be useful to reproduce here the order passed by the High Court while disposing of the writ petition, which reads as under:-

"Comments have been filed wherein it is stated that advertisement in question would be amended as per stand of the petitioner, therefore, no further action has been required."

After going through the above referred order of the High Court passed in writ petition filed by one Nazia Ghafoor, it can easily be ascertained that departmental authority have under taken that the disputed post shall duly be advertise as per stance of the petitioner, therein. Thereafter, an advertisement was issued on 03.04.2016, which is reproduced as under:-

"جاری شدہ اشتہار بھرتی پر انٹری معاملات یونین کونسل چکار میں 2 اسامیوں کے لیے قبل ازیں جن امیدواران نے درخواستیں جمع کروائی ہیں وہ اب دوبارہ درخواستیں نہیں جمع کروائیں گے اور جو امیدوار درخواستیں جمع نہیں کروا سکے وہ دفتر ہذا کے اکونٹ نمبر CD 174 میں مبلغ 380 روپے جمع کروا سکتے ہیں۔ درخواستیں جمع کروانے کی آخری تاریخ 10 اپریل 2016ء مقرر ہے۔ سابقہ

اور نئی درخواستوں والے امیدواران کے ٹیسٹ انٹرویو بذیل شیڈول کے مطابق گریڈ سکول ہٹیاں بالا میں ہوں گے۔

ٹیسٹ:	16 اپریل 2016ء بمقام گریڈ سکول ہٹیاں بالا
انٹرویو	18 اپریل 2016ء دفتر ڈی ای او زنانہ ہٹیاں بالا

ڈسٹرکٹ ایجوکیشن آفیسر (زنانہ) ہٹیاں بالا"

From the perusal of the advertisement reproduced herein above, it is clear that the schedule for test and interview for the posts which had already been advertised is issued and in the guise it has been provided that the candidates who have already submitted their applications against the advertised posts are not required to submit fresh applications, however, fresh candidates may apply up-till 10th April, 2016. In the referred advertisement, no necessary conditions like eligibility criteria for the candidates, academic qualification and age limit etc., have been mentioned. Thus, it can safely be said that proper procedure has not been followed by the departmental authorities in the light of undertaking given by them before the High Court. The proper course was to re-advertise the disputed post which was challenged by one Nazia Ghafoor

before the High Court while mentioning the eligibility criteria and other conditions provided under rules which are necessary to fill in the vacant posts in the Education Department. The advertisement is defective one and is lacking the legal requirements. The law on the subject is very much clear that the advertisement lacking settled norms, effectiveness and comprehensiveness would not be appreciated as is held by this Court in a case titled *Abida Hanif & anothers Vs. Fatima Yaqoob & others* (Civil Appeal No.180 of 2014, decided on 12.01.2016). Wherein, it has been observed as under:-

10. In view of the observations recorded hereinabove and in public interest we also deem it proper to direct the concerned authorities that in future the advertisements published for appointments should be self-explanatory, comprehensive, clear and according to rules. Such defective and deceptive advertisements as one in the case in hand, will be deemed misconduct and mal-practice. The University authorities are further directed that while advertising the posts the statutory requirements should strictly be adhered to so that the candidates should not face the unnecessary hardships of litigations and there should be no injury to the

public interest for taking long time in selection process or selecting right man for right job. Therefore, for keeping good governance in the high exalted educational institution there must be high level of integrity, intelligence and efficiency and for such standard acts should speak and not the papers."

Now we advert to the notification dated 26.11.2015, through which 1037 posts of different cadres have been created in the Education Department and the mode of appointment has also been provided in the said notification. In the said notification, it is categorically mentioned in the conditions for appointment to the posts that non-gazetted posts shall be filled in through National Testing Service (NTS), whereas, gazetted posts shall be filled in through Public Service Commission. The relevant portion of the notification is reproduced as under:-

"شرائط:-

----- (i)

----- (ii)

(iii) نو تخلیق شدہ 1037 اسامیوں پر ایڈہاک، عارضی یا تابع توثیق سلیکشن کمیٹی

تقرریاں عمل میں نہیں لائی جائیں گی بلکہ جریدہ اسامیاں بذریعہ پبلک

سروس کمیشن جبکہ غیر جریدہ تدریسی اسامیاں NTS کے ذریعہ پر کی جائیں
گی۔

----- (iv)
نوٹیفکیشن ہذا فوری طور پر نافذ العمل ہوگا۔

(خواجہ محمد اشرف)
ڈپٹی سیکرٹری
ایلیمنٹری اینڈ سیکنڈری ایجوکیشن "

After going through condition No.iii of the above referred notification, it is clear that mode of appointment against the non-gazetted posts has been provided through National Testing Service (NTS). The condition is neither un-constitutional nor in violation of any law. In our estimation, this is the mode through which the object of transparency in the appointments can exceptionally be achieved. Even otherwise, the appellants do not appear to be affected by the direction issued by the High Court as they will have full opportunity to participate in the selection process. If they succeeded to get the merit position, surely they will be there amongst the successful candidates.

In the light of what has been discussed above, we do not find any substance in this appeal, the same is hereby dismissed with no order as to costs.

Muzaffarabad.
.06.2016.

JUDGE

CHIEF JUSTICE

Date of Announcement: 13.06.2016.