

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.

Raja Saeed Akram Khan, J.

Civil Appeal No. 201 of 2016

(PLA filed on 03.06.2016)

Lutaf Hussain s/o Shair Muhammad r/o Chak  
No.479, Kashmir Colony, Tehsil Sher Kot, District  
Jhang, Pakistan.

..... APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir, through its Chief Secretary having his office at New Civil Secretariat, Lower Chatter, Muzaffarabad.
2. Secretary Services & General Administration Department, having his office at Civil Secretariat, Chatter, Muzaffarabad.

.... RESPONDENTS

(On appeal from the judgment of the High Court  
dated 06.04.2016 in writ petition No. 1785/2015)

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

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

Date of hearing: 03.04.2017.

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**— The titled appeal by leave of the Court has been filed against the judgment of the High Court dated 06.04.2016, through which the writ petition filed by the appellant, herein, has been dismissed.

2. According to the summarized facts of the case the appellant, herein, filed a writ petition before the High Court claiming therein that in the year 2010, the respondents advertised many posts including five posts of of Section Clerk B-9, however, the selection process was not completed. Subsequently, the respondents advertised many posts of different designations/scales including six posts of Section Clerk B-9, amongst which one post was allocated for refugees settled in Pakistan. The appellant applied for the same and after test and interview he was placed at serial No.4 of the merit list. He claimed that the respondents have withheld a number of the posts. Had all the posts been advertised he would have been appointed. He sought a direction to the respondents to appoint

him against the withheld vacant post. The learned High Court, after necessary proceedings, dismissed the writ petition through the impugned judgment, hence this appeal by leave of the Court.

3. Sardar M. R. Khan, Advocate, the learned counsel for the appellant after narration of the necessary facts submitted that the impugned judgment of the High Court is based upon misconception of the facts and law. The respondents-authority evasively denied the important proposition that the posts of Selection Clerk reserved for the quota of refugees settled in Pakistan have illegally been withheld. It is also very important aspect of the matter that in the year 2010, five posts of the quota reserved for refugees settled in Pakistan were advertised but amazingly, subsequently only one person was appointed. This fact has not been denied by the respondents in the pleadings rather only evasive denial has been made that due to litigation before the Court the appointment against the quota could not be made, which appears to be mere a lame excuse. According

to principle of law laid down by this Court in a number of cases the implementation of the quota as fixed under rules is mandatory and violation of same amounts to violation of law. Therefore, while accepting this appeal the writ petition may be accepted and the respondents be directed to appoint the appellant against the post falling in the quota of refugees settled in Pakistan.

4. Conversely, Mr. Raza Ali Khan, Advocate-General while defending the impugned judgment submitted that the same is according to law. Neither any post is available nor withheld. He further submitted that in the written statement, valid ground for non-availability of the posts has been mentioned, thus, this appeal has no substance and the same is liable to be dismissed.

5. During arguments of the counsel for the parties, in the light of written statement filed before the High Court, it was felt advised to call detailed report on behalf of the respondents. The learned Advocate-General filed the same on 07.04.2017.

6. We have heard the learned counsel for the parties and examined the record made available. According to admitted facts, the appellant falls in the category of refugees settled in Pakistan. In the year 2010, five posts of Section Clerk B-9, reserved for the quota of refugees settled in Pakistan, were advertised but due to litigation the appointments could not be made against the advertised posts. Subsequently, on 28.12.2014 only one post was advertised. The appellant approached to the High Court with the claim that in the year 2010 five posts reserved for quota of refugees settled in Pakistan were advertised but amazingly after 4 years' period the number of posts, instead of increasing has been reduced to one. It is clear violation of quota fixed under rules and speaking proof of the fact that the posts available for refugees settled in Pakistan have been withheld and some other persons have been accommodated. In this context, the reply in paragraph 3 of the written statement filed by the respondents before the High Court is very relevant, which reads as follows:-

"مشتہرگی کی حد تک درست ہے۔ البتہ سال 2010 میں سلیکشن کلرکان (بی۔9) کی دستیاب حق عود میں جملہ 28 آسامیاں مطابق ضلعی کوٹہ مشتہرگی گئی ہیں۔ جس پر مہاجرین مقیم پاکستان کی 05 آسامیوں کو مشتہر کیا گیا تھا۔ ان آسامیوں پر تعینات عارضی ملازمین کے عدالت عالیہ میں پہلے ہی رٹ دائر کر رکھی ہے جس پر تاحال کوئی فیصلہ نہ ہوا ہے بدیں وجہ ان آسامیوں کو مشتہر نہ کیا گیا۔ مورخہ 28-12-2014 کو جو ایک آسامی مہاجر مقیم پاکستان مشتہرگی گئی ہے۔ یہ آسامی ان میں شامل نہ ہے۔ پٹیشنرز کا موقف درست نہ ہے۔"

As in this case in the written statement the authority has admitted that five posts were advertised but due to litigation the appointments could not be made. In this context, the report was called which has been submitted by the Advocate-General along with the decisions of the Courts. According to the produced decisions all the writ petitions and petitions for leave to appeal remained fruitless and dismissed, thus, in the light of report and decisions produced by the respondents-authority it is clear that after dismissal of all the writ petitions the availability of the posts is proved. As due to litigation the matter has been procrastinated but now after dismissal of the writ petition and appeal it has been finalized.

7. In view of the pleadings of the parties and the report submitted by the Advocate-General the

version of the appellant stands proved that five posts reserved for the quota of refugees settled in Pakistan are available. Admittedly, the appellant was placed at serial No.4 of the merit list. The availability of the posts and withholding of same is - proved, thus, according to the principle of justice the appellant cannot be deprived for the act of any other person or due to litigation. He has succeeded in proving his version, therefore, while accepting this appeal and recalling the impugned judgment of the High Court, the respondents-authority is directed to appoint the appellant against one of the posts reserved for the quota of refugees settled in Pakistan. The order shall be complied within a period of two months from communication of this order.

This appeal stands accepted in the above terms. No order as to costs.

Mirpur,

\_.04.2017

CHIEF JUSTICE

JUDGE

Date of announcement: 03.05.2017