

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 170 of 2016
(PLA filed on 18.4.2016)

Syed Tajamal Hussain s/o Syed Sadaqat Hussain Shah r/o Shahkot, Tehsil Authmaqam, District Neelum, AJ&K, Lecturer Boys Degree College Authmaqam.

.... APPELLANT

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary having his office at Chatter, Muzaffarabad.
2. Secretary Education Colleges, Azad Jammu & Kashmir, New Secretariat Complex, Muzaffarabad.
3. Secretary Public Service Commission, Azad Jammu & Kashmir, Muzaffarabad.
4. Public Service Commission through its Chairman, Azad Jammu & Kashmir, Muzaffarabad.

..... RESPONDENT

5. Zahid Hussain s/o Ghulam Hussain r/o Authmaqam, Lecturer Political Science, Girls Degree College Authmaqam, District Neelum.

..... PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 17.2.2016 in Writ Petition No. 198 of 2010)

FOR THE APPELLANT: Mr. Amjad Hameed
Siddique, Advocate.

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

Date of hearing: 15.5.2017.

JUDGMENT:

Ghulam Mustafa Mughal, J—This appeal by leave of the Court arises out of the judgment of the High Court dated 17.2.2016, whereby the writ petition filed by the appellant and proforma respondent, herein, has been dismissed.

2. The necessary facts forming the background of the captioned appeal are that the appellant and proforma respondent, herein, filed a writ petition before the Azad Jammu & Kashmir High Court, alleging therein, that they were appointed on ad-hoc basis as Lecturers Political Science in Degree College, Authmaqam. The Public Service Commission through

proclamations dated 8.2.2008, advertised three posts of Lecturer Political Science, whereas, 8 posts were available at the time of requisition. They claimed that their names were listed at serial No. 4 and 5 of the merit list and due to withholding of the posts, they were not recommended for appointment. After necessary proceedings, the learned High Court dismissed the writ petition vide impugned judgment dated 17.2.2016, hence, this appeal.

3. Mr. Amjad Hameed Siddiqi, Advocate, appearing for the appellant, argued that the learned High Court failed to appreciate the factual as well as legal controversy involved in the matter in a legal manner. He contended that at the time when one post was advertised against the quota of District Neelum, 6 other posts were available in the quota of the said District, but the same were withheld by the department. He contended that the appellant and proforma respondent duly participated in selection process and their names were placed at

serial No. 1 and 3 of the waiting list. Had all the posts been advertised, they would have definitely been appointed, but the learned High Court failed to appreciate this important issue. He added that the learned High Court instead of deciding the case on merits dismissed the same on technical ground, which is not warranted under law. He lastly argued that the question of placing the photocopies of the notifications on record has also not been attended by the learned High Court in a legal manner.

4. Mr. Raza Ali Khan, Advocate General, appearing for the respondents, contended that the appellant, herein, could not attain merit position. There was no proof before the High Court that any post was withheld by the department. The fact of the matter is that all the available posts were sent to the Public Service Commission and the same were advertised. As the appellant as well as the proforma respondent has not attained the merit position against their respective quota, hence, were not recommended.

The learned Advocate submitted that the learned High Court has committed no illegality while dismissing the writ petition.

5. We have heard the learned Advocates representing the parties and also gone through the record of the case. A perusal of record reveals that vide advertisements dated 8.2.2008 and 13.6.2008, various posts of Lecturers were advertised including one post of Lecturer Political Science for District Neelum. The appellant and proforma respondent, herein, participated in the test and interview, but could not attain merit position, hence, were not recommended. Their case before the High Court was that at the time of requisition, 8 posts of Lecturer were available for permanent appointment. 3 posts of Lecturer Political Science were vacant in District Neelum. Had these posts were sent to the Public Service Commission they would have been among the selected candidates. The stand of the respondents was that only one post was

available at the time of requisition, which was sent to the Public Service Commission and the candidates who have attained merit position, have been appointed. A perusal of record further reveals that Syed Tajamal Hussain, appellant, and proforma respondent, herein, were appeared in the test and interview in pursuance of advertisement dated 8.2.2008. The appellant, herein, was placed at serial No. 3 of the waiting list, whereas, the proforma respondent, herein, was placed at serial No. 1 of the waiting list. As they have not qualified the test and interview, therefore, they have rightly been not appointed. The contention of the learned Advocate for the appellant is that various posts were withheld by the department, stands also nullified in view of the stand taken by the respondents in para 2 of the written statement. This written statement is supported by an affidavit of Secretary Education Colleges. As the appellant has not proved that any post was withheld by the respondents at the time of requisition and has also filed the writ petition after a considerable delay when the

validity of waiting list had already been expired, therefore, finding no force in this appeal, it is hereby dismissed.

No order as to costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad

.5.2017.

Date of announcement: 19.05.2017