

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT

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

Civil Appeal No.277 of 2016
(PLA filed on 03.10.2016)

1. Azad Jammu and Kashmir Government through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Finance Department of Azad Jammu and Kashmir through its Secretary, Muzaffarabad.
3. Services and General Administration Department, Azad Government through its Secretary having his office at New Secretariat, Muzaffarabad.

.... APPELLANTS

VERSUS

Khursheed Ahmed Chaudhary Retired Secretary to Government of Azad Jammu and Kashmir Muzaffarabad.

....RESPONDENT

(On appeal from the judgment of the High
Court dated 29.03.2016 in writ petition
No.1956 of 2014)

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

FOR THE RESPONDENT: Mr.Muhammad Yaqoob
Khan Mughal Advocate

Date of hearing: 16.05.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeal by leave of the Court has been preferred against the judgment passed by the High Court on 29.03.2016, whereby the writ petition filed by the respondent, herein, has been accepted.

2. The brief facts of the case are that the respondent, herein, filed a writ petition before the High Court, alleging therein, that he was appointed on the recommendations of Public Service Commission and served as Sub Divisional Magistrate to Senior Member Board

of Revenue. Later on, he was appointed as Secretary to Government and was posted as Secretary Education Elementary and Secondary. Keeping in view the meritorious services of the respondent, the worthy Prime Minister accorded approval for grant of BPS-22 in his favour on 11.08.2014. In pursuance of the approval accorded by the worthy Prime Minister, the summary was sent to the Finance Department for financial concurrence. The Finance Department vide letter dated 02.09.2014, refused to issue concurrence. It was averred that the refusal of the Finance Department is illegal, arbitrary and without any justification and the appellants, herein, are bound to implement the approval of the Prime Minister. The learned High Court while accepting the writ petition issued the direction for implementation of the order/approval of

the Prime Minister. Hence, this appeal by leave of the Court.

3. At the very outset, Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the respondent raised a preliminary objection that the appeal is hopelessly time-barred as the impugned judgment was delivered on 29.04.2016, whereas, the petition for leave to appeal against the said judgment has been filed on 03.10.2016, after a considerable delay. On this, the learned Advocate-General was asked to cross the barrier of limitation at first. He submitted that no notice whatsoever was issued to the appellants regarding the announcement of the judgment and when the appellants came to know about the judgment on 16.09.2016, they applied for the certified copy of the judgment and after obtaining the same immediately filed the petition for leave

to appeal. In this way, from the date of knowledge the appeal is well within time and in this regard an application for condonation of delay supported by an affidavit has also been filed.

4. To appreciate the stance taken by the learned Advocate-General, we have examined the record. From the record of the High Court it appears that the case was fixed for arguments on 24.03.2016, but no such order is available on the file of the High Court, whether on the said date; the arguments were heard and judgment reserved. It also appears from the High Court's file that no such order is available through which it could be ascertained that the judgment was announced after duly notifying the parties. In such state of affairs, the version of the learned Advocate-General bears substance. It appears that the appellants moved application for obtaining the

certified copy of the impugned judgment on 16.09.2016, before the High Court through Advocate-General and the same was delivered to them on 20.09.2016 and the petition for leave to appeal was filed 03.10.2016. In this way, the appeal is well within limitation from the date of knowledge; therefore, the objection raised by the learned counsel for the respondent is hereby repelled.

5. While arguing on the merits of the case, Mr. Raza Ali Khan, the learned Advocate-General submitted that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that the worthy Prime Minister of the time accorded approval for grant of BS-22 to the respondent without adhering to the relevant provisions of Rules of Business, 1985. He contended that under Rule 15(1) of the Rules of Business, 1985 the concurrence of

Finance Department prior to the issuance of such approvals/orders is prerequisite but in the matter in hand no such concurrence has been sought from the Finance Department. In this way, the approval was awarded while bypassing all the rules and regulations. In continuation of the arguments, he submitted that the provisions of AJ&K Grant of and Appointment to BS-21 & 22 Rules, 1994 has also not been appreciated while granting grade, BS-22, to the respondent, therefore, the approval accorded by the worthy Prime Minister of the time has no legal backing and the learned High Court was not justified to issue direction for implementation of the same. He relied upon the case law reported as *Muhammad Rehman and another vs. Azad Government and 8 others* [2014 SCR 298] and *Shahzad Sharif v. Azad Govt. & 14 others* [2016 SCR 24].

6. On the other hand, Mr. Muhammad Yaqoob Khan Mughal, Advocate, the learned counsel for the respondent strongly controverted the arguments advanced by the learned Advocate-General. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. He contended that the worthy Prime Minister being Chief Executive of the State was fully competent to grant BS-22 to the respondent on his meritorious and brilliant service and the authorities are under obligation to implement the order of the Chief Executive. He added that the respondent was retired from service after one day from the approval of the worthy Prime Minister, therefore, there was no need to fulfill any other requirement and in this regard no illegality has been committed. He submitted that in case of failure of the State functionaries

to implement the order of the Prime Minister, no other option was left with the respondent, except to invoke the extraordinary constitutional jurisdiction of the High Court. The learned High Court while exercising the constitutional jurisdiction has not committed any illegality, therefore, the instant appeal is liable to be dismissed.

7. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. It appears from the record that the controversy started when the worthy Prime Minister of the time accorded approval to grant BPS-22 to the respondent in view of his meritorious service career. It will be useful to reproduce here the order issued by the Prime Minister which reads as under:-

"مسٹر خورشید حسین چوہدری آفیسر منیجمنٹ
گروپ بی پی ایس-21 (حال سیکرٹری تعلیم
سکولز) کو اعلیٰ پیشہ ورانہ خدمات و احسن

کارکردگی کے پیش نظر گریڈ بی پی ایس-22
 دیئے جانے کی منظوری دی جاتی ہے۔"

For implementation of the order (supra), the respondent filed writ petition before the High Court and the learned High Court while accepting the same issued the direction as prayed for. The question arises; whether, the worthy Prime Minister without adopting any proper process was equipped with the powers to grant BPS-22, to the respondent in view of his meritorious service career. To reach the right conclusion, we have examined Rule 4 and 5 of the AJ&K Grant of and Appointment to BS-21 & BS-22 Rules, 1994, and the Rule 15 of the Rules of Business, 1985. Rule 15 of the Rules of Business, 1985, postulates that without prior consultation with the finance department no department shall be authorized to issue any order which directly or indirectly affects the finance of the Government. Furthermore, clause (c) of sub-rule (1) of the

Rule 15, speaks that the matters where change in the number or grading of the posts or the terms and conditions of service of Government servants or their rights and privileges which have financial implication, are involved the prior consultation with the Finance Department is mandatory. Item 15 of the schedule 3, of the Rules of the Business, 1985, provides that in the matter for appointment and promotion of officers to the posts of BPS-19 and above, the cases shall be submitted to the Prime Minister. Moreover, the AJ&K Grant of and Appointment to BS-21 and BS-22 Rules, 1994, provides that the posts of BPS-21 and BPS-22 shall be the selections posts and the same shall be filled in on the recommendations of the Selection Board constituted by the Government from time to time under law. The juxtapose perusal of the relevant provisions of law leads us to the

conclusion that a proper procedure has been provided to deal with the matter, but in the instant case, except the above referred approval nothing is available on record to show that after determining that the respondent fulfilled the criteria laid down in the relevant Rules, the same was accorded. In this way, it can safely be said that the procedure provided under law has not been adopted while granting BPS-22 to the respondent. The argument of the learned counsel for the respondent that the Prime Minister being Chief Executive of the State is empowered to accord such approval, cannot be considered as a valid argument as no one is above law including the President and the Prime Minister. It may be observed here that the persons holding the highest posts of the State should be more careful while dealing with such like matters and they cannot be

supposed to violate the rules and regulations. As no justification has come on the record to grant the special treatment to the respondent, therefore, the approval accorded by the worthy Prime Minister cannot be given a legal cover, rather the same comes within the purview of void order which cannot be implemented under law. This Court has time and again held that only such order/direction of the Prime Minister can be implemented which is consistent with law. In this regard, the learned Advocate-General has rightly relied upon the case law reported as *Muhammad Rehman and another v. Azad Government and 8 others* [2014 SCR 298], wherein this Court held that:-

“11. So far as the arguments of the learned counsel for the appellants that the direction of the Prime Minister should be carried out is concerned, the Prime Minister

(Chief Executive) is not made a party in the writ petition and counsel for the official respondents before the Court has also taken the same stand as has been discussed hereinabove. Even otherwise, according to law, the directions of the Prime Minister can only be carried out which are consistent with law and any direction contrary to law having no statutory backing cannot be carried out.”

In the other case law referred to by the learned Advocate-General reported as *Shahzad Sharif v. Azad Govt. & 14 others* [2016 SCR 24], this Court held as under:-

“The orders passed by the Prime Minister are without statutory backing. These are of no legal validity. Only legal orders of the Prime Minister can be implemented and writ can be issued for enforcement of the said orders.”

Keeping in view the circumstances of the case and the dictum laid down in the referred reports, we are of the view that the approval accorded by the Prime Minister of the time having no legal backing cannot be implemented and the learned High Court erred in law while issuing the writ for enforcement of the same. Hence, while accepting this appeal the impugned judgment of the High Court is set aside and the writ petition filed by the respondent stands dismissed. No order as to costs.

Muzaffarabad, **JUDGE** **CHIEF JUSTICE**
____.05.2017

Date of announcement: 30-05-2017

