

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Civil PLA. No.187 of 2017
(Filed on 31.01.2017)

Fida Hussain s/o Muhammad Latif Khan r/o Tehsil
Chikar District Hattian Bala.

.....PETITIONER

VERSUS

1. Azad Government of the State of Jammu & Kashmir, through its Chief Secretary having his office at New Secretariat Muzaffarabad.
2. Secretariat Law, Justice, Parliamentary Affairs and Human Rights of Azad Govt. through its Secretary Law, having his office at New Secretariat Chatter Domail.
3. Accountant General of Azad Jammu & Kashmir Muzaffarabad.
4. Sajid Aziz Moon s/o Abdul Aziz r/o Tehsil Chikar District Hattian Bala, currently serving as Data Entry Operator at Secretariat Law, Justice, Parliamentary Affairs and Human Rights of Azad Govt. through its Secretary Law having his office at New Secretariat Chatter Muzaffarabad.
5. Selection Committee through its Chairman Law, Justice and Parliamentary Affairs Muzaffarabad.

.....RESPONDENTS

[On appeal from the judgment of the High Court
dated 09.03.2017 in Writ Petition No.1059 of 2015]

FOR THE PETITIONER: Syed Nazir Hussain Shah
Kazmi, Advocate.

FOR RESPONDENT No.4: Mr. Muhammad Yaqoob
Khan Mughal, Advocate.

Date of hearing: 29.05.2017.

ORDER:

Ch. Muhammad Ibrahim Zia, C.J.- The
above titled petition for leave to appeal arises out
of the judgment of the High Court dated 9th March,
2017, whereby the writ petition filed by petitioner,
herein, has been dismissed.

2. Brief facts forming background of the
instant petition for leave to appeal are that the
petitioner herein, filed writ petition in the High
Court alleging therein, that the official respondents
advertised the posts of Computer Operator/Data
Entry Operator (B-12) on 09.09.2014 in daily News

“Express Islamabad” for induction on permanent basis in all the units of Azad Jammu & Kashmir including District Hattian Bala, except Muzaffarabad and refugees settled in Pakistan. He alleged that after test and interview the official respondents by ignoring the merit of the petitioner have appointed private respondent No.4 on political motivation and by arbitrary exercise of powers. It is further stated that petitioner is highly qualified person and the appointment has been made against the spirit and conditions of advertisement dated 09.09.2014. In the writ petition he prayed for setting aside the appointment order of respondent No.4 dated 10.03.2015 and sought direction to the respondents, for his appointment as Data Entry Operator/Computer Operator (B-12). After necessary proceedings, the learned High Court through the impugned judgment dated 9th

March, 2017, dismissed the writ petition, hence this petition for leave to appeal.

3. Syed Nazir Hussain Shah Kazmi, Advocate, counsel for the petitioner after narration of necessary facts submitted that the impugned judgment of the High Court is against law and the record. The learned High Court has not applied judicial mind while delivering the impugned judgment and dismissed the writ petition on the sole ground of non-impleading the Selection Committee as party. The learned counsel submitted that for arraying the Selection Committee as party an amendment application was filed in the High Court but without disposal of the application the writ petition has been dismissed by the High Court which is against law. This important legal proposition is involved in the case which justifies the grant of leave to appeal. He further argued that according to the annunciated principle of law by

this Court even the Court itself can direct for impleading the party.

4. Conversely, Mr. Muhammad Yaqoob Khan Mughal, Advocate, counsel for respondent No.4, strongly opposed the petition for leave to appeal on the ground that the petitioner has challenged the appointment order of respondent No.4, dated 10.03.2015. A copy of the said order annexed with the writ petition which clearly speaks that the appointment has been made on the recommendations of the Selection Committee. The writ petition was filed on 28.05.2015 without impleading the Selection Committee as party. The petitioner failed to file the application for impleading the selection Committee as party within a reasonable time, rather the application for the first time was filed on 04.03.2016 almost after a period of 11 months. No reasonable ground has been mentioned in the application. The only reason

mentioned in the application that the petitioner was not aware of the respective Selection Committee stood negated from his own produced record. Thus, the impugned judgment of the High Court is legal one which does not call for any interference by this Court. The petition for leave to appeal is liable to be dismissed.

5. I have considered the arguments of the counsel for the parties and perused the record made available. On the direction of the Court the counsel for the petitioner has brought on record the appointment order of respondent No.4, dated 10.03.2015, which is reproduced as under:-

**"آزاد حکومت ریاست جموں و کشمیر
محکمہ قانون، انصاف، پارلیمانی امور و انسانی حقوق**

حکم:

جناب سیکرٹری قانون، انصاف، پارلیمانی امور و انسانی حقوق نے بعد از اخبار اشتہار، ٹیسٹ و انٹرویو میں میرٹ پر آنے والے بزیل امیدواران کو حسب سفارش سلیکشن کمیٹی، مستقل بنیادوں پر بحیثیت ڈپٹی انٹری اپریٹر/کمپیوٹر اپریٹر (بی-12) تابع شرائط ذیل تقرر کیے جانے کی منظوری صادر فرمائی ہے۔

1- ساجد عزیز مون ولد عبد العزیز مون، ساکنہ چکار، ڈاکخانہ خاس تحصیل و ضلع ہٹیایا بالا۔

- 2- نقاش یونس ولد محمد یونس ساکنہ کوہی پلندری تحصیل و ڈاکخانہ پلندری ضلع سدھنوتی، آزاد کشمیر۔
شرائط:
- 1- بالا تقرریاں عرصہ دو سال کے لیے آزمائشی ہوں گی۔
 - 2- حاکم مجاز دوران آزمائشی عرصہ متذکرہ تقرریوں کو بدوں نوٹس منسوخ کرنے کے مجاز ہوں گے۔
 - 3- حکم ہذا کا طلاق اہلکاران کی تاریخ حاضری سے ہو گا۔
- 2- راجہ انجم نسیم خان ایڈھاک ڈیٹا انٹری اپریٹر/کمپورٹر اپریٹر (بی-12) مستقل تقرریوں کی بنا پر ایڈھاک ملازمت سے فارغ تصور ہوں گے۔

(چوہدری محمد اشفاق)
سیکشن آفیسر (انتظامیہ)"

The petitioner himself in para 7 of the writ petition has mentioned that "the copy of the impugned order No.593-602/15 of respondent No.4, dated 10.03.2015 is attached herewith and marked as Annexure "E". According to the petitioner own stated facts his grievance is against the proceedings of the Selection Committee and this fact is within his knowledge from the day first as he himself produced the copy of the impugned order which clearly speaks that:

".....بعد از اخبار اشتہار، ٹیسٹ و انٹرویو میں میرٹ پر آنے والے بذیل امیدواران کو حسب سفارش سلیکشن کمیٹی، مستقل بنیادوں پر بحیثیت ڈیٹا انٹری اپریٹر/کمپیوٹر

اپریٹر (بی-12) تابع شرائط ذیل تقرر کیے جانے کی
منظوری صادر فرمائی ہے۔"

The sole reason mentioned in the application that he was not aware of the respective Selection Commission, on the face of it appears to be incorrect. It is also established from the record that the petitioner despite having knowledge filed the application after a period of almost 11 months'. It clearly proves the carelessness and negligent conduct of the petitioner. Even otherwise, according to section 22 of the Limitation Act, 1908 the case shall be deemed to have been instituted with reference to a party when he was so made a party. The negligent conduct of the petitioner despite having knowledge of the fact that the process conducted by the Selection Committee and appointment has been made on its recommendations, remained negligent to implead the selection Committee as party within a

reasonable time. Thus he does not deserve for the discretionary relief.

6. So far the argument of the counsel for the petitioner that the power lies in the Court to implead party at any time is concerned, in the light of the fact of the case this argument has no substance in view of the clear negligent conduct of the petitioner.

The petition for leave to appeal having no force stand dismissed with no order as to costs.

CHIEF JUSTICE

Muzaffarabad.
29.05.2017.

Announcement Date 31-05-2017