

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No 139 of 2016
(PLA filed on 16.3.2016)

Aurangzeb Qureshi s/o Muhammad Javid
Qureshi, Junior Clerk, B-7, office of the Director
Commercial Electricity, Muzaffarabad.

.... APPELLANT

VERSUS

1. Muhammad Maroof, Watchman (Multi
Sector Rehabilitation and Improvement
Project) Muzaffarabad.

..... RESPONDENT

2. Secretary Electricity, Azad Government of
the State of Jammu and Kashmir,
Muzaffarabad.
3. Chief Engineer Electricity, Azad Jammu
and Kashmir, Muzaffarabad.
4. Director General Commercial Electricity
having his office at DHQ Complex,
Muzaffarabad.
5. Director Commercial Electricity having his
office at DHQ complex, Muzaffarabad.
6. Project Coordinator/Sector Coordinator
(MSRIP), Azad Jammu and Kashmir,
Muzaffarabad.
7. Deputy Project Director (MSRIP), Azad
Jammu and Kashmir, Muzaffarabad.
8. X.E.N Store Division, Mirpur.

9. Accountant General, Azad Jammu and Kashmir, Muzaffarabad.

..... PROFORMA-RESPONDENTS

(On appeal from the judgment of the High Court dated 4.2.2016 in writ petition No. 991 of 2013)

FOR THE APPELLANT: Ch. Shoukat Aziz,
Advocate.

FOR RESPONDENT NO.1: Mr. Sajid Hussain Abbasi,
Advocate.

FOR RESPONDENT NO.8: Mr. Raza Ali Khan,
Advocate-General.

Date of hearing: 10.7.2017.

JUDGMENT:

Ghulam Mustafa Mughal, J— This appeal by leave of the Court has been directed against the judgment of the learned High Court dated 4.2.2016 passed in writ petition No. 991 of 2013.

2. The precise facts forming the background of the captioned appeal are that respondent No.1, herein, filed a writ petition under section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974 before the Azad Jammu and Kashmir High Court on

4.7.2013, claiming therein that he is Matriculate and is qualified for the appointment as Junior Clerk, B-7. He was appointed as such in the Electricity Department on temporary basis vide order dated 31.8.2004. His appointment has been extended from time to time by the competent authority. Subsequently, he was appointed as Watchman, B-1 on the recommendation of the respective selection committee in a project known as (MSRIP) vide order dated 28.4.2006. It was further averred by him that he is a disabled person and has made various applications for his appointment against the quota reserved for disabled persons but needful was not done and meanwhile he has crossed the upper age limit prescribed for induction in the service. It was further claimed by him that the Electricity Department has advertised the post of Junior Clerk, B-7 through daily '*Sada-e-Chinar*' on 21.6.2013 without determination of the quota. The writ

petition was contested by the official respondents, herein, by filing written statement and it was pleaded that the appellant, herein, has approached the Court with unclean hands. After hearing the parties, a learned single Judge of the High Court vide judgment dated 4.2.2016 quashed the advertisement and directed the official respondents to advertise the post of Junior Clark, B-7 against 2% disabled quota as per the Government policy. The appellant, herein, has challenged the judgment of the High Court on the ground that the appellant, herein, also filed writ petition No. 1518 of 2012 before the High Court on 3.8.2012 which was decided by the learned High Court on 30.11.2015 directing the official respondents to advertise the post occupied by the appellant, herein, within a period of two months and make the appointment on merit. It was stated that in the subsequent judgment, the appellant, herein, has not impleaded as party.

3. Ch. Shoukat Aziz, the learned Advocate, appearing for the appellant, herein, vehemently argued that the impugned judgment passed by the learned High Court is contradictory and has been handed down without consolidating both the writ petitions. He submitted that on the petition filed by the appellant, herein, the High Court issued a direction on 13.11.2015 for advertisement of the post and in pursuance of the aforesaid judgment the department has issued the advertisement which was cancelled by the learned High Court vide judgment dated 4.2.2016, hence, the impugned judgment has been passed without hearing the appellant, therefore, the impugned judgment is a nullity in the eye of law, hence, may be recalled. The learned Advocate argued that the mandatory procedure for deciding the writ petitions among the same parties on identical points visualized by the Azad Jammu and Kashmir High Court Procedure Rules, 1984, has been violated,

therefore, the judgment under challenge is even otherwise not sustainable under law.

4. Conversely, Mr. Sajid Hussain Abbasi, Advocate, appearing for respondent No.1, herein, contended that two different judgments in the different writ petitions have been recorded by the learned High Court but confliction can be meted out by a direction to the official respondents for observing the quota or making the appointment on merit.

5. We have heard the learned Advocates representing the parties and have gone through the record with utmost care. A perusal of the record reveals that the appellant, herein, filed a writ petition before the Azad Jammu and Kashmir High Court on 3.8.2012, seeking a direction for advertisement of the post of Junior Clark, B-7 occupied by him. The learned High Court after necessary proceedings vide judgment dated 30.11.2015 directed the department to fill in the post after

due process of law on the recommendation of the respective selection committee within a period of two months. In compliance of the judgment dated 30.11.2015, an advertisement was issued in daily '*Sada-e-Chinar*' on 21.6.2013, which was challenged by the respondent, herein, through the writ petition on 4.7.2013 and the same was decided on 4.2.2016, the advertisement was quashed and a direction was issued for advertisement of the post against the quota of disabled persons. It has rightly been contended by the Ch. Shaokat Aziz, Advocate for the appellant that in order to avoid the conflicting judgment it is imperative that all the cases involving identical questions of facts and law and where the parties are common should be placed before the same bench. Sub rule (2) of rule 11 of the Azad Jammu and Kashmir High Court Procedure Rules, 1984, postulates that the Cases involving similar or identical points shall, as far as may be classified and ground together

and set down for simultaneous hearing if so directed by the Chief Justice.

6. In the present case the conflict arising due to the conflicted judgments can be remanded on the basis of suggestion made by the learned Advocate-General, therefore, the appeal is accepted in the manner that the competent authority shall determine the respective quota and thereafter shall make the appointment on merit after due advertisement.

No order as to costs.

Muzaffarabad.
12.7.2017.

JUDGE

CHIEF JUSTICE

