

SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, CJ.

Raja Saeed Akram Khan, J.

Civil Appeal No.288 of 2017

(PLA filed 10.8.2017)

Iffat Firdos d/o Muhammad Manzoor Kiani, r/o
Garthama, U/C Chakhama, district Hattian Bala.

.... APPELLANT

v e r s u s

1. Muhammad Ashfaq s/o Muhammad Sadiq, r/o
Garthama, U/C Chakhama, district Hattian Bala.

..... RESPONDENT

2. Selection Committee for the post of Muhalam-
ul-Quran, District Hattian Bala, through its
Chairman, District Education Officer Elementary
& Secondary (Male), Hattian Bala.

3. DEO Elementary & Secondary (Male), District
Hattian Bala.

4. Deputy DEO, Elementary & Secondary, District
Hattian Bala.

5. Assistant Education Officer (Male), Elementary
& Secondary, District Hattian Bala.

6. Assistant Education Officer (Female) Elementary
& Secondary, constituency No.5, District Hattian

some posts of Mua'allam-ul-Qur'an were advertised in the newspaper, daily "Siasat", Muzaffarabad, on 5.8.2014. After conducting the test and interview, the appellant, herein, was appointed vide order dated 2.9.2014. Feeling aggrieved, the respondent, herein, filed a writ petition before the High Court, for setting aside the appointment order of the appellant, herein, with the following prayer:-

"It is, therefore, very humbly prayed that while accepting the writ petition;

i. While declaring the whole process adopted by respondents No.1 to 5 for the induction against the impugned post of Moallim-ul-Quran as illegal, unlawful and discriminatory, the impugned merit list dated 01.09.2014, along with the impugned order of appointment or respondent No.6 dated 02.09.2014 may kindly be quashed being issued with mala fide intention and without lawful authority.

ii. The respondent No.1, may further be directed to reconstruct the Selection Committee and to adopt the legal procedure for the induction against the impugned post.

iii. The proforma respondent No.9 may kindly be directed to register the case against the real respondents, in accordance with the provisions of Azad Jammu & Kashmir Ehtesab Bureau Act, 2001.

iv. Any other relief which this Hon'ble Court deems proper may kindly be granted to the petitioner."

The learned High Court, after necessary proceedings, accepted the writ petition through the impugned judgment dated 3.8.2017, set aside the appointment order of the appellant, herein, dated 2.9.2014, and directed the respective Selection Board to initiate fresh selection process of the candidates, who had already applied as per relevant rules. This judgment of the High Court has been made the subject of the instant appeal, by leave.

3. Ch. Shaukat Aziz, advocate, counsel for the appellant, after narration of the facts, submitted that the appellant participated in the test and interview and after due selection on merit, she has been appointed. There is no violation of law and the learned High Court has committed grave illegality while accepting the writ petition filed by the respondent, whose name was at serial No.16 of the merit list. He added that the learned High Court was also misled from the record and the findings have been recorded by the High Court without going

through the version of the official respondents and just relying upon the baseless allegations of the private respondent. The learned High Court observed that there are two merit lists, whereas the reality is otherwise, as only one list was prepared and there was no variation in preparation of the merit list. He added that the findings of the High Court have been recorded merely on presumption, through which the appellant has been deprived of her vested legal right. The learned counsel referred to different documents while submitting that respondent No.1 duly participated in the selection process but he failed to get the merit position and has challenged the selection process with *mala fide* intention. The learned counsel referred to and relied upon the cases reported as *Muhammad Ammer & another vs. Muhammad Shaukat & 3 others* [2003 SCR 450], *Azad Government & 3 others vs. Mrs. Jamshed Naqvi & 2 others* [2013 SCR 13], *Muhammad Irfan Ali Gorski vs. Azad Government & 6 others* [2014 SCR 710], *Syed Khadim Hussain & 2 others vs. Imran Aziz Butt & 6 others* [2015 SCR 1528] and *Manzoor*

Hussain Shah & 7 others vs. Syed Akbar Shah [2017 SCR 990].

4. Sardar Karam Dad Khan, advocate, counsel for respondent No.1, supported the judgment passed by the High Court and submitted that the same is in accordance with law, which is not open for interference by this Court. He added that the High Court was justified to set aside the selection process, which was not conducted in a transparent manner. He added that the appellant failed to fulfil the criteria for appointment as her testimonials were forged one and on the strength of those, no appointment can be made. He further submitted that the findings of the High Court are well-reasoned and supported by the record, as tempering has been made and two lists have been prepared just to benefit the appellant, which is proved from the record. The learned counsel submitted that respondent No.1 is a matriculate, whereas the appellant is middle pass. After calculating the marks of the testimonials, the respondent is at better merit position.

5. We have heard the learned counsel for the parties and gone through the record made available.

6. The controversy involved in the matter is regarding the appointment of Mua'allam-ul-Qur'an. Admittedly both; the appellant as well as the respondent, duly participated in the selection process and, on the recommendations of the selection committee, the appellant was appointed vide order dated 2.9.2014. For better appreciation, it will be useful to reproduce the relevant portion of the advertisement, which reads as under:-

"شرائط:

- ۱- امیدوار کی عمر تاریخ اشاعت اشتہار سے 18 سال سے کم اور 35 سال سے زائد نہیں ہونی چاہیے۔
- ۲- امیدوار کا مڈل پاس اور مستند قاری کی سند کا حامل ہونا لازمی ہوگا۔
- ۳- آزاد حکومت کی جانب سے جاری شدہ نوٹیفکیشن مورخہ (iv)P(49(4-A/R/S&GAD کی روشنی میں متذکرہ آسامیوں پر تعینات معلمین القرآن (اگر مروجہ معیار پر پورے اترتے ہوئے) بھی درخواست دینے کے اہل ہوں گے۔"

After going through the above-reproduced conditions enumerated in the advertisement, it appears that the qualification for appointment

against the post in dispute was middle pass and holder of the certificate of Qaari.

7. It has also been alleged by the respondent that two merit lists have been prepared by the selection committee and that too, without mentioning the marks of testimonials/certificates as well as the interview, therefore, we intend to examine the same at first. The main argument of the counsel for the respondent is that the High Court was misled while going through the record that two merits lists were prepared by the selection committee. One of the alleged merit lists appears to be a cut-list, in continuation of which, final merit list has been issued. Through the cut-list, names of candidates, who secured top 8 positions, were displayed and the others were asked to inquire about their merit position from the office. It appears to be a routine practice. We have made a comparison of both the alleged merit lists and failed to find out any discrepancy or variation in the names of the candidates. The detail of marks and merit position has been given in the final merit list. In this

scenario, we are justified to hold that the findings of the High Court in this regard are not in accordance with the record, as the learned High Court was misled from the record.

8. As far the other limb of arguments of the counsel for the respondent, that the marks of the interview and testimonial certificates have not been mentioned in the merit list, is concerned, the same is ill-founded as the learned counsel has failed to substantiate this argument from the record, in the absence of which the argument cannot be accepted. Even otherwise, the name of respondent No.1 appears at serial No.16 of the final merit list of 17 candidates, who have participated in the selection process, meaning thereby that the respondent was much below in the merit list and thus, does not appear to be an aggrieved person. All the above-reflected facts remained escaped from the notice of the High Court while handing down the impugned judgment.

9. There is another aspect of the case in hand, that respondent No.1, in pursuance to the

advertisement, participated in the selection process and failed to attain the merit position. He, then, opted to challenge the whole selection process, which is against the principle of acquiescence. In this regard, the learned counsel for the appellant has referred to the correct case-law in support of his case, especially, in the case reported as *Manzoor Hussain Shah & 7 others vs. Syed Akbar Shah* [2017 SCR 990], referred to and relied upon by the counsel for the appellant, it has been observed as under:-

“....Moreover, it is admitted position that the petitioner took part took part in the written test and could not qualify for the interview which fact has not been denied by her. She does not come within the purview of the aggrieved person and had no *locus standi* to file writ petition before the High Court challenging the eligibility of the candidates as she herself was declared ineligible to be called for the interview. When she failed to get succeeded in the written test, she opted to challenge the process by filing writ petition which is not permissible under law. In this regard reliance may be placed on a case reported as *Tabassum Arif vs. Azad Govt. & others* [2013 SCR 134], wherein, it has been observed by this Court as under:-

“7. There is another aspect of the case that the petitioner in

response to aforesaid advertisement applied for the aforesaid post. When he was not called for interview on the ground that he does not fulfill the qualification for the said post, he filed writ petition. If a person participates in the proceedings and fails to achieve the desired results, thereafter he cannot turn round and challenge the process.”

On the basis of what has been stated above, we are of the unanimous view that the findings of the High Court are against the record, which are not sustainable in appeal. Resultantly this appeal is accepted while setting aside the judgment passed by the High Court on 3.8.2017 and the writ petition filed by respondent No.1, herein, before the High Court, stands dismissed. No order as to the costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad