

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Misc. No.57 of 2018
(Filed on 12.03.2018)

Syed Zulfiqar Hussain Shah

.....PETITIONER

VERSUS

Competent Authority & others

...RESPONDENTS

[Application for ad-interim ex-parte relief]

FOR THE PETITIONER: Mr. Abdul Rashid
Abbasi, Advocate.

FOR THE RESPONDENTS: Nemo.

Date of hearing: 13.03.2018

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– This application for ad-interim ex-parte relief has been placed before the Court during pendency of petition

for leave to appeal under completion in the registry office.

2. The petitioner, herein, was promoted as Civil Judge B-18 vide notification dated 28.08.2018 upon the recommendations of the Selection Board on the basis of seniority, suitability and fitness. Thereafter, through corrigendum dated 02.09.2010, the word "seniority" was deleted. The appointment of the petitioner as Civil Judge was challenged by respondent No.4 before the AJ&K Subordinate Judiciary Service Tribunal. The appeal was dismissed by the Service Tribunal vide judgment dated 04.07.2017, however, on appeal this Court vide judgment dated 19.01.2018 referred the matter to the Selection Board for re-examination. Thereafter, vide notification dated 20.02.2018 in the light of recommendations of Judicial Selection Board the petitioner, herein, was reverted to post of Superintendent. The petitioner filed an appeal before the Service Tribunal and also moved an application for suspension of the operation of impugned notification. The learned Chairman

Service Tribunal, vide order dated 05.03.2018 declined to hear the appeal on the ground that he along with two other Judges participated in the proceedings of the Selection Board. The matter was placed before the learned Chief Justice High Court who vide order dated 07.03.2018 kept the appeal pending till elevation of new Judges.

3. Mr. Abdul Rashid Abbasi, Advocate, the learned counsel for the applicant after discussion of material facts of the case submitted that the petitioner was initially appointed as Civil Judge and subsequently according to the rules and right of promotion was promoted as Senior Civil Judge in grade B-19. This Court in appeal referred the matter to the Selection Board for re-examination. The Selection Board without providing opportunity of hearing to the petitioner reverted him from grade B-19 to B-16. The petitioner applied for certified copies of the proceedings, orders and recommendations of the Selection Board but the same have not been supplied and refused on the pretext that these are not the public documents.

The petitioner filed an appeal before the Service Tribunal under the provisions of Azad Jammu and Kashmir Subordinate Judiciary Service Tribunal Act, 2016 but the learned Chairman of the Tribunal declined to hear the appeal on the ground that he along with two other learned Judges of the High Court have conducted the selection board proceedings. The matter was placed before the learned Chief Justice High Court who ordered that the appeal shall be kept pending till elevation of new Judges. Practically, the petitioner has been deprived of his right of appeal, specially, when he has been condemned unheard. He submitted that in this state of affairs, due to operation of the impugned departmental order the loss caused to the petitioner is irreparable. The petitioner is performing his functions since 8 years, thus, the balance of convenience also lies in his favour. He has got prima facie arguable case, therefore, till resolution of the controversy the operation of the impugned reversion order dated 20.02.2018 may kindly be suspended. He further submitted that

according to facts of the case the expeditious disposal of the case is required.

4. We have heard the learned counsel for the petitioner and examined the record made available. The petitioner was appointed as Civil Judge B-18 vide order dated 28.08.2010. Subsequently, he was promoted as Senior Civil Judge B-19 on the recommendations of Selection Board and since 8 years he is performing his functions as judicial officer. Although, this Court has referred the matter to the Selection Board for re-examination but as stated hereinabove the copies of proceedings/orders and recommendations of the selection Board have not been supplied to the petitioner, thus, the same are not available before this Court at this stage. On the other hand, the appeal has been kept pending till appointment of the new Judges of the High Court, whereas, according to the past history, conduct and behavior of the concerned authorities, specially, the Azad Jammu and Kashmir Council the appointments of Judges in the High Court is not certain and it may

take months or even years. According to the provisions of section 5 of the AJ&K Subordinate Judiciary Service Tribunal Act, 2016 against the departmental order the right of appeal is provided. In the light of hereinabove stated facts, practically for time being keeping the appeal of the petitioner pending for an indefinite period means to deprive him of his statutory right of appeal.

In this state of affairs, the petitioner's apprehension of irreparable loss has substance. Therefore, subject to objections from other side till further orders the operation of the impugned departmental order dated 20.02.2018 shall remain suspended. This application shall be taken up along with petition for leave to appeal on its completion.

CHIEF JUSTICE

JUDGE

Muzaffarabad,
13.03.2018