

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Ghulam Mustafa Mughal, J.

Civil Appeal No.124 of 2018

(PLA filed on 06.06.2018)

Wajid Munir s/o Muhammad Aslam Jatt, r/o Kachi Abadi, Near Boys Primary School, Bhatti Mohalla, Sector F-2, Mirpur.

....APPELLANT

VERSUS

1. Mirpur Development Authority, Mirpur, through its Chairman.
2. Chairman Mirpur Development Authority, Mirpur, through its Secretary.
3. Competent Authority/Selection Committee of MDA through its Deputy Director, Admin, MDA, Mirpur.
4. Deputy Director Admin, MDA, Mirpur.
5. Secretary, MDA, Mirpur.
6. Accounts Officer, MDA, Mirpur.
7. Tariq Mehmood s/o Fazal Hussain, adhoc Junior Clerk, MDA, Mirpur.
8. Imran Ali s/o Rehman Ali, r/o House No.396, Chittarpari, Mirpur.
9. Jibran Ali s/o Mirza Muhammad Zubair, r/o Koonjari Colony, Sangote, Mirpur.
10. Kabir Ahmed s/o Ahmed Din, r/o C-4, Mirpur.
11. Danish Hameed s/o Abdul Hameed, r/o House No.46, Sector F-3, Part IV, Mirpur.

12. Mohammad Moazam s/o M. Azam, r/o Salyal, Sangote, Mirpur.
13. Faisal Tariq s/o Tariq Mehmood, r/o E-4, Mirpur.
14. Mohammad Idrees s/o Mohammad Bostan, r/o Chittarpari, Mirpur.
15. Mirza Javaid Akhtar s/o Mirza Ali Bahadur, r/o Pindi Suberwal, Tehsil and District Mirpur.
16. Afzal Ahmed s/o Allah Lok, r/o Jongian, Kotla, Afzalpur.
17. Sajid Iqbal s/o Muhammad Malik, r/o Rathoa Muhammad Ali, Mirpur.
18. Mohammad Idrees s/o Muhammad Bashir, r/o Rathoa Muhammad Ali, Mirpur.
19. Muhammad Arif s/o Muhammad Siddique, r/o Jabot Jatlan, Mirpur.
20. Nazir Rafique s/o Muhammad Rafique, r/o Bangial Chandran, Mirpur.
21. Dilpazeer s/o Muhammad Mansha, r/o Pindi Suberwal, Mirpur.
22. Zohaib Ahmed s/o Mohammad Shafi, r/o Chapran, Jatlan, Mirpur.
23. Muhammad Sajid s/o Muhammad Saddique, r/o E-2, Bandral, Mirpur.
24. Munsif Dad so Mohammad Khan, r/o Purani Hattian, Balah, Mirpur.
25. Muhammad Meherban s/o Baqar Ali, r/o Nathia Town, Mirpur.
26. Muhammad Shabbir Chaudhary s/o Muhammad Rashid, r/o Maira Khoo Colony, Mirpur.

.....RESPONDENTS

[On appeal from the judgment of the High Court dated 15.05.2018 in Writ Petition No.05 of 2009]

FOR THE APPELLANT: Mr. Kabir Ahmed
Hashim, Advocate.

FOR THE RESPONDENTS: M/s Javaid Najam-us-Saqib
and Muhammad Jamil
Chaudhary, Advocates.

Date of hearing: 20.11.2018.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The titled appeal by leave of the Court has been directed against the judgment dated 15.05.2018, passed by the Azad Jammu & Kashmir High Court in Writ Petition No.05 of 2009.

2. The precise facts forming the background of the captioned appeal are that the appellant, herein, as per his stand was working as Chowkidar in the Mirpur Development Authority (MDA) on temporary basis when the official-respondents, herein, invited applications for appointment against the post of Security Guard B-5 in the MDA. It is stated that the appellant, herein, being eligible applied for appointment in pursuance of the advertisement. Thereafter, the official-respondents issued

the appointment orders of the private-respondents, herein. The appellant, herein, challenged the legality and propriety of the appointment orders issued in favour of the private-respondents, herein, by filing writ petition before the Azad Jammu & Kashmir High Court. It was alleged that the appointment orders of the private-respondents, herein, have been issued without providing the appellant, herein, an opportunity of taking part in the test an interview, hence, are illegal. The learned High Court after hearing preliminary arguments dismissed the writ petition in limine vide order dated 24.02.2010. An appeal was filed against the order of the High Court dated 24.02.2010, before this Court which was accepted vide judgment dated 21.11.2012 and the case was remanded to the learned High Court for decision on merits. After remand, the respondents contested the writ petition by filing separate written statements, wherein, it was pleaded that the petitioner/appellant, herein, is not an aggrieved person and the appointment orders have been issued after following the due process of law. After necessary

proceedings, the learned High Court has again dismissed the writ petition while holding that the petitioner/appellant, herein, is not an aggrieved person.

3. Mr. Kabeer Ahmed Hashim, the learned Advocate appearing for the petitioner argued with vehemence that the reply of the MDA before the learned High Court was factually incorrect because the appellant, herein, was serving on temporary basis as Chowkidar in the MDA. He added that had the test and interview been conducted after notice to the appellant, herein, he would have participated in the same. The learned Advocate further argued that no notice was issued and the test and interview was in fact not held at all. He added that the appointments have been made without lawful authority in violation of the statutory rules and previous judgments of this Court. The learned Advocate submitted that the appellant, herein, is only candidate who was F.A. vis-à-vis all the respondents and had a right to be considered for appointment in light of his application.

4. Conversely, Mr. Muhammad Jamil Chaudhary, the learned Advocate appearing for the private-respondents, argued that the appellant, herein, has not participated in the test and interview and this fact has not been rebutted by him by filing replication/counter affidavit. The learned Advocate further argued that in the advertisement, the date for written test was fixed as 25.08.2008, therefore, issuance of separate notice to every candidate was not necessary at all. The learned Advocate further argued that as the appellant has not participated in the test and interview, therefore, his claim for appointment is against law and he has rightly been declared as not aggrieved by the learned High Court. The learned Advocate further argued that the appointments of the private-respondents, herein, have been made on the recommendations of the respective selection committee which carries presumption of truth and unless it is negated by producing the cogent record/evidence the same cannot be set aside in vacuum because the question

of participation in the test and interview is a question of fact can be proved on the basis of record.

5. We have heard the learned counsel for the parties and have gone through the record of the case. It appears that MDA issued advertisement for appointment against the post of Security Guard B-5. It was categorically stated in the advertisement that the test and interview would be conducted on 25.08.2008. In this state of affair, it was not necessary to send separate call letters for each and every candidate for participation in the test and interview. Moreover, the appellant, herein, has not participated in the test and interview, therefore, he cannot be considered aggrieved, specially so, when the date of test and interview had already been communicated to the candidates by mentioning the same in the advertisement. The appointment order of the private-respondents, herein, also postulates that they have been appointed on the recommendations of the respective selection committee, therefore, their appointment carries presumption of truth until is negated by the record. We are of the considered

view that in the circumstances of this case, the High Court has rightly held that the petitioner/appellant, herein, is not an aggrieved person, hence, cannot challenge the lawful appointments of the private-respondents, herein.

The upshot of the above discussion is that finding no force in this appeal, the same stands dismissed with no order as to costs.

Mirpur.
22.11.2018

JUDGE
JII

CHIEF JUSTICE