

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(APPELLATE JURISDICTION)

PRESENT:

*Ch. Muhammad Ibrahim Zia, CJ.
Raja Saeed Akram Khan, J.*

Civil appeal No.175 of 2018
(PLA filed on 04.06.2018)

Abida Sarfaraz, Contract Employee, Lecturer
Department of Art and Design AJ&K University
City Campus, Muzaffarabad.

....APPELLANT

VERSUS

1. University of Azad Jammu and Kashmir through Registrar, office situate at Chellah Campus, Muzaffarabad.
2. Vice Chancellor University of Azad Jammu and Kashmir, office situate at Chellah Campus, Muzaffarabad.
3. Registrar of University of Azad Jammu and Kashmir, office situate at Chellah Campus, Muzaffarabad.

4. Chairperson/Coordinator Department of Art and Design University of Azad Jammu and Kashmir, Muzaffarabad.
5. Selection Board for the selection of Lecturer, Assistant Professor in Department of Arts and Design, through Secretary Selection Board/Registrar University, Chellah Campus, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment/order of the High Court dated 14.05.2018 in writ petition No.915 of 2018)

FOR THE APPELLANT: Ch.Shoukat Aziz,
Advocate.

FOR THE RESPONDENTS: Raja Amjad Ali Khan,
Advocate.

Date of hearing: 12.02.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeal by leave of the Court has been preferred against the judgment/order of the High Court dated 14.05.2018, whereby the

writ petition filed by the appellant, herein, has been dismissed in limine.

2. The facts necessary for disposal of this appeal are that the University of Azad Jammu and Kashmir advertised one post of Assistant Professor (B-19) and 5 posts of Lecturer (B-18), for the discipline of Art and Design along with many other posts of different disciplines on 15.04.2018. The appellant was already serving on ad-hoc basis as lecturer in Art and Design discipline. In the advertisement, the criteria for selection against the post of Assistant Professor (B-19) was fixed as Ph.D. in the relevant field from Higher Education Commission (HEC) recognized University/Institution, whereas, for the post of Lecturer (B-18), Master Degree (Foreign) or M.Phil./MS (Pakistan) or equivalent degree (18 years) in the relevant filed from HEC recognized

University/Institution with no 3rd division in the academic career. The appellant by filing writ petition challenged the advertisement on the ground that the eligibility criteria given in the same is against the guidelines laid down by HEC. The learned High Court after hearing the preliminary arguments dismissed the writ petition in limine vide impugned judgment/order dated 14.05.2018, hence, this appeal by leave of the Court.

3. Ch. Shoukat Aziz, Advocate, the learned counsel for the appellant argued that the judgment/order passed by the learned High Court is based on misconception of law and facts which is not sustainable in the eye of law. He contended that the appellant in view of the eligibility criteria determined by the University of Azad Jammu and Kashmir through notification dated 28.05.2007, is eligible for appointment against the post of

Lecturer but by making the arbitrary enhancement in the qualification, she is being deprived of a valuable right. He added that the guidelines/instructions of HEC have also been violated just to accommodate the person of choice which is against law. He forcefully contended that the qualification prescribed by HEC, through letter dated 20.04.2012 and the notification issued by the University of Azad Jammu and Kashmir through letter dated 17.02.2015, relates to the general discipline and not for the special discipline like Art and Design, but the learned High Court has not considered this aspect of the case and wrongly observed that the appellant according to notification dated 17.02.2015, is not eligible for appointment against the post of Lecturer as per her qualification. The learned counsel while referring to the different documents submitted that the instructions/guidelines issued by the

HEC are being followed by all other Universities, but in the case in hand the same have been violated and the learned High Court has not considered this aspect of the case and dismissed the writ petition in a slipshod manner.

4. On the other hand, Raja Amjad Ali Khan, Advocate, while appearing on behalf of the respondents strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the impugned judgment/order of the High Court is in accordance with law; therefore, interference by this Court is not warranted under law. He contended that the instructions/notification issued by HEC and the University of Azad Jammu and Kashmir upon which the appellant heavily relied were issued in the year 2007 and 2010 which are no more in field as the same were replaced/substituted through

instructions/notification dated 20.04.2012 and 17.02.2015, respectively. In this regard, the learned counsel drew the attention of this Court towards the referred documents, available at page 84 and 85 of the paper book and submitted that the learned counsel for the appellant mislead the Court by making distinction between general and special disciplines as through these documents qualification has been enhanced for all the disciplines. The learned counsel also referred to the latest instructions of the HEC, issued on 26.01.2017 and contended that the criteria fixed in the advertisement is in accordance with the instructions issued by HEC. He prayed for dismissal of appeal.

5. We have heard the arguments and gone through the record made available along with the impugned judgment/order. The main claim of the appellant is that the eligibility

criteria fixed in the advertisement dated 15.04.2018, is not in line with the instructions/guidelines given by HEC. Moreover, the instructions/guidelines issued by HEC for the general discipline are not applicable to special discipline of Art and Design. To appreciate the argument, we have minutely examined the record. Different notifications issued in the year 2007 by the University of Azad Jammu and Kashmir, brought on record by the learned counsel for the appellant, show that the University fixed the eligibility criteria for different disciplines separately. Through notification dated 28.05.2007, the University of Azad Jammu and Kashmir determined the criteria for appointment in Art and Design discipline; however, the subsequent notification issued by the University on 17.02.2015, shows that enhancement in the qualification for the

appointment against the posts of Assistant Professor and Lecturer for all disciplines was made. It will be useful to reproduce here the relevant portion of the notification dated 17.02.2015, which reads as under:-

“... In exercise of powers vested in him under Chapter III Clauses 8 (5) of the University of Azad Jammu & Kashmir Act, 1985, the Chancellor vide No.PS/20 dated 26-01-2015 has been pleased to assent the following amendment/enhancement in the qualification requirement for the appointment of Assistant Professor and Lecturer in the Universities/DAIs for all disciplines in light of High Education Commission, Islamabad letter No.DG-QA/HEC/FAC (50)2012/212 dated 20.04.2012....”

(Under lining is our)

After going through the notification (supra), it is clear that enhancement in the qualification

was made for all the disciplines and the Art and Design discipline has not been excluded from the same, therefore, the version of the learned counsel for the appellant that enhancement in the qualification was made for general discipline which is not applicable to the Art and Design discipline being special discipline, is baseless. During the course of arguments, a query was made to the learned counsel for the appellant; whether after the issuance of notification dated 17.02.2015, any other amendment, in respect of qualification, has been made; he stated that this notification is the latest in time. At the time of arguments in the case, the appellant with the permission of the Court also came on the rostrum and submitted that this Hon'ble Court in the judgment delivered in the case *titled Abida Hanif and another v. Fatima Yaqoob and another* (civil appeal No.180 of 2014, decided

on 12.01.2016), has declared the findings recorded by the High Court, i.e., that the appellant is lacking the required qualification; inoperative and also declared the advertisement impugned therein as defective on the ground that the requisite qualification and eligibility for the disputed post of Lecturer (B-18), laid down vide notification dated 30.01.2010, was not applied. She added that the respondents has again not followed the conditions laid down in the notification dated 30.01.2010 while advertising the disputes posts. The version of the appellant is not of worth consideration as in the judgment (supra) the latest notification dated 17.02.2015 was not under consideration, moreover, the advertisement challenged therein was also ambiguous one, whereupon, this Court issued the direction to the authorities that in future the advertisements

published for appointments should be self-explanatory, comprehensive, clear and according to rules. As in the instant matter the situation is quite different and the advertisement is also comprehensive one; therefore, on the basis of the findings recorded by this Court in the judgment (supra) the prayed relief cannot be granted to the appellant. The instructions of HEC, issued on 26.01.2017, brought on record by the respondents' counsel further support the versions of the respondents. From the juxtapose perusal of the advertisement and the latest instructions/notification, it appears that the advertisement is in accordance with the same. As the appellant failed to substantiate any illegality in the advertisement or any mala-fide on the part of the respondents, as has been discussed hereinabove, therefore, the learned High Court

rightly dismissed the writ petition in limine and interference by this Court is not required under law in view of the peculiar facts of the instant case.

In the light of the above discussion, this appeal having no force is hereby dismissed with no order as to costs.

Muzaffarabad, **JUDGE** **CHIEF JUSTICE**
_.02.2019