

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

Raja Saeed Akram Khan, J.  
Ghulam Mustafa Mughal, J.

Civil Appeal No. 140 of 2018  
(PLA filed on 13.04.2018)

1. Education Department, Azad Government of the State of Jammu and Kashmir through Secretary Education Schools, Muzaffarabad.
2. Director Public Instruction Schools (female) Azad Government of the State of Jammu and Kashmir having his office at New District Complex, Muzaffarabad.
3. Divisional Director Schools (female) Poonch Division, Rawalakot.
4. District Education Officer Schools (female) District Poonch, Rawalakot.

.... APPELLANTS

**VERSUS**

1. MJst. Fardos Ashraf d/o Muhammad Ashraf Khan r/o village Pothi Chapprian, Post Office Hajira, Tehsil and District Poonch.

..... RESPONDENT

2. Mst. Naila Mansha, temporary Junior Science Teacher, Government Girls High School Pothi Chapprian, District Poonch.

..... PROFORMA-RESPONDENT

(On appeal from the judgment of the High Court dated 14.02.2018 in writ petition No. 1466 of 2010)

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FOR THE APPELLANTS: Sardar Karam Dad Khan,  
Advocate-General.

FOR RESPONDENT No.1: Sardar Abdul Sammie  
Khan, Advocate.

FOR PROFORMA-  
RESPONDENT NO. 2: Sardar Muhammad Riaz  
Khan, Advocate.

*Date of hearing:* 06.02.2019.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal by leave of the Court is directed against the judgment dated 14.02.2018 passed by the High Court in writ petition No. 1466 of 2010.

2. The facts necessary for disposal of the captioned appeal are that respondent No.1, herein, filed a writ petition in the High Court and sought a direction to the official respondents to appoint her as Junior Science Teachress according to the merit list against the vacant post in Constituency No. 2, Poonch. A further direction was also sought by respondent No.1, herein, to appoint her against the post temporarily occupied by respondent No.5,

therein. The writ petition was contested by the respondents by filing comments/written statement. After necessary proceedings, a learned single Judge in the High Court vide impugned judgment dated 14.02.2018, accepted the writ petition and directed the Divisional Director Schools (female) Poonch Division to appoint respondent No.1, herein, against any vacant post within three months.

3. Sardar Karam Dad Khan, the learned Advocate-General appearing for the appellants, argued that the learned High Court has not properly appreciated the facts and law while handing down the impugned judgment. He submitted that the writ petition was clearly hit by the principle of laches but the same has not been attended by the learned High Court. He added that the first advertisement was issued on 29.06.2008 and the selection committee has prepared the merit list in the years 2008-09, whereas, the writ petition was filed after a period of 2 years, hence, was liable to be dismissed,

therefore, the learned High Court fell in error in accepting the writ petition. The learned counsel argued that meanwhile the policy for recruitment was changed, therefore, the appointment could have only been made after qualifying the N.T.S test. In the circumstances of this case according to the learned Advocate-General, the High Court should have not issued the direction for appointment of the respondent, herein.

4. Sardar Abdul Sammie Khan, the learned Advocate appearing for respondent No.1, herein, has defended the impugned judgment and submitted that one Mst. Naila Mansha, proforma-respondent No.2, herein, has also applied for appointment as Junior Science Teachress and she was at serial No. 1 of the merit list and stood appointed vide order dated 25.11.2011 as Junior Teachress. After the appointment of Mst. Naila Mansha, it was respondent, No.1, herein, who was placed at the merit list, hence, she deserves to be appointed

and the direction given by the learned High Court advances the cause of justice against anyone of three withheld posts.

5. We have heard the learned Advocates representing the parties and gone through the record of the case. From the record, it has been proved that three posts were withheld by the department and had it been advertised at the relevant time, the respondent, herein, would have been among the selected candidates. Moreover, after the appointment of Mst. Naila Mansha as a Junior Science Teachress, the respondent, herein, was at serial No. 1, deserves to be appointed. The contention of the learned Advocate that the policy was changed, however, it does not apply to the case of the parties because the respondent, herein, has accrued the right of appointment before enforcement of the N.T.S policy.

6. The contention of the learned Advocate-General that the laches are fully attracted in the case in hand may be correct but

the laches does not preclude a party from prosecuting his genuine claim, where, it is found that a party has been discriminated and maltreated then the rule of laches cannot be applied for defeating the ends of justice. It is also noticed that the respondent, herein, before the learned High Court has neither filed written statement nor any affidavit. In these circumstances, under rule 38 of the Azad Jammu and Kashmir High Court Procedure Rules, 1984, the stand taken by the appellants, herein, before the learned High Court supported in their affidavit were liable to be accepted. The plea of laches was not considered by the learned High Court in absence of any written statement, thus, the learned High Court has not committed any illegality.

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

Muzaffarabad.  
.02.2019.

JUDGE

JUDGE