

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 326 of 2018

(PLA Filed on 18.9.2018)

1. Inspector General Police of Azad Jammu & Kashmir, having its office at G.P.O. Lower Chatter, Muzaffarabad.
2. Deputy Inspector General Police, Headquarter Muzaffarabad.
3. Deputy Inspector General Police, Poonch Division Rawalakot.
4. Deputy Inspector General Police Mirpur Division Mirpur.
5. Senior Superintendent Police District Muzaffarabad.
6. Senior Superintendent Police District Mirpur.
7. Senior Superintendent Police District Kotli.
8. Senior Superintendent Police District Rawalakot.
9. Senior Superintendent Police District Bagh.
10. Senior Superintendent Police District Hattian Bala.
11. Senior Superintendent Police District Neelum.
12. Senior Superintendent Police District Bhimber.
13. Senior Superintendent Police District Haveli.
14. Police Training School Muzaffarabad through its Principal, having its office Shoukat Line Gojra Muzaffarabad.
15. Police Training College Mirpur through its Principal, having its office at Police Lines Mirpur.

16. Additional Inspector General Police legal, having its office at CPO Lower Chatter Muzaffarabad.
17. C.P.O. of the Govt. of the Azad Jammu & Kashmir Muzaffarabad through Registrar.
.... APPELLANTS

VERSUS

1. Muhammad Fareed Constable No. 746.
2. Mir Amjad Rabbani Constable No. 250.
3. Muhammad Khalid Constable No. 413.
4. Abdul Waheed Paracha Constable No. 285.
5. Mohammad Asif Abbasi Constable No. 699.
6. Mohammad Shamimn Khan Constable No. 156.
7. Talat Gull Awan Constable No. 254.
8. Rizwan Hamid Constable No. 390.
9. Tahir Rafique Qureshi Constable No. 249.
10. Raja Muhammad Naseem Khan Constable No. 183.
11. Raja Muhammad Ayaz Constable No. 130.
12. Syed Shahid Kazmi Constable No. 279.
13. Muhammad Shahid Nadeem Constable No. 32.
14. Muhammad Sabir Constable No. 257.
15. Aftab Iqbal Constable No. 144.
16. Qadeer Kiani Constable No. 173.
17. Muhammad Ejaz Khan Constable No. 65.
18. Mohammad Nadeem Khan Constable No.64.
19. Muhammad Saeed Khan Constable No. 115.
20. Muhammad Akhtar Constable No. 131.
21. Najam-ul-Saqib Constable No. 131.
22. Muhammad Habib Constable No. 204.
23. Naveed Khan Constable No. 36, respondents No. 1 to 16 from Police Department Muzaffarabad, 17 to 20 from District Bagh, 21 to 23 from District Kotli.
24. Muhammad Zubair Constable No. 89.
25. Aftab Naseem Constable No. 64.
26. Muhammad Farooq Constable No. 245.
27. Muhammd Safer Constable No.

28. Abdul Shakoor Constable No. 215.
29. Sajid Ali Khan Constable No. 17., respondents No. 24 to 28 from Police Department District (Poonch), respondent No. 29 from Haveli.

..... RESPONDENTS

30. Additional Inspector General Police of Azad Jammu & Kashmir, having its office at CPO Lower Chatter Muzaffarabad.
31. Senior Superintendent Police District Sudhnoti, Azad Kashmir.
32. Servies and General Administration Department, Azad Govt. of the State of Jammu & Kashmir having his office at New Secretariat, Muzaffarabad.
33. Muhammad Kabeer Constable No. 576.
34. Safeer Ahmed Constable No. 400.
35. Abid Hussain Shah Constable No. 205.
36. Israr Malik Constable No. 181.
37. Waqar Ali Shah Constable No. 388.
38. Majid Khan Constable No. 657.
39. Waseem Mumtaz Constable No. 28.
40. Muhammad Ishfaq Constable No. 164.
41. Rayasat Hussain Constable No. 177.
42. Syed Nazar Hussain Shah Constable No. 116.
43. Azhar Nazir Awan Constable No. 463.
44. Muhammad Nadeem Constable No. 382.
45. Majid Javid Constable No. 27.
46. Sadaqat Ali Khan Constable No. 77.
47. Syed Farhat Abbas Constable No. 256.
48. Malik Farooq Constable No. 440.
49. Waheed Gillani Constable No. 108.
50. Waseem Shahzad Constable No. 617.
51. Aftab Mehmood Khan Constable No. 396.
52. Asim Alyas Constable No. 27.
53. Muhammad Israr Mughal Constable No. 509.
54. Muhammad Hafeez Constable No. 457.
55. Muhammad Qadeer Constable No. 392.
56. Mohsin Abbas Constable No. 11.
57. Tahir Mehmood Constable No. 142.
58. Muhammad Zafar Constable No. 258.
59. Abdul Qayyum Constable No. 68.

- 60. Muhammad Naveed Constable No. 24.
- 61. Muhammad Abbas Constable No. 269.
- 62. Aqeel Ahmed Constable No. 91.
- 63. Muhammad Khalid Rehman Constable No. 273.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 18.7.2018 in Service Appeal No. 81 of 2018)

FOR THE APPELLANTS: Mr. Saqib Javed, Advocate.

FOR THE RESPONDENTS: Mrs. Bilqees Rasheed
Minhas, Advocate.

Date of hearing: 4.2.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arise out of the judgment dated 18.7.2018 passed by the Azad Jammu & Kashmir Service Tribunal in service appeal No. 81 of 2018.

2. The precise facts forming the background of the captioned appeal are that the respondents, herein, are permanent employees of the Police Department and are serving as Constables. Vide notification dated 11.1.2017 certain amendments have been made in the

Police Rules, 1934 with respect to providing an age limit for deputing the constables for lower school course. The notification dated 11.1.2017 along with the orders of the appellants, herein, was challenged through appeal No. 81 of 2018 before the Service Tribunal. The appeal was contested by the respondents by filing written statement, whereby they refuted the claim of the respondents. The learned Service Tribunal after hearing the parties through the impugned judgment dated 18.7.2018 has disposed of the appeal.

3. Mr. Saqib Javed, the learned Advocate appearing for the appellants argued with vehemence that respondents through an appeal has challenged the legality and correctness of the notification dated 11.1.2017 and the orders passed on the basis of this notification in the captioned appeal but the Government of the Azad Jammu & Kashmir has not been impleaded as party. The learned Advocate argued that as the appeal before the Service Tribunal was

incompetent, therefore, the Service Tribunal was not competent to issue the direction. The learned Advocate submitted that the direction is contrary to the rules as well as the record.

4. Conversely, Mrs. Bilqees Rahseed Minhas, the learned Advocate appearing for the respondents has defended the impugned judgment and submitted that the Azad Government was not a necessary party because the direction has been given to the Inspector General Police and its subordinate officers, who were impleaded as party in line of the respondents. The learned Advocate has requested for impleading the Government as party in the appeal before the Service Tribunal.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. The main grievance of the respondents, herein, was against the notification dated 11.1.2017, which was issued by the Government but the Government has not been impleaded as party in the case. We have

attended the objection in light of the rules governing the appeal before the Service Tribunal and are of the view that the appeal was not competent before the Service Tribunal as necessary party has not been impleaded in line of the respondents. A perusal of the record reveals that notification dated 11.1.2017, which is the subject matter of the appeal before the learned Service Tribunal was issued by the Government in exercise of powers conferred on it under sub-section (3) of section 46 of Police Act, 1861. The notification is appended with the memorandum of appeal as annexure "A". In the memorandum of appeal before the Service Tribunal the Government is not impleaded as party. All the other orders challenged in the appeal have been issued in pursuance of this notification. The learned Service Tribunal has not properly appreciated the record regarding maintainability of the appeal both on account of law and limitation. The procedure of the learned Service Tribunal for disposal of appeals and

other ancillary matters has been regulated by the Azad Jammu & Kashmir Service Tribunal (Procedure) Rules, 1976. Rule 7 provides the mode of filing appeals. Under Sub-rule 8 it is postulated that in every memorandum of appeal the competent authority shall be shown as the first respondent and thereafter all other parties to the dispute shall be shown as respondents. As the Government was authority, who has issued the notification dated 11.1.2017, therefore, it was enjoined upon the appellants before the Service Tribunal to impleade the Government as such and thereafter arrayed the other respondents, who have issued the other orders for deputing the respondents on the course on the basis of this notification. As in the appeal before the Service Tribunal, the Government who was a necessary party, was not impleaded as such, therefore, we are of the considered view that the appeal was not competent and the Service Tribunal has not considered this aspect of the matter and has

issued the direction on an incompetent appeal. The application for impleading the Government as party and producing the other orders at this stage cannot be allowed. The observation on other arguments would be academic as the captioned appeal can be disposed of on the above legal ground.

The upshot of the above discussion is that the appeal is accepted and the impugned judgment of the Service Tribunal dated 18.7.2018 is hereby recalled. Resultantly, the appeal filed by the respondents, herein, before the Service Tribunal is hereby dismissed with no order as to costs.

JUDGE
Muzaffarabad.
6.2.2019.

CHIEF JUSTICE

