

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

Raja Saeed Akram Khan, J.

Ghulam Mustafa Mughal, J.

Civil Appeal No.226 of 2018.

(PLA filed on 03.08.2018)

Muhammad Irfan s/o Mohammad Naseem, r/o Dhali,  
Tehsil and District Bagh, Azad Kashmir.

.... APPELLANT

**VERSUS**

1. Chief Conservator Forest of AJ&K, Muzaffarabad, having his office at Bank Road, Muzaffarabad.
2. Conservator Forest, Division Poonch, having his office at Supply Road, Rawalakot.
3. Divisional Forest Officer, Bagh, having his office at Janglat Road, Bagh, AJ&K.
4. Selection Committee No.4 through its Chairman Divisional Forest Officer, Bagh, AJ&K, having his office at Janglat Road, Bagh.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated  
13.06.2018 in Writ Petition No.27 of 2017)

FOR THE APPELLANT:

Ch. Amjid Ali,  
Advocate.

FOR THE RESPONDENTS:

Mr. Muhammad Hanif  
Khan Minhas, Advocate.

*Date of hearing:* 14.01.2019.

**JUDGMENT:**

**Ghulam Mustafa Mughal, J.**— The captioned appeal by leave of the Court has been directed against the judgment dated 13.06.2018, passed by the Azad Jammu & Kashmir High Court in writ petition No.27 of 2017.

2. The facts forming the background of the captioned appeal are that the appellant, herein, filed a writ petition before the Azad Jammu & Kashmir High Court on 05.01.2017, stating therein, that he hails from Dhali, Tehsil and District Bagh and his qualification is F.A. with Matric Science. It was alleged that respondent No.3, herein, advertised a post of Forest Guard B-9 vide advertisement dated 03.05.2016, in Daily '*Ausaf*' against the quota of District Bagh. It was stated that among others, the appellant being eligible, applied for appointment against the advertise post and after test and interview, he was placed at serial No.2 of the merit

list. It was further stated that the candidate who attained the merit position has been appointed. It was further stated that in view of the departmental rules issued vide notification dated 09.12.2013, the qualification for appointment against the post of Forest Guard B-9 is F.A./F.Sc. with Matric in Science and 1 year diploma in Forestry. It was further stated that as the appellant, herein, was at serial No.2 of the merit list, hence, was deputed for training vide order dated 18.06.2016. It was contended that the petitioner/appellant, herein, has completed the training and in possession of the relevant diploma, hence, respondents are bound to appoint him but they have advertised 3 more posts vide advertisement dated 24.08.2017 which is illegal. The writ petition was contested by the other side by filing written statement, wherein, it was claimed that the petitioner/appellant, herein, has approached the Court with unclean hands and is not an aggrieved person. It was stated that vide

advertisement dated 03.05.2016, only 1 post of Forest Guard B-9 was advertised in compliance of the order of the Court and in light of the merit list the candidate appearing at the top merit position was appointed. It was further stated that the petitioner/appellant, herein, could not be appointed in view of the pronouncements of the Superior Courts because only one appointment can be made against an advertised post. It was further stated that the post of Ch. Muhammad Bashir, Forest Guard, claimed by the petitioner/appellant, herein, is not vacant because he has been promoted on officiating basis as Forester. He has not been confirmed as yet and his lien is kept on his original post of Forest Guard, hence, the appointment of the appellant, herein, cannot be made against that post. The grounds raised in the other paras of the writ petition were also denied. The learned High Court, after necessary proceedings, through the impugned

judgment dated 13.06.2018, has dismissed the writ petition.

3. Ch. Amjid Ali, the learned Advocate appearing for the appellant argued with vehemence that at the time of advertisement dated 03.05.2016, 2 posts of Forest Guard B-9 were vacant. He added that one post was available due to promotion of Ch. Muhammad Bashir as Forester vide order dated 20.06.2014 but this aspect of the matter has neither been considered nor appreciated by the learned High Court. He added that the recommendations made by the D.F.O. on 18.06.2014, have also been overlooked by the learned High Court which were approved by the Conservator Forest and the appellant, herein, was deputed on training vide order dated 27.06.2016. The learned Advocate further argued that the appellant, herein, has completed the training, hence, is liable to be adjusted against the vacant post. He submitted that the subsequent advertisement issued by the respondents, herein, on

24.08.2017 is illegal and without lawful authority because posts were liable to be filled in from amongst already qualified/trained candidates.

4. Mr. Muhammad Hanif Khan Minhas, the learned Advocate appearing for the respondents has refuted the contentions of the learned counsel for the appellant and submitted that 3 posts which have been advertised vide advertisement dated 24.08.2017 have no nexus with the claimed post as these posts are different and the appellant, herein, may compete for appointment against them in accordance with the rules. The learned Advocate further argued that the post fell vacant due to promotion of Ch. Muhammad Bashir cannot be filled in on permanent basis because his promotion has been made on officiating basis against a scheme and his lien has been kept intact on his original post. The learned Advocate further argued that deputing the appellant, herein, on training does not cloth him with any right of appointment without test and

interview. He submitted that the appellant, herein, invoked the jurisdiction of the High Court with unclean hands, hence, was not entitled to any discretionary relief and the writ petition has rightly been dismissed by the learned High Court.

5. We have heard the learned counsel for the parties and have gone through the record of the case. After hearing the learned counsel for the parties at some length, we summoned the concerned Conservator Forest and the D.F.O. They were confronted with the position that after deputing the appellant, herein, for training, why they are not adjusting him on available vacant post; their reply was that the appellant, herein, cannot be adjusted because he has to appear in the test and interview and only after that he can be appointed provided that he attains the merit position. They also stated that the subsequently advertised posts have no nexus with the claimed post because those are different and the appellant may compete for appointment

against the same if so desires. Upon this, we suggested that as the appellant is a trained candidate, therefore, he may be adjusted temporarily against the post fell vacant due to promotion of Ch. Muhammad Bashir. The proposal was accepted by the Department and the departmental order of adjustment of the appellant dated 11.01.2019 was placed in the Court but the appellant, herein, has refused to accept the same, therefore, we are proceeding to decide the appeal on merits. For proper appreciation of the matter, firstly, we would like to refer the departmental rules for appointment against the post of Forest Guard B-9 which are reproduced as under:-

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S#	Name of the Department	Functional Unit	Name of the post with Grade	Appointing Authority	Minimum Qualification for appointment By		Method of Recruitment	Age of Initial Appointment		Examination Training & other conditions required for confirmation
					Initial Appointment	Promotion		Min.	Max.	
1	2	3	4	5	6	7	8	9	10	11
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35	Forests	Forest Executive	Forest Guard B-9	DCF/ACF In-charge of Forests Division	1) F./F.Sc. With Matric in Science + one-year Diploma in Forestry. The	As per col. 8	i) 70% by initial recruitment as per col.6. (ii) 20% by promotion on the basis of seniority-	18	35	

				<p>selected candidate by Selection Committee, after advertising in newspapers, shall be appointed in the Forest Department OR F.A/F.Sc. with Matric in science. The candidate selected by Selection Committee, after advertising in newspapers, shall be treated as 'Trainee' and shall not be appointed as Forest Guard unless undergoes on-year pre-service training in any Forest Training Institution and earns on-year Diploma in Forestry to be eligible for appointment as Forest Guard.</p> <p>ii) The candidates, before undergoing prescribed written tests and interview, shall have to qualify six kilometer race within 40 minutes as part of physical fitness, otherwise shall stand disqualified for further selection process</p>	<p>cum-fitness from closure watchers Bs-1/BS-2.</p> <p>iii) 05% by promotion on the basis of seniority-cum-fitness from Nursery Man with 10 years' service as such and with SSC minimum qualification.</p> <p>iv) 05% for one-time initial recruitment through adjustment of Depot Guards who were recruited before issuance of Notification on 26-03-2011 to jointly regulate timber extraction by AKLASC and Forest Department on the basis of seniority-cum-fitness in pursuance of implementation upon judgment of the AJK Supreme Court. Provided that the above 05% quota after adjustment of Depot Guards of mentioned category shall stand reverted back for promotion quota of Closure Watchers at S# ii.</p>			
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A perusal of the above reproduced rules would show that for appointment against the post of Forest Guard B-9, the selection shall be made on the basis of test and interview and thereafter the selected candidate would be deputed for training. After completion of the training, he has to be appointed as such. A perusal of

the advertisement dated 03.05.2016 further reveals that a post of Forest Guard B-9 was advertised by the D.F.O. Bagh. After the test and interview, one Muhammad Sajid was appointed. So far as the case of the appellant that he may be appointed against the post fell vacant due to promotion of Muhammad Bashir, is concerned, that has no substance in it. Muhammad Bashir has been appointed on officiating basis and his lien has been kept on his post, therefore, neither it can be said that the post is vacant for regular appointment nor it can be done in view of the rules. Against the advertised post, only one candidate could have been appointed but the D.F.O. Bagh has committed serious misconduct while deputing the appellant, herein, for training. The Conservator Forest has also not considered the recommendations/report forwarded to him by the D.F.O. with open eyes and issued the order dated 27.06.2016. In the report/letter dated 18.06.2016, the D.F.O. has stated that after completion of training, the appellant would be adjusted/appointed. The relevant part of the report/letter dated 18.06.2016, is reproduced as under:-

"----- سلیکشن کمیٹی نمبر 04 کی سفارش کی روشنی میں دفتر ہذا سے جاری کردہ مکتوب نمبر 3089.93 مورخہ 30.05.2016 کی روشنی میں (جو جناب والا کو مخاطب ہے) میرٹ میں دوسرے نمبر پر کامیاب ہونے والے امیدواران 06 ماہ کے اندر خالی ہونے والی فاریسٹگارڈ کی خلو آسامیوں پر کشمیر فاریسٹ سکول مظفر آباد فارسٹری کورس / ٹریننگ کیلئے مامور کرنے کا تحریر کیا گیا تھا۔

لہذا سلیکشن کمیٹی نمبر 4 کی سفارش کی روشنی میں میرٹ پر دوسرے نمبر پر آنے والے مسٹر محمد عارفان ولد محمد نسیم قوم کھوکھر ساکنہ ڈھلی اور مسٹر محمد وسیم ولد نصیب خان قوم ملدیال ساکنہ کھرل ملدیالاں کو چوہدری بشیر احمد کی ترقیابی کی وجہ سے خالی ہونے والی فاریسٹگارڈ کی برائے راست کوٹہ کی آسامی اور شیخ محمد یسین فاریسٹگارڈ کی مستقل قریب میں ریٹائر ہونے پر خالی ہونے والی آسامی پر فاریسٹ سکول مظفر آباد میں تربیت کیلئے نامزد کرنے کی سفارش کی جاتی ہے۔

فاریسٹ سکول سے تربیت کے بعد ڈپلومہ کورس کا سرٹیفکیٹ مہیا کرنے پر ان خالی آسامیوں پر مذکوران کو بحثیت فاریسٹگارڈ مطابق شرائط بھرتی کرنے کا محکمہ ذمہ دار ہو گا۔ نیز فارسٹری کیلئے ڈویژن ہذا میں کوئی اہل امیدوار دستیاب نہ ہے۔"

As state above, the Conservator Forest has accepted these recommendations/report. Now the appellant, herein, has completed the training, therefore, inaction of the respondents cannot be condoned and it is well settled law that party cannot be made to suffer for the lapses committed by the department/authority. The rules do not require that after completion of the training, the candidate has to

further appear in the test and interview, that is why, the authority has conducted the test and interview before sending the candidates on training. The contention of Ch. Amjid Ali, Advocate, that the appellant, herein, has been discriminated, is devoid of any force. A perusal of the impugned judgment of the learned High Court shows that the same has been given merely on the ground that no post was withheld, whereas, fact of the matter is that this proposition was hardly involved in the case.

The upshot of the above discussion is that, this appeal is accepted and impugned judgment passed by the learned High Court is hereby set aside. Resultantly, the writ petition filed by the appellant, herein, before the High Court stands accepted and the respondents are directed to adjust him in view of the commitment made to him in letter dated 18.06.2016.

**JUDGE**

Muzaffarabad.  
16.01.2019

**JUDGE**