

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

**PRESENT:**

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

Civil Appeal No. 298 of 2018)  
(PLA Filed on 27.7.2018)

Mazhar Hussain s/o Said Hussain r/o Bagloor,  
Junior Commerce Instructor B-14, Govt. Post  
Graduate College Bagh, Azad Kashmir.

.... APPELLANT

**VERSUS**

1. Waseem Saleem (Gold Medalist) s/o  
Muhammad Saleem Khan village Rawali,  
post office and Tehsil Hari Ghal, District  
Bagh.

..... RESPONDENT

2. Secretary Education Colleges Govt. of Azad  
Jammu & Kashmir, Muzaffarabad.
3. DPI Colleges Govt. of Azad Jammu &  
Kashmir, Muzaffarabad.
4. District Account Officer, District Bagh,  
Azad Kashmir.
5. Principal Govt. Post Graduate College for  
Boys District Bagh, Azad Kashmir.
6. Selection Committee through its Chairman  
& Chairman Selection Committee BPS-1 to  
15 Colleges Departments through DPI  
Colleges Govt. of Azad Jammu & Kashmir,  
Muzaffarabad.

... PROFORMA RESPONDENTS

(On appeal from the order of the High Court dated  
4.6.2018 in Writ Petition No. 2019/11)

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FOR THE APPELLANT: Sardar M.R. Khan,  
Advocate.

FOR THE RESPONDENTS: Sardar Abdul Sammie  
Khan, Advocate.

*Date of hearing:* 7.2.2019.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal arise out of the order dated 4.6.2018 passed by the Azad Jammu & Kashmir High Court in writ petition No. 2019/11.

2. The precise facts forming the background of the captioned appeal are that Waseem Saleem, respondent No.1, herein, filed a writ petition before the Azad Jammu & Kashmir High Court on 29.12.2011, which is still awaiting disposal. He moved an application for grant of amendment in the writ petition, which was objected to by the other side and the learned High Court after hearing the parties vide order dated 10.5.2017 rejected the application observing therein that the petitioner may file a proper application if so chooses. Thereafter,

respondent No. 1, herein, filed another application for grant of amendment which has been allowed by the learned High Court through the impugned order dated 4.6.2018.

3. Sardar M.R. Khan, the learned Advocate appearing for the appellant has argued that the first application moved by respondent No. 1, herein, was rejected by the High Court and the second application has been filed by him after a considerable time, thus the second application was mala-fide and could not be entertained. The learned Advocate argued that after dismissal of the first amendment application the second one was not competent.

4. Sardar Abdul Sammie Khan, the learned Advocate appearing for the respondents has defended the impugned order of the learned High Court and submitted that in the earlier order the learned High Court has directed the petitioner to file proper application after removing the defects. The learned Advocate further argued that there is no limitation for

moving to the Court for filing the application for grant of amendment. The learned Advocate argued that delay alone is not sufficient to refuse the amendment, which is otherwise just and necessary for resolving the whole controversy.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. It may be stated that the first application filed by respondent No.1, herein, was rejected by the High Court for the reason that the same was not properly drafted. In the impugned order, it is clearly mentioned by the High Court that respondent No.1, herein, can file second application. Though, he has filed the second application after a considerable time but this fact alone is not sufficient for rejection of his prayer. The High Court has observed that the proposed amendment does not change the nature of the proceedings or cause of action. Be that as it may, the appellant, herein, has a right to rebut the newly added grounds through amended written statement. The High Court has

already burdened the respondent with costs, however, we are of the view that the costs already ordered by the High Court was not reasonable, therefore, the same is enhanced up to Rs.5000/-. The additional amount shall be paid by respondent No.1, herein, before the learned High Court.

The appeal is accepted and the impugned order passed by the learned High Court is modified in the terms indicated above.

JUDGE

CHIEF JUSTICE.

Muzaffarabad.  
7.2.2019.

