

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(APPELLATE JURISDICTION)

PRESENT:

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

Civil appeal No.274 of 2018
(PLA filed on 30.07.2018)

Najam-un-Nisa, Arabic Junior Teacher,
Government Girls High School Noral, District
Muzaffarabad.

....APPELLANT

VERSUS

1. Divisional Director Elementary and Secondary Education (Female), Muzaffarabad.
2. District Education Officer Elementary and Secondary Education (Female), Muzaffarabad.
3. Headmistress Government Girls High School Noral, District Muzaffarabad.
4. Headmistress Government Girls High

School Dana, District Muzaffarabad.

5. Zulekha Begum, Junior Arabic Teacher,
Government Girls High School Dana,
District Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment/order of the
Service Tribunal dated 06.06.2018 in service
appeal No.415 of 2018)

FOR THE APPELLANT: Raja Shujjat Ali
Khan, Advocate.

FOR RESPONDENT NO.5: Syed Sayyad
Gardezi, Advocate.

Date of hearing: 11.02.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— The titled appeal by leave of the Court has been directed against the judgment/order of the Service Tribunal dated 06.06.2018, whereby the appeal filed by the appellant, herein, has been dismissed for non-compliance of the order of the Tribunal.

2. The facts necessary for disposal of this appeal are that the appellant, herein, challenged the departmental order dated 21.05.2018, whereby the transfer order of the appellant and respondent No.5, herein, dated 30.04.2018, was held in abeyance by the concerned authority, before the Service Tribunal by filing an appeal. The learned Service Tribunal after hearing the preliminary arguments admitted the appeal for regular hearing and ordered the appellant to deposit requisite security and process fee within a period of one week and fixed the next date as 06.06.2018, for further proceedings. On the said date, the learned Service Tribunal dismissed the appeal for non-compliance of the order dated 24.05.2018, hence, this appeal by leave of the Court.

3. Raja Shujjat Ali Khan, Advocate, the learned counsel for the appellant argued that

the order passed by the learned Service Tribunal is against the record. He contended that the appellant in compliance of the order of the tribunal had deposited the security fee etc., therefore, there was no justification to dismiss the appeal on the sole ground that the appellant failed to comply with the order of the Tribunal. The learned counsel stressed that the official of the Service Tribunal, before whom the appellant deposited the security fee etc., while concealing the facts mislead the Service Tribunal and the learned Service Tribunal without examining the relevant record dismissed the appeal. In this regard, he prayed for summoning of the relevant record/register from the Service Tribunal.

4. On the other hand, Syed Sayyad Hussain Gardezi, Advocate, while appearing on behalf of respondent No.5, strongly controverted the arguments advanced by the

learned counsel for the appellant. He submitted that the impugned order of the Service Tribunal is in accordance with law and interference by this Court is not warranted under law. He added that the appellant did not comply with the order of the learned Service Tribunal for depositing the security fee etc., within the stipulated period; therefore, the learned Service Tribunal rightly dismissed the appeal on this ground. The story narrated by the appellant that he had deposited the requisite fee etc., within time, is false and not supported by the record. He referred to and relied on the case law reported as *Abdul Rehman v. Abdul Ghafoor and 5 others* [2005 SCR 183] and an un-reported judgment/order of this Court delivered in a case titled *Tariq Mehmood v. Azad Govt. & others* (civil PLA No.151 of 2018, decided on 06.08.2018) and prayed for dismissal of appeal.

5. We have heard the arguments and gone through the record made available along with the impugned order. The perusal of the record shows that the learned Service Tribunal vide order dated 24.05.2018, admitted the appeal filed by the appellant, herein, for regular hearing and directed him to deposit the requisite security and process fee within a week time. For better appreciation, the relevant portion of the said order is reproduced here which reads as under:-

“The appellant is directed to deposit requisite security and process fee according to the rules within a period of one week. Thereafter the official respondents be summoned to file objections against appeal and application for suspension of the impugned order. To come up for further proceedings on 06.06.2018.”

On the next date of hearing, i.e. 06.06.2018, the office of the Service Tribunal reported that

the requisite fee has not been deposited, whereupon, the learned Service Tribunal dismissed the appeal for non-compliance of the order dated 24.05.2018, reproduced hereinabove. The version of the appellant before this Court is that the appellant in compliance of the order of the Tribunal had deposited the requisite fee etc., on the very next day, but the concerned official, before whom he deposited the fee, misled the Tribunal. In the matter in hand, leave was mainly granted on the ground that the proposition raised by the appellant appears to be serious relating to administration of justice and if the same is correct then the dismissal of appeal is miscarriage of justice. This Court while granting leave also issued the direction to the Service Tribunal to submit the report relating to deposit of security fee as alleged by the appellant. The learned Service Tribunal has

submitted the detailed report before the Court, wherein, it has categorically been mentioned that after examination of the relevant record it has been found that the appellant, herein, has not deposited the fee in compliance of the order of the Tribunal. Along with the report, the statement of the concerned official, which is supported by an affidavit, has also been submitted. The learned Service Tribunal after examining the relevant record has submitted its report; whereas, the appellant neither provided copy of any such document through which it could be ascertained that manipulation has been made in the record nor brought on record the receipt of depositing the security and process fee, therefore, in such circumstances, there is no occasion to summon the relevant register of the Service Tribunal while disbelieving the report. As the appellant failed to furnish the security as well

as process fee within the stipulated period, therefore, the learned Service Tribunal has rightly dismissed the appeal under the provisions of rule 11(3),(4) of Azad Jammu and Kashmir Service Tribunals (Procedure) Rules, 1976, and has not committed any illegality. The learned counsel for respondent No.5, has rightly relied upon the case law reported as *Abdul Rehman v. Abdul Ghafoor and 5 others* [2005 SCR 183] and an unreported judgment/order of this Court delivered in a case titled *Tariq Mehmood v. Azad Govt. & others* (civil PLA No.151 of 2018, decided on 06.08.2018).

Resultantly, this appeal being devoid of any force is hereby dismissed with no order as to costs.

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

