

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Ghulam Mustafa Mughal, J.

Civil Appeal No.301 of 2018.

(PLA filed on 13.08.2018)

1. Sadheer Ahmed s/o Muhammad Hussain,
2. Shafqat Hussain s/o Muhammad Miskeen,
3. Zahid Hussain s/o Qazi Najeeb-ullah, presently all posted as Followers BPS-3, Azad Jammu & Kashmir Police Department, Line Headquarter, Gojra, Muzaffarabad.

.... APPELLANTS

VERSUS

1. Inspector-General of Police, Azad Jammu & Kashmir having his office at Central Police Office, New Secretariat Complex, Chatter, Muzaffarabad.
2. Deputy Inspector-General of Police, Reserve/Rangers, Azad Jammu & Kashmir having his office at New District Complex, B Block, Saheli Sarkar Road, Muzaffarabad.
3. Senior Superintendent of Police, Reserve, having his office at Police Line Headquarter, Gojra, Muzaffarabad.
4. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary, having his office at New Secretariat Complex, Chatter, Muzaffarabad.
5. Assistant Inspector-General of Police (Legal), having his office at Central Police Office, New Secretariat Complex, Chatter, Muzaffarabad.

6. Services and General Administration Department through its Secretary, having his office at New Secretariat Complex, Chatter, Muzaffarabad.
7. Police Department of Azad Jammu & Kashmir through its Registrar, Muzaffarabad, Azad Kashmir.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 14.06.2018 in Writ Petition No.3470 of 2016)

FOR THE APPELLANT: Mr. Maqsood Ahmed
Sulehria, Advocate.

FOR THE RESPONDENTS: Mr. Saqib Javed,
Advocate.

Date of hearing: 04.02.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been directed against the judgment dated 14.06.2018, passed by the Azad Jammu & Kashmir High Court in writ petition No.3470 of 2016.

2. The facts forming the background of the captioned appeal are that the appellants, herein, filed a writ petition before the High Court claiming therein that they are permanent employees of police

department and initially inducted as Followers in Reserve Police vide orders dated 01.06.1993, 01.02.1991 and 21.01.1994, respectively. It was alleged that vide notification dated 28.06.2004, various Followers were promoted as orderly constable B-5 against 5% promotion quota on the basis of pick and choose and the appellants, herein, have been discriminated while refusing the promotion. It was further alleged that they being eligible for promotion/adjustment as orderly constables time and again approached the authorities by filing applications for redressal of their grievance but the needful has not been done. The petitioners/appellants, herein, claimed that they also filed a writ petition in the High Court, whereby, they sought direction for disposal of the representation/applications filed before the departmental authorities and the learned High Court while accepting the writ petition issued a direction that the representations/applications filed by the

petitioners/appellants, herein, shall be decided forthwith while considering their service rights keeping in view the notification dated 28.06.2004 but even then they have not been considered for promotion as yet. The precise stand of the petitioners/appellants, herein, before the High Court was that they may be considered for promotion as Orderly Constables in the light of Government notification dated 28.06.2004. The writ petition was contested by the other side by filing written statement, whereby, the claim of the petitioners/respondents, herein, was refuted. It was stated that though, vide notification dated 28.06.2004, some followers were promoted as Orderly Constables against 5% promotion quota but the said notification was later on abrogated vide notification dated 01.04.2009, hence, the petitioners/appellants, herein, have no locus standi to file the writ petition. The learned High Court after necessary proceedings through the impugned

judgment dated 14.06.2018 has dismissed the writ petition.

3. Mr. Maqsood Ahmed Sulehria, the learned Advocate appearing for the appellants argued with vehemence that the appellants, herein, were recruited as Followers in the Police Department under the Azad Jammu & Kashmir Police Department Ministerial Establishment Rules, 1983, and in these Rules, no avenue was provided for further promotion of the appellants, herein, however, the Government of Azad Jammu & Kashmir while exercising powers conferred on it under sub-section 3 of section 46 of the Police Act, 1861, amended the relevant Rules and after amendment, 5% promotion quota was provided for the Followers as Orderly Constable vide notification dated 28.06.2004. The learned Advocate further argued that respondent No.3, herein, by ignoring the appellants, herein, adjusted/promoted various Junior Followers as Orderly Constable B-5 against the said

quota on the basis of pick and choose and the appellants, herein, have been discriminated deliberately. In this regard, he placed reliance on the case reported as *Minister Forest & 3 others vs. Aurangzeb & 12 others* [2014 SCR 841]. The learned Advocate further argued that on 01.04.2009, the Government abrogated the amendment made in the Azad Jammu & Kashmir Police Department Ministerial Establishment Rules, 1983, vide notification dated 28.06.2004, but that does not affect the case of the appellants, herein, because they have earned the right of promotion under the amended Rules. The learned Advocate further argued that the appellants, herein, filed a departmental representation, wherein, their right of promotion was admitted but even then they have not been considered for promotion against 5% quota. He added that in the earlier round of litigation the learned High Court directed the official-respondent, therein, to consider the case of the appellants,

herein, for promotion in light of the notification dated 28.06.2004 but even then they have not been promoted. The learned Advocate submitted that the impugned judgment of the learned High Court is violative of law and the judgment passed by this Court in the case reported as *Azad Govt. & 2 others vs. Syed Muhammad Afzal Shah & another* [2003 SCR 21]. He further submitted that it was enjoined upon the learned High Court to issue direction for promotion of the appellants, herein.

4. Conversely, Mr. Saqib Javed, the learned Advocate appearing for the other side argued that the writ petition filed by the appellants, herein, has rightly been dismissed by the learned High Court because their case was already considered by the competent authority as is evident from the order dated 07.12.2016, annexure PV, page 77 of the paper book. The learned Advocate further argued that even otherwise, the learned High Court has no jurisdiction to issue direction in presence of the

alternate remedy as in the instant case, appeal was competent before the Azad Jammu & Kashmir Service Tribunal.

5. We have heard the learned counsel for the parties and gone through the record of the case. A perusal of the judgment passed by the learned Division of the High Court in writ petition No.515/2008, decided on 16.07.2013, reveals that the official-respondents, therein, were directed to consider the case of the petitioners/appellants, herein, for the purpose of promotion. In consequence whereof, the case of the appellants, herein, was considered and the competent authority refused to promote the appellants, herein, vide order dated 06.12.2016 issued on 07.12.2016. The order dated 07.12.2016, shows that comments in shape of a summary of the case of the appellant, herein, for promotion was forwarded by the D.I.G.P., Reserve Rangers to the I.G.P. but it is nowhere provided that the said summary has been approved by the I.G.P.

and decision has been communicated to the appellants, herein. Be that as it may, the proper course for the appellants, herein, was to wait for the decision of the I.G.P. and thereafter file appeal before the Azad Jammu & Kashmir Service Tribunal. A perusal of the writ petition filed by the appellants, herein, before the High Court also reveals that the order dated 07.12.2016 has not specifically been challenged by them. Even otherwise, the High Court has no jurisdiction to issue direction in the service matter.

In view of above, this appeal stands disposed of in the manner that the final order passed by the I.G.P. shall be conveyed to the appellants, herein, if had already not been conveyed to them and thereafter the appellants, herein, may avail appropriate remedy subject to all exceptions.

JUDGE

CHIEF JUSTICE

Muzaffarabad.
06.02.2019