SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:
Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.13 of 2019
PLA filed on 22.11.2018

Hina Afzal, Adhoc Junior Science Teacher, Government Girls Middle School, Baloot, Tehsil and District Mirpur.

…. APPELLANT

VERSUS

1. Azad Government of the State of Jammu & Kashmir through Secretary Elementary and Secondary Education, having his office at New Secretariat, Muzaffarabad.

2. Director Public Instructions (Female), Elementary and Secondary Education Schools, having her office at New Secretariat, Muzaffarabad.

3. Director Public Instructions (Female), Schools, having her office at New District Complex, Muzaffarabad.

4. Director Public Instructions (Female), Elementary and Secondary Education Schools, AJK, Mirpur, Division.

5. Director Public Instructions (Female), Mirpur, Azad Kashmir.

6. District Accounts Officer, Mirpur, Azad Kashmir.

7. Saleh Saleem d/o Muhammad Saleem, r/o Pindi Sabarwal, Tehsil and District Mirpur.

….. RESPONDENTS

(On appeal from the judgment of the High Court dated 01.11.2018 in Writ Petition No. 98 of 2018)

FOR THE APPELLANT: Sh. Masood Iqbal, Advocate.

FOR RESPONDENT NO. 7: Mr. Zulfiqar Ahmed Raja, Advocate.

Date of hearing: 27.02.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been directed against the judgment dated 01.11.2018 passed by the learned High Court in writ petition No. 98 of 2018.

2. The precise facts forming the background of the captioned appeal are that the

appellant, herein, was appointed as Junior Science Teacher B-9 on adhoc basis, vide order dated 18.02.2011. Her adhoc appointment has been extended from time to time and at present she is performing her duty at Govt. Girls Middle School Baloot. Vide order dated 14.09.2017, she was transferred from Government Girls Middle School Khambal Mirpur City to Government Girls Middle School Baloot. The respondents, herein, cancelled the said transfer notification vide order dated 23.09.2017, which was challenged by the appellant, herein, before the Azad Jammu & Kashmir Service Tribunal through an appeal. It is alleged that her appeal was accepted vide judgment of the Service Tribunal dated 4.7.2018. It is further alleged that the official respondents again started some proceeding for cancelation of her transfer order and thereafter she filed a writ of prohibition

before the Azad Jammu & Kashmir High Court, which has been dismissed in limine by the learned High Court vide impugned judgment dated 1.11.2018 mainly on the ground that the post occupied by the appellant, herein, was advertised and after the test and interview the candidate who is on merit position is waiting for her adjustment.

3. Sh. Masood Iqbal, the learned Advocate appearing for the appellant argued that the learned High Court has dismissed the writ petition through the impugned judgment on merits without providing an opportunity of hearing to the appellant, herein. The learned Advocate submitted that no post of Junior Science Teacher was advertised by the official-respondents, herein, as is evident from the advertisement but even then they are bent upon to remove the appellant, herein. The learned

Advocate further submitted that dismissal of the writ petition without hearing the appellant, herein, was illegal and violative of the principal of natural justice.

4. Conversely, Mr. Zulfiqar Ahmed Raja, the learned Advocate appearing for respondent No.7, argued that the private-respondent, herein, participated in the test and interview conducted by the NTS and obtained merit position, hence, the appellant, herein, should give way to the selectee. He added that the appellant, herein, had no cause of action to file writ of prohibition which has rightly been dismissed by the learned High Court.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. We are of the view that the controversy raised in the writ petition has been decided by the learned High Court ex-parte

without providing an opportunity of hearing to the appellant, herein, therefore, we will refrain from making any observation on merits of the case. In our view, when the appellant, herein, or his counsel was not present before the Court, it was proper to dismiss the writ petition in default and not on merits.

Thus, this appeal is accepted and the case is remanded to the learned High Court to decide the same afresh on merits after providing reasonable opportunity of hearing to the parties. Both the parties are directed to appear before the learned High Court on Tuesday, the 5th of March, 2019.

JUDGE JUDGE

Mirpur.
27.02.2019.