

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.05 of 2019

(Filed on 19.11.2018)

Mohammad Awais s/o Ashiq Hussain r/o Nagyal
p/o Fakroat, Tehsil & District Bhimber, Azad Jammu
& Kashmir.

....APPELLANT

VERSUS

1. AJ&K Government through its Secretary Electricity, having his office at New Secretariat Muzaffarabad, AJ&K.
2. Chief Engineer Electricity Department, Mirpur Division, Mirpur AJ&K.
3. XEN Electricity Department District Bhimber, AJ&K.
4. SDO Operation Division Bhimber, AJ&K.

.....RESPONDENTS

(On appeal from the judgment of the High Court
dated 17.10.2018 in Writ Petition No.187/2018)

FOR THE APPELLANT:

Mr. Ahmed Saad Khan,
Advocate.

FOR THE RESPONDENTS:

Raja Saadat Ali Kiani,
Addl. Advocate General.

Date of hearing: 26.03.2019.

Judgment:

Ghulam Mustafa Mughal, J.— The titled appeal by leave of the Court has been addressed against the judgment dated 17.10.2018, passed by the Azad Jammu & Kashmir High Court in Writ Petition No.187/2018.

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 26.06.2018, alleging therein, that a post of Naib Qasid fell vacant due to the retirement of his father, and he was appointed as Naib Qasid (BPS-1) on temporary basis in the Electricity Department Operation Division Bhimber, vide order dated 18.04.2013. It was further alleged that after five years' of his service in the department, certain posts of Naib Qasid's were advertised through advertisement No.AJK-MD-5090-D-18 and in

response to the said advertisement the appellant, herein, applied as such. The test and interview was conducted on 28.04.2018 by the department. It was stated that the appellant, herein, participated in the test and interview but the department instead of issuing his appointment order on regular basis against 20% quota fixed for the employee's sons, illegally terminated his temporary appointment, despite of the fact he has preferential right to be appointed on regular basis keeping in view his five years' service and experience. It was also stated that during his service, he performed his duty honestly and not a single complaint has ever been made against him. The learned High Court after hearing preliminary arguments dismissed the writ petition in limine, through the impugned judgment dated 17.10.2018.

3. Mr. Ahmed Saad Khan, the learned Advocate appearing for the appellant argued that the appellant was appointed in place of his father

against 20% quota reserved for the children of the employees serving in grade to 1 to 4. He further argued that appellant remained in service for five years and thereafter test and interview was conducted but he has been relieved without showing any result and disclosing his merit position by the official-respondents, herein. He further argued that it was the condition of the advertisement that the persons who have some experience shall be preferred; therefore, it was enjoined upon them to prefer the appellant and consider him against the relevant quota. The learned Advocate further argued that the learned High Court has erroneously held that relevant quota has been abolished. He argued that when the appellant was appointed, the relevant notification was in existence and vested right stood accrued in favour of the appellant, which cannot be snatched due to cancellation of the notification.

4. On the other hand, Raja Saadat Ali Kiani, the learned Additional Advocate-General argued that as the appellant, herein, was appointed on temporary basis and has no right to be considered on regular basis, therefore, the petition has rightly been dismissed in limine.

5. We have heard the learned Advocates for the parties and gone through the record of the case. The case of the petitioner before the High Court was that he was appointed against 20% quota reserved for the employee's children serving in grade 1 to 4. Moreover, the appellant remained in service for period of five years. The learned High Court has not sought comments from the respondents and even not considered the merit position of the appellant, herein. The question, as to whether, a right stood accrued in favour of the appellant, herein, on the basis of existing policy, was liable to be considered by the learned High Court after admission of the writ petition. As the comments were not sought and

there was no result of test and interview of the post in question, before the learned High Court, therefore, the judgment has been given in vacuum.

In view of above, accepting this appeal, the impugned judgment of the learned High Court dated 17.10.2018 is hereby set-aside. Resultantly, the writ petition filed by the appellant, herein, before the High Court stands admitted for regular hearing. The learned High Court shall now proceed further in accordance with law.

Mirpur
.03.2019.

JUDGE

CHIEF JUSTICE