

SUPREME COURT OF AZAD JAMMU AND KASHMIR
(APPELLATE JURISDICTION)

PRESENT:

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

Civil Appeal No.71 of 2018
(PLA filed on 15.02.2018)

Muhammad Rafique, Naib Qasid, Govt. Boys High School,
Narul, Tehsil and District Muzaffarabad, r/o
Manakpayyan/Domail Sayyedana, Ward
No.4, Muzaffarabad.

....APPELLANT

VERSUS

1. District Education Officer (Male), Elementary and Secondary Education, having his office at New District Complex, Muzaffarabad.
2. Headmaster, Govt. Boys High School, Narrul, Tehsil and District Muzaffarabad.
3. Accountant General of Azad Jammu & Kashmir, Muzaffarabad.
4. Mubasher Hussain Shah s/o Qayyum Shah, r/o Domail Sayedan, Ward No.4, Tehsil and District Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment of the High Court dated
29.01.2018 in Writ Petition No.251 of 2017)

FOR THE APPELLANT: Ch. Shabir Ahmed, Advocate.

FOR THE RESPONDENTS: Sardar Karam Dad Khan,
Advocate-General and
Ch. Shoukat Aziz, Advocate.

Date of hearing: 06.03.2019

ORDER:

Ghulam Mustafa Mughal, J.— The titled petition appeal by leave of the Court has been directed against the judgment dated 29.01.2018, passed by the Azad Jammu & Kashmir High Court in Writ Petition No.251 of 2017.

2. The facts forming the background of the captioned appeal are that Muhammad Rafique, appellant, herein, was firstly appointed as Niab Qasid on contingent basis vide order dated 01.09.2013. As per his claim, he was confirmed by the competent authority on the said post after advertisement of the post in Government Boys High School, Narul, vide order dated 01.02.2017. It is stated that in compliance of the said

order the appellant, herein, submitted his joining report before the competent authority on 02.02.2017. Apprehending cancellation of his appointment order, the appellant, herein, filed a writ petition before the Azad Jammu & Kashmir High Court on 14.02.2017. Respondent No.4, herein, made an application under Rule 37 of the High Court Procedure Rules, 1984, that he may be allowed to file the written statement who was accordingly allowed to file the same. The official-respondents, herein, also filed separate written statement. The precise stand of the respondents before the High Court was that the appellant, herein, is a resident of constituency No.2, Manakpayyan, Mahajar Camp No.2, hence, was not eligible for appointment against the post falling vacant in constituency No.3. It was further stated that the post has not been advertised properly, therefore, the appointment is illegal and the appellant, herein, has no right to file the writ petition. After necessary proceedings, the learned High Court through the impugned judgment has dismissed the writ

petition with the direction that the post shall be re-advertised and the appointment may be made on permanent basis.

3. In the written arguments filed by Ch. Shabbir Ahmed, Advocate, on behalf of the appellant, it is stated that the learned High Court has wrongly observed that the appellant, herein, was not local, whereas, fact of the matter is that he is living within the Municipal limits of Muzaffarabad and was entitled to be considered as such. It is further stated that the private-respondent, herein, cannot be appointed on contract basis because he has not participated in the test and interview. It is further stated by the learned Advocate that when a post is available in municipal area then notification for appointment on Constituency level is not attracted. It is further stated that the learned High Court has wrongly held that permanent order has not been placed on the record, whereas, fact of the matter is that the same is appended with the writ petition.

4. Conversely, Sardar Karam Dad Khan, Advocate-General and Ch. Shoukat Aziz, Advocate, while appearing on behalf of the respondents have defended the impugned judgment and submitted that the appointment order of the appellant, herein, is fake and he was not local. They argued that appointment to the post in question was to be made from the local candidates after test and interview to be conducted after advertising the post. They further argued that the learned High Court has not committed any illegality while passing the impugned judgment rather the same is in consonance with law and the pronouncements of this Court.

5. We have gone through the written arguments filed by Ch. Shabbir Ahmed, Advocate, heard the learned Advocates representing the respondents and have perused the record. It may be stated that the appellant, herein, filed replication to the written statement filed on behalf of the respondents before the High Court. Along with the replication, a copy of advertisement has been placed on the record. The

appointment order is also appended with the writ petition as annexure 'PA' which reveals that the appointment of the appellant, herein, has been made on the recommendations of the respective selection committee vide order dated 01.02.2017. Under the relevant rules, the Headmaster concerned is the appointing authority. It is categorically stated by the appellant, herein, that he is resident of *Manakpayyan* which is situated within the municipal limits. This is question of fact which has neither been denied nor rebutted by the other side through cogent evidence. Moreover, in presence of the appointment order which has validly been issued by the competent authority on the recommendations of the respective selection committee, it cannot be ordered that appointment to the post in question shall be made afresh. The documents mentioned above have escaped the notice of the learned High Court otherwise, direction for advertisement of the post should not have been issued. The advertisement has also not been challenged by the respondents by filing writ petition and relief cannot be

granted in writ jurisdiction beyond the pleadings of the parties.

The upshot of the above discussion is that this appeal is accepted and the impugned judgment of the learned High Court is, hereby, set aside. Resultantly, the writ petition is accepted in the terms that the appointment order of the appellant, herein, dated 01.02.2017, being validly issued, shall remain in field and the respondents shall restrain from cancelling the same.

JUDGE

CHIEF JUSTICE

Muzaffarabad
07.03.2019