

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 297 of 2018
(PLA Filed on 15.8.2018)

Uzma Sheikh d/o Sheikh Ali Akbar r/o village
Pihaliyan, Tehsil Patikka (Naseerabad) District,
Muzaffarabad.

.... APPELLANT

VERSUS

1. Divisional Director (Female) Schools
Elementary and Secondary Education
Muzaffarabad Division Muzaffarabad.
2. Assistant Divisional Director (Female)
Schools Elementary & Secondary Education
Muzaffarabad Division Muzaffarabad.
3. District Education Officer (Female)
Elementary and Secondary Education
Schools having her office at New District
Complex Muzaffarabad.
4. Sobia Usmani d/o Muhammad Nazir
Usmani r/o Madar Tehsil Patikka
(Naseerabad) District Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the Service Tribunal
dated 23.6.2018 in Service Appeal No. 1065 of 2017)

FOR THE APPELLANT: Mr. Farooq Hussain
Kashmiri, Advocate.

FOR RESPONDENT NO.4: Mr. Muhammad Yaqoob
Khan Mughal, Advocate.

Date of hearing: 4.3.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arise out of the judgment dated 23.6.2018 passed by the Azad Jammu & Kashmir Service Tribunal in service appeal No. 1065 of 2017.

2. The precise facts forming the background of the captioned appeal are that the Divisional Director Schools (Female) through advertisement dated 16th June, 2012 advertised some posts for appointment of Junior Science Teacheress for different constituencies including constituency No.1. The last date for receipt of the applications was fixed as 29.6.2012. Among others, the appellant, herein, also applied for her appontiemnt and after the test and interview she was placed at serial No.4 of the merit list

prepared for constituency No.1. One Sobia Usmani, private respondent, herein, was appointed as a Junior Science Teacheress, who was placed a-head to her in the merit list. The appointments made in pursuance of the advertisement were cancelled on the basis of the report of an Inquiry Committee, as a result whereof the appellant, herein, was appointed as Junior Science Teacheress vide order dated 28.1.2015. The report of the Inquiry Committee was challenged through a writ petition before the Azad Jammu & Kashmir, which was accepted on the ground that the appointees whose appointments have been cancelled were not associated by the Inquiry Committee and the judgment passed by the Azad Jammu & Kashmir High Court in this behalf was maintained by this Court vide judgment recorded in civil appeal No. 196 of 2016 titled *Uzma Sheikh vs. Farhat Rasheed & others* decided on 7.12.2016. The Education Department while mentioning the said judgment

has cancelled the appointment order of the appellant, herein, vide order dated 22.2.2017. The order dated 22.2.2017 was challenged by way of appeal by the present appellant, before the Azad Jammu & Kashmir Service Tribunal on 11.10.2017 on the ground that respondent No.4, herein, was not eligible for appointment as she was not in possession of the C.T. certificate before the last date fixed for receipt of the applications in the advertisement. It was further stated that she was not in possession of the B.Ed. decree, which was obtained by her subsequently. The appeal was contested by the respondents by filing separate written statement. At the conclusion of the proceedings, the learned Service Tribunal has dismissed the appeal through the impugned judgment dated 23.6.2018 mainly on the ground of limitation and also referring to the judgment of this Court.

3. Mr. Farooq Hussain Kashmiri, the learned Advocate appearing for the appellant argued with vehemence that the judgment

passed by the learned Service Tribunal is illegal, perverse and against the record. He argued that the order appealed before the Service Tribunal dated 22.2.2017 was not communicated to the appellant, hence, the appeal was within limitation from the date of knowledge. He argued that the observation of the learned Service Tribunal in this regard is also against the record and the judgments relied upon were also not relevant. The learned Advocate argued that the question of qualification of the private respondent, herein, was admitted by the department but even then the learned Service Tribunal has not taken into consideration the same. The learned Advocate further argued that the judgment passed by this Court on 7.12.2016 in Civil Appeal No. 196 of 2016 has also been misinterpreted by the learned Service Tribunal as well as the Education Department because the finding of the Inquiry Committed was set aside mere on technical ground that the affectees have not been heard and it was not

stated anywhere in the judgment that the appointment of the private respondent along with the other was protected.

4. Mr. Muhammad Yaqoob Khan Mughal, the learned Advocate appearing for the private respondent has defended the impugned judgment and submitted that as the appeal was time barred, hence, rightly has been held so by the learned Service Tribunal. The learned Advocate further argued that the appellant has no right to ask for her appointment because the appointment of the respondent stood restored by the Department. The learned Advocate argued that no plausible explanation for filing of appeal beyond the prescribed period of limitation was furnished, therefore, the judgment of the Service Tribunal is unexceptional and hardly requires any interference.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. It may be stated that in the appeal filed before the learned Service

Tribunal by Uzma Sheikh, appellant, herein, it was categorically stated in para 14 that order dated 22.2.2017, through which her service was terminated has not been communicated to the appellant. A perusal of the order also reveals that no copy of the same has been sent to the appellant, herein. The averment was supported by an affidavit, whereas, no specific counter affidavit has been filed in this behalf. We have also noticed that the Education Department has misinterpreted the judgment of this Court. The findings of the Inquiry Committee were set aside only for the reason that the affectees have not been associated by the Inquiry Committee. It was nowhere stated in the judgment that the appointments were correct as the same were not subjudice before this Court.

6. As the Service Tribunal has not attended the controversy on merits, therefore, without any further observation, we are constrained to accept the appeal and set aside the judgment dated 23.6.2018 passed by the

learned Service and remand the case for decision afresh in according with law. No order as to costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad .
5.3.2019.

