

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No. 305 of 2018  
(PLA filed on 04.10.2018)

Abdul Ghafoor s/o Sohbat Ali r/o Gorah Doian  
(Machura) Tehsil and District Bhimber.

.... APPELLANT

**VERSUS**

1. District Education Officer (male)  
Elementary & Secondary Education,  
District Bhimber.
2. Deputy District Education Officer (male)  
Schools, Bhimber.
3. Selection Committee for the post of Naib  
Qasid through its Chairman DEO, (male),  
Bhimber.
4. Naseer Nadeem s/o Muhammad Latif  
resident of Machura, Tehsil and District  
Bhimber, Naib Qasid, Government Boys  
Middle School Machura, Tehsil and District  
Bhimber.

..... RESPONDENTS

(On appeal from the judgment of the High Court  
dated 18.09.2018 in writ petition No. 1776 of 2017)

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FOR THE APPELLANT: Raja Muhammad Arif  
Rathore, Advocate.

FOR RESPONDENT NO.4: Sardar Muhammad Resham  
Khan, Advocate.

*Date of hearing:* 12.03.2019.

**JUDGMENT:**

**Ghulam Mustafa Mughal, J—** The captioned appeal by leave of the Court is directed against the judgment dated 18.09.2018 passed by the learned High Court in writ petition No. 1776 of 2017.

2. The brief facts of the case are that the appellant, herein, has challenged the legality and correctness of the appointment order of respondent No.4, herein, dated 12.10.2017 by filing writ petition before the Azad Jammu and Kashmir High Court. It was stated that the appellant, herein, was appointed as Naib Qasid in the Government Boys Middle School Machura, Bhimber vide order dated 10.10.2016. The said order was extended time and again up to 15.10.2017 by the District Education Officer (DEO), Bhimber. It was further stated that

according to the Education Department rules, the required qualification for the post of Naib Qasid is matriculation and the head of the department is appointing authority of the said post. The District Education Officer (male) Bhimber advertised the post in an unknown newspaper, namely, "*Daily Kashmir Times*" dated 30.09.2017 with *malafide* intention in order to accommodate the person of his choice. The District Education Bhimber, illegally constituted selection committee on 04.10.2017 for completion of selection process. It was further stated that the competent authority (Secretary Elementary & Secondary Education) has already constituted a committee vide order dated 28.07.2017. The said committee issued the appointment order of respondent No.4, herein, on 12.10.2016 as Naib Qasid. The learned High Court after necessary proceedings dismissed the writ petition through the impugned judgment dated 18.09.2018.

3. Raja Muhammad Arif Rathore, the learned Advocate appearing for the appellant, argued that a post of Naib Qasid fell vacant in the office of District Education Officer Elementary & Secondary (male), Bhimber and an advertisement was issued for the appointment of a suitable candidate in "*Daily Kashmir Time*" on 30<sup>th</sup> March, 2017. The learned Advocate argued that the DEO himself constituted a selection committee consisting of Ch. Tufail Ahmed Khaki, Headmaster, Government Girls High School, *Muhalla* Civil Hospital, Chairman, Waheed Abdullah and Ch. Muhammad Malik, Teachers, as its members and directed them to conduct the test and interview. He argued that the test and interview was conducted and the private-respondent, herein, was appointed as such on the recommendation of this selection committee vide order dated 12.10.2017. The learned Advocate further argued that as the selection committee was not lawfully constituted, hence, the process initiated by the said selection

committee including the test and interview conducted was without lawful authority and the appointment order of the private respondent is also bad in law. The learned Advocate while referring to the order dated 28<sup>th</sup> July, 2017, argued that the selection committee actually has been constituted by the Secretary Elementary & Secondary Education which consist of District Education Officer as its Chairman, Deputy District Education Officer and Assistant Education Officer as its members. The learned Advocate argued that the District Education Officer (DEO) has no jurisdiction and power to constitute the selection committee. He further argued that the matter was forcefully argued before the learned High Court but the same has not been considered and attended.

4. Conversely, Mr. Muhammad Resham Khan, the learned Advocate appearing for respondent No.4, argued that the appellant was not an aggrieved person and the learned High Court has rightly dismissed the writ petition

filed by the appellant. The learned Advocate argued that as the appellant was serving on ad-hoc basis and his case was that he is liable to be considered against the quota reserved for the categories of the employees serving in B-1 to B-4, hence, this notification has been cancelled by the Government.

5. We have heard the learned Advocates representing the parties and gone through the record of the case. A perusal of the record reveals that the moot point in the case was as to whether the selection committee, who has initiated the process of selection, conducted the test and interview and made the recommendation, was lawful? The learned Advocate for the appellant has placed on record the order dated 28.07.2017 issued by the Secretary Elementary & Secondary Education through which a committee for appointment of Naib Qasid, *Chowkidar* etc. has been constituted as under:—

The District Education Officer has no jurisdiction in light of the above order dated 28<sup>th</sup> July, 2017 to constitute fresh committee for induction of Naib Qasid, even otherwise, the same can be constituted by the Government/Secretary.

6. The law is well settled that if an act or rule prescribes a particular mode for performance of an act, that act should be performed in the same manner alone or not at all. As the first step taken by the private respondent was illegal, therefore, all the

proceedings including the appointment order of the private respondent dated 12.10.2017 made by the District Education Officer, Bhimber is declared to have been made without lawful authority. The official respondents are directed to initiate the process for selection of Naib Qasid afresh in accordance with law.

In view of above, this appeal is accepted and the writ petition filed by the appellant, herein, before the learned High Court is also accepted.

Muzaffarabad.  
13.03.2019.

JUDGE

CHIEF JUSTICE



Director General  
Health & others

vs.

Saeed Ahmed

ORDER:

The judgment has been signed. The same shall be announced by the Registrar after notifying the learned counsel for the parties.

Muzaffarabad.  
13.03.2019.

CHIEF JUSTICE

JUDGE