

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

Civil Appeal No.39 of 2019

(PLA filed on 06.12.2018)

Ayesha Nazir d/o Muhammad Nazir r/o Mahajar
Camp Karka/Nokot, Tehsil Patika, District
Muzaffarabad.

.....APPELLANT

VERSUS

1. Abida Ghufar d/o Abdul Ghufar r/o Karka Town
Committee Patika, Tehsil Patika/Naseerabad,
District Muzaffarabad.

.....RESPONDENT

2. Secretary Education Schools, having his office
at New Secretariat, Muzaffarabad.

3. Divisional Director Schools having his office at
District Complex, Muzaffarabad.

4. District Education Officer (Female)
Muzaffarabad / Selection Committee for the
post of Primary Teachers through its
Chairperson (DEO) having his office at District
Complex, Muzaffarabad.

5. Assistant Education Officer (Female)
Constituency No.2, Muzaffarabad.

6. Accountant General, having his office at
Sathra, Muzaffarabad.

.... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court
dated 24.11.2018 in writ petition No.1379/2013]

FOR THE APPELLANT: Mr. Sajid Hussain
Abbasi, Advocate.

FOR RESPONDENT NO.1: Ch. Shoukat Aziz,
Advocate.

Date of hearing: 15.03.2019

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The captioned appeal by leave of the Court has arisen out of the judgment of the High Court dated 24.11.2018, whereby writ petition filed by respondent No.1, herein, has been accepted.

2. The precise facts forming the background of the captioned appeal are that the Department of Elementary and Secondary Education Department advertised various vacancies of Primary Teachers on 13.03.2017, including two vacancies of Union Council Noora Seri, District Muzaffarabad. Later on, through a corrigendum dated 28.03.2017 one vacancy for Town Committee Pattika, was also added in the advertisement. The appellant, herein, applied for appointment against the vacancy of

Union Council Noora Seri, whereas, respondent No.1 applied for the vacancy reserved for Town Committee, Pattika. According to the provisional merit list prepared for Union Council, Noora Seri, the contesting respondent stood at the top, whereas, the appellant, herein, stood at the top in the merit list prepared for Town Committee, Pattika. The interview for the vacancy of Town Committee was conducted on 16.08.2017, whereas, for the vacancy of Union Council the same was conducted on 18.08.2017. It is alleged by the appellant that as she hails from Town Committee, Pattika, therefore, she filed an application on 18.08.2017 to the District Education Officer, Muzaffarabad for including her name in the list of candidates who applied against the vacancy of Town Committee, Pattika. The District Education Officer, accordingly ordered to include her name in the concerned list. The department after completion of test and interview issued two separate merit lists on 25.08.2017. In the merit list prepared for Town Committee, Pattika, the appellant was placed at

serial No.1, whereas, the contesting respondent was placed at serial No.2 in the same merit list. Feeling aggrieved, respondent No.1 challenged the merit list dated 25.08.2017 by filing a writ petition before the High Court on 28.08.2017. It was alleged that the appellant, herein, never applied for appointment against the vacancy advertised for Town Committee, Pattika, whereas, the contesting respondent who hails from Town Committee, Pattika and applied for appointment as such, is entitled to be appointed against the vacancy of Town Committee, Pattika. During the pendency of the writ petition, the appointment order of appellant, herein, was issued on 29.08.2017. Respondent No.1, through amended writ petition also challenged the aforesaid appointment order. The writ petition was contested by the appellant, herein, by filing written statement. After necessary proceedings, the learned High Court accepted the writ petition through the impugned judgment and declared the appointment of the appellant, herein, *void ab initio*. The official respondents were also

directed to adjust the contesting respondent against the vacancy of Primary Teacher pertaining to Town Committee, Pattika, hence, this appeal by leave of the Court.

3. Mr. Sajid Hussain Abbasi, Advocate, the learned counsel for the appellant argued the case at some length. He discussed the detailed facts of the case and submitted that although the appellant applied for the vacancy against Union Council, Noora Seri but she being resident of Town Committee, Pattika, filed an application before District Education Officer on 18.08.2017 for including her name in the list of candidates applied against the vacancy for Town Committee, Pattika instead of Union Council, Noora Seri. He submitted that although he is not in possession of the certified copy of the application, however, he will produce the same later on (Subsequently, he furnished the certified copy of the application which was received on 22nd of March, 2019). The same is made part of the record. He further submitted that admittedly the appellant is at the top of merit list, whereas,

the contesting respondent has secured second position. The appointment of the appellant was made quite in accordance with law. To substantiate his arguments, he referred to the copy of the State Subject Certificate of the appellant (Annexure "PA") and the certificate issued by the Chief Officer, Municipal Committee, Pattika (annexed with written arguments filed by the appellant in the High Court). He further submitted that the appellant who is admittedly resident of Town Committee, Pattika and obtained merit position has been rightly appointed. The learned High Court has fell in error of law while issuing the direction for appointment of the contesting respondent. As an alternate, he submitted that the appellant obtained first position in merit, if at all due to some inadvertence of the department there is any illegality, even then she deserves to be adjusted against the available vacancy and for doing complete justice the Court may issue direction in this regard.

4. Ch. Shoukat Aziz, Advocate, the learned counsel for respondent No.1 submitted that the

impugned judgment of High Court is quite in accordance with law. The appellant, herein, clearly applied against the vacancy of Union Council, Noora Seri and not for the vacancy of Town Committee, Pattika. It is proved from the record as well as appellant's own produced copy of the application that after completion of all the proceedings and merit list she applied to the District Education Officer, Muzaffarabad for transfer of her name from the list of candidates of Union Council, Noora Seri to the list of Town Committee, Pattika. The District Education Officer was not competent to pass such order because once the process was completed, thereafter it was not open for any candidate or authority to shift her name from one Union to other according to her wishes or choice. All the acts done in this regard are without lawful authority. He further argued that for the refugees of 1989 (and thereafter) separate 6% quota is reserved and from the documents produced by the appellant herself it is proved that she is refugee of 1990 residing in Mahajar Camp Karka Nokot, Tehsil Pattika

(Naseerabad). Thus, she cannot be appointed against the vacancy reserved for Union Council or Town Committee rather if she has any right she can claim the same against the quota reserved for refugees of 1989. He further submitted that the contesting respondent is admittedly and undisputedly resident of Town Committee, Pattika. She stood at top of the merit list, thus, vested legal rights accrued to her which cannot be snatched. The learned High Court has rightly exercised the extra ordinary writ jurisdiction.

5. We have paid our dispassionate thoughts to the respective arguments of learned counsel for the parties and minutely examined the record made available. According to the admitted facts, the appellant, herein, applied for appointment against the vacancy reserved for Union Council, Noora Seri, whereas, the contesting respondent approved for the vacancy of Town Committee, Pattika. Both of them qualified the National Testing System (NTS). The contesting respondent obtained first position in the provisional merit list of Town Committee,

Pattika, whereas, the appellant, herein, obtained first position in the provisional merit list for Union Council, Noora Seri. After qualifying the NTS, the interview for the vacancy of Town Committee was conducted on 16.08.2017, whereas, for the vacancy of Union Council the same was conducted on 18.08.2017, thus, it is clear that the process of selection for the vacancy of Town Committee, Pattika stood completed on 16.08.2018. The appellant on 18.08.2017, after completion of all the process for selection on the vacancy of Town Committee, submitted an application before District Education Officer, for transfer of her name from Union Council to Town Committee. It appears that she claimed so being resident of Mahajar Camp Karka Nokot, Tehsil Naseerabad, as refugee of 1990. On this ground the District Education Officer transferred her name from the list of Union Council to Town Committee. This fact is admitted and undisputed. The appellant, herself along with the written arguments filed before the High Court has submitted the certificate issued by Chief Officer,

Municipal Committee, Pattika that she is refugee of 1990 residing in Mahajar Camp Karka Nokot, Tehsil Naseerabad. The State Subject Certificate also clearly proves this fact that she is refugee of 1990 of District Kapwara (Jammu) and residing in Mahajar Camp Karka Nokot.

6. In the light of hereinabove stated facts it is clear that the departmental authority has seriously committed mal practices. It is also undisputedly established that the appellant is refugee of 1990, thus, she does not fall in the category of candidates of Union Council or Town Committee rather according to record for her category 6% quota is fixed and she has got the right to be appointed and considered against the reserved quota.

7. In the light of hereinabove stated background, to this extent the impugned judgment of the High Court does not suffer from any illegality or infirmity because the contesting respondent who is permanent resident of Town Committee clearly applied and qualified against the vacancy of Town

Committee and obtained first position, hence, she cannot be deprived of her vested accrued legal right. In this state of affairs, through the impugned judgment the learned High Court has rightly directed the departmental authority for her appointment, which is upheld.

8. However, as hereinabove discussed that the appellant obtained first merit position and appointment order was also issued in her favour, thus, although she does not fall in the category of candidates of candidates of Union Council or Town Committee but being a state subject and refugee of 1990 she deserves to compete on merit. Due to mal practice or failure of the authority to determine the 6% quota of the refugees of 1989 (and thereafter), the appellant cannot be penalized, therefore, while exercising inherent powers vested in this Court, for doing complete justice, we direct the departmental authority that the appellant be adjusted and appointed against 6% quota of refugees of 1989 (and thereafter). If according to calculation at the relevant time the vacancy of quota reserved for

refugees of 1989 (and thereafter) is not available then the appellant may be adjusted by applying carrying forward formula and she shall be deemed appointed against 6% quota reserved for refugees of 1989 (and thereafter). To this extent the impugned judgment of the High Court is modified.

This appeal stands disposed of in the above terms with no order as to costs.

Muzaffarabad,
03.04.2019

CHIEF JUSTICE

JUDGE