

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 328 of 2018
(PLA filed on 26.09.2018)

1. Director General Health, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
2. Additional Director Health Services, Muzaffarabad.
3. District Health Officer, District Neelum.

.... APPELLANTS

VERSUS

Saeed Ahmed s/o Muhammad Maqbool r/o Chalahana, Tehsil Authmuqam, District Neelum, presently posted as Sanitary Petrol, BHU Katha Chugali.

..... RESPONDENT

(On appeal from the judgment of the Service Tribunal dated 28.07.2018 in service appeals No. 977 & 1031 of 2017)

FOR THE APPELLANTS: Sardar Shoukat Ali,
 Advocate.

FOR THE RESPONDENT: Mr. Shahid Ali Awan,
 Advocate.

Date of hearing: 11.03.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court is directed against the judgment dated 28.07.2018 passed by the learned Service Tribunal in civil appeals No. 977 & 1031 of 2017.

2. The brief facts of the case are that the respondent, herein, filed two different appeals in the Service Tribunal. In appeal No. 977 of 2017, the respondent, herein, has challenged the legality and correctness of the order dated 04.08.2017 before the Service Tribunal. It was stated that the respondent, herein, was appointed as Sanitary Petrol, B-1 on the recommendations of the departmental selection committee No. 2 vide order dated 31.10.2002 and is presently posted as Sanitary Petrol at BHU, *Katha Chugalli*, District Neelum. It was further stated that the respondent, herein, has got one year diploma in Patient Care Technician/Dispenser on 28.11.2015 from Skill

Development Council Punjab, Lahore. A post of Junior Technician fell vacant due to the change of trade by one Mr. Altaf Baig, Junior Technician Medical in the office of District Health Officer Neelum. The respondent, herein, submitted an application before District Health Officer, District Neelum for his promotion against the post of Junior Technician, but the same was refused vide order dated 04.08.2017 on the ground that the respondent, herein, cannot be considered for promotion under the departmental rules because the diplomas issued by the Skill Development Council are not recognized by the Punjab Medical Faculty as qualification, whereas, the Skill Development Council Punjab Lahore is a registered institute established under National Training Ordinance, 1980 and the respondent, herein, is eligible for promotion against the post of Junior Technician, B-9. The respondent, herein, also filed another appeal No. 1031 of 2017 in the Service Tribunal and challenged the order dated 27.10.2016.

Both the appeals were admitted for regular hearing and the official respondents filed objections, wherein, they refuted the claim of the respondent, herein. The learned Service Tribunal consolidated both the appeals and disposed of the same through the impugned judgment by directing the respondent, herein, may be considered for promotion against the post of Junior Technician Medical, B-9, under the departmental rules when the post thereof is available for promotion quota.

4. Sardar Shoukat Ali, the learned Advocate appearing for the appellants, herein, argued that the impugned judgment of the learned Service Tribunal is illegal and erroneous because the respondent, herein, before the Service Tribunal was not eligible for promotion under the departmental rules which provides Medical rules. The learned Advocate further argued that the Service Tribunal has erroneously held that the Diploma issued by Skill Development Council Punjab, Lahore is

recognized by the rules. The learned Advocate further argued that the department has sought a clarification from Secretary Punjab Medical Faculty in this regard vide letter dated 20th March, 2017 and as per reply of the Secretary Punjab Medical Faculty dated 21.03.2017, it was opined that the same is not recognized qualification for further promotion, hence, the respondent, herein, was not aggrieved.

5. Conversely, Mr. Shahid Ali, the learned Advocate appearing for the other side, while referring to the various documents appended with the concise statement, argued that the similar qualification has been accepted by the department and the employees who are in possession of the same have been considered for appointment/promotion, therefore, the respondent, herein, cannot be discriminated. The learned Advocate defended the impugned judgment of the learned Service Tribunal.

6. We have heard the learned Advocates representing the parties and gone through the

record of the case. The controversy voiced through appeal before the Service Tribunal was with regard to the promotion as Junior Technician, B-9. Under the departmental rules, it has provided that an employee who is metric with second division and one year Diploma certificate in the relevant field from Para Medical Institute, Mirpur or any other recognized institute, is eligible for consideration against the promotion quota. The respondent, herein, admittedly, is in possession of one year Diploma of Patient Care Technician/Dispenser from Skill Development Council Punjab, Lahore. Though, this is a registered institution under National Training Ordinance, 1980, which was amended later on vide Ordinance 2002 but it is not recognized by the relevant institution as is evident from the reply of the Secretary Punjab Medical Faculty dated 31.03.2017.

7. The law is well settled that only a person who is in possession of the minimum qualification fixed for promotion can be

considered for the same. This Court has already taken the same view in Civil PLA No. 414 of 2018 titled *Hukam Zadi vs. Director General Health and others decided on 14.12.2018*. In view of the above, the conclusion reached at by the learned Service Tribunal in the impugned judgment is not according to law.

Resultantly, this appeal is accepted and appeal No. 977 of 2017 filed by the respondent, herein, before the learned Service Tribunal is hereby dismissed. No order as to costs.

Muzaffarabad.
12.03.2019.

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.
12.03.2019.

CHIEF JUSTICE

JUDGE