

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 120 of 2018
(PLA filed on 13.04.2018)

Muhammad Rafique s/o Saifullah, Chowkidar at
District Food Depu Moji, Tehsil Leepa Karnah,
District Jehlum Valley.

.... APPELLANT

VERSUS

1. District Food Controller,
Muzaffarabad/Jehlum Valley, Hattian Bala.
2. District Accounts Officer, District Jehlum
Valley.
3. Selection Committee for the appointment of
Chowkidar, c/o District Food Controller,
Jehlum Valley.

..... RESPONDENTS

(On appeal from the order of the High Court dated
05.04.2018 in writ petition No. 1578 of 2017)

FOR THE APPELLANT: Ch. Muhammad Manzoor,
Advocate.

FOR THE RESPONDENTS: Sardar Karam Dad Khan,
Advocate-General.

Date of hearing: 05.03.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court is directed against the judgment dated 05.04.2018 passed by the learned High Court in writ petition No. 1578 of 2017.

2. The facts necessary for disposal of the captioned appeal are that the appellant, herein, was appointed as *Warzan* vide order dated 21st March, 2012 and in compliance of the said order, he joined his duty on 21st March, 2012. Subsequently, he was appointed as *Chowkidar* in place of one Abid Hussain, who was on leave vide order dated 03.07.2012. The appellant, herein, was performing his duty when the incumbent came back. It was further stated that while the appellant, herein, was performing his duty, one Muhammad Hafeez, *Chowkidar*, also went on leave and the appellant, herein, was appointed as *Chowkidar* in his place at Moji Depu vide order dated 23.06.2014. Thus, the

appellant has eight years service in his credit. The department, latter on, advertised the said post in the newspaper in the year January, 2016. The appellant, herein, being qualified candidate applied for appointment and he was appointed as *Chowkidar* on the recommendations of the respective selection committee vide order dated 24.03.2016. The appellant, herein, moved an application to the concerned officials that he is permanent employee but he was adjusted on a temporary basis but the needful was not done. The appellant, herein, feeling apprehension of cancellation of his appointment order, filed a writ of prohibition before the Azad Jammu and Kashmir High Court which was contested by the other side. The learned High Court through the impugned order dated 05.04.2018 has dismissed the writ petition. It was observed by the learned High Court that as the appellant, herein, was adjusted on a temporary post of *Chowkidar* in place of Muhammad Hafeez vide

order dated 24.03.2016 in leave arrangement and on joining the duty on his post, the appellant, herein, was relieved, therefore, the direction sought could not be issued.

3. Ch. Manzoor Ahmed, the learned Advocate appearing for the appellant, herein, argued that as the appellant, herein, has eight years service in the department, hence, is entitled to be adjusted on permanent basis. The learned Advocate further argued that in alternative, the appellant is entitled to the salary of the post for the period he remained in service.

4. Sardar Karam Dad Khan, the learned Advocate-General, appearing for the Government, submitted that as the appellant was appointed on temporary basis in leave arrangement, hence, he has to be released on rejoining of the permanent employee. The learned Advocate further submitted that the appellant, herein, has been performing the duty in the garb of stay order, therefore, the

respondents cannot relieve him from service, hence, is not entitled to any salary.

5. After hearing the learned Advocates representing the parties and perusing the impugned judgment of the learned High Court, we are of the view that there is no legal infirmity in the impugned judgment, however, in the interest of justice, it is directed that the respondents shall pay the salary of the post held by the appellant, herein, for the period he remained in service.

With this observation, finding no force in this appeal, the same is hereby dismissed. No order as to costs.

Muzaffarabad.
06.03.2019.

JUDGE

CHIEF JUSTICE

