

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(APPELLATE JURISDICTION)

PRESENT:

*Ch. Muhammad Ibrahim Zia, CJ.
Raja Saeed Akram Khan, J.*

Civil appeal No.276 of 2018
(PLA filed on 04.06.2018)

Qurat-ul-Ain d/o Masood Akbar Hashmir, r/o
Pallandri Khas, District Sudhnooti, Azad
Kashmir.

....APPELLANT

VERSUS

1. Qazi Zain-ul-Abadeen son of Qazi Jameel Ahmed, r/o village Saeen Bagh, post office Sharian, Tehsil and District Hattian Bala, Azad Kashmir.

....RESPONDENT

2. University of Azad Jammu and Kashmir through its Vice Chancellor, Chellah Campus, Muzaffarabad.
3. Syndicate, University of Azad Jammu

and Kashmir through Vice Chancellor,
Chellah Campus, Muzaffarabad.

4. Selection Board for the selection of Teachers of University of Azad Jammu and Kashmir through its Chairman, Chehla Campus, Muzaffarabad.
5. Registrar, University of Azad Jammu and Kashmir, Chehla Campus, Muzaffarabad.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 21.05.2018 in writ petition No.952 of 2017)

FOR THE APPELLANT:	Barrister Humayun Nawaz Khan, Advocate.
FOR THE RESPONDENT:	Raja Muhammad Hanif Khan, Advocate.
FOR THE PROFORMA- RESPONDENTS:	Raja Amjid Ali Khan, Advocate.
Date of hearing:	04.03.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— Leave was granted in the appeal to evaluate the

correctness of the judgment of the High Court dated 21.05.2018, whereby the writ petition filed by the respondent, herein, was disposed of in the following terms:

“So, University management is directed to act in accordance with recommendations of Selection Board by deleting 5 marks of distinction/Gold Medal awarded to the private respondent. The writ petition is disposed off accordingly.”

2. The facts necessary for disposal of this appeal are that the University of Azad Jammu and Kashmir advertised one post of Lecturer (B-18) in the discipline of Mathematics along with some other posts. The criteria for selection against the disputed post of Lecturer was fixed as Master Degree (Foreign) or M.Phil/MS (Pakistan) or equivalent degree (18 years) in the relevant field from Higher Education Commission (HEC)

recognized University/Institution with no 3rd division in the academic career. Amongst others the contesting parties applied for the post in question and the Selection Board recommended the appellant for appointment as Lecturer (B-18) in the subject of Mathematics. The respondent, herein, by filing writ petition before the High Court challenged the recommendations on the ground that 5 additional marks of Gold Medal have been awarded to the appellant, herein, without any legal justification. The learned High Court after necessary proceedings disposed of the writ petition in the terms reproduced in the preceding paragraph, hence, this appeal by leave of the Court.

3. Barrister Humayun Nawaz Khan, Advocate, the learned counsel for the appellant argued that the judgment passed by the learned High Court is based on

misconception of law and the facts which is not sustainable in the eye of law. He contended that the learned High Court failed to adhere to the fact that the appellant was entitled to get 5 additional marks of distinction/Gold Medal obtained by her in M.Sc. Mathematics, in pursuance of the decision made by the competent forum, i.e. Syndicate of the University. He forcefully contended that the appellant was fully entitled for 5 marks of Gold Medal in M.Sc. Mathematics as no Gold Medal is being awarded for M.Phil degree under the policy of the University, but the High Court has wrongly held that the appellant, herein, is not holder of Gold Medal in M.Phil degree, thus she was not entitled to get the additional marks. He further added that there was an ambiguity in the proforma dated 02.02.2017 and later on, through notification dated 07.08.2017, the authority/syndicate after detailed discussion

clarified the matter by deleting the words "for required degree/certification" from its inception. He contended that the suitability of a candidate under law can only be judged by the Selection Board and the wisdom of the Selection Board cannot be substituted, but the learned High Court has not appreciated this aspect of the case.

4. On the other hand, Raja Muhammad Hanif Khan, Advocate, the learned counsel for the respondent strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the learned High Court after appreciating the record has passed a well reasoned judgment which is not open for interference by this Court. He contended that the whole process of awarding 5 additional marks to the appellant was made just to give her an undue advantage which is not warranted under law. The

Selection Board was not competent to refer the matter to the Syndicate, moreover, the notification on the strength of which the additional marks have been given to the appellant, was never published in the official gazette; therefore, the same has got no value in the eye of law. He added that after completion of selection process on the strength of decision of the Syndicate; the right which had already been accrued to the respondent could not be snatched later on. He lastly submitted that after completion of the selection process retrospective effect could not be given to the notification issued subsequently. The learned counsel referred to and relied upon the case law reported as *Abdul Shakoor v. Mrs. Shamim Khalid and 5 others* [2003 SCR 351], *Azad Government and 4 others v. Shezad Naseem Abbasi* [2006 SCR 396] and *Muhammad Yaqoob Awan v.*

Secretary Electricity and 3 others [2014 SCR 1].

5. Raja Amjid Ali Khan, Advocate, while appearing on behalf of the proforma respondents adopted the arguments advanced by the learned counsel for the appellant.

5. After hearing the arguments pro and contra we have gone through the record made available along with the impugned judgment. The perusal of the record shows that during the course of proceedings of selection process conducted in April, 2017, the policy notification dated 02.02.2017 issued by the University of Azad Jammu and Kashmir, in the light of the approval of the Syndicate accorded on 23.12.2016, was holding the field. In the said policy notification, it was specifically provided that the additional marks of distinction shall be awarded to a candidate for her/his distinction

“for required degree/certificate”. In the matter in hand, the required degree for the purpose was M.Phil/MS, whereas, the appellant was not the holder of Gold Medal in the relevant degree rather she got the Gold Medal in M.Sc. degree. In the selection process, the respondent was admittedly succeeded to get the first position in the merit, thus, in such scenario, a right for appointment against the disputed post was accrued to him, but later on, through another notification dated 07.08.2017, the words “for required degree/certificate” were deleted and substituted with the words “five marks of Gold Medal shall be awarded to each candidate having Gold Medal in any degree of his/her academic career” and retrospective effect was also given to the subsequent notification. Resultantly, the appellant after getting the 5 additional marks of Gold Medal in M.Sc. stood

at serial No.1 in the merit list. It is obvious from the record that when the subsequent notification was issued, a right had already been accrued to the respondent and in such state of affairs in view of the settled principle of law, retrospective effect could not be given to the subsequent notification. In this regard, the learned counsel for the respondent has rightly relied upon the case law reported as *Muhammad Yaqoob Awan v. Secretary Electricity and 3 others* [2014 SCR 1], wherein, it has been held by this Court that:-

“It is a settled law that rules of procedure operate retrospectively but if the rules create or take away some vested rights, then the operation of the rules is prospective and not retrospective.”

The learned counsel for the appellant during the course of arguments has stressed that under the policy of University Gold Medal is

not being awarded for M.Phil degree, therefore, the appellant could not be deprived of the benefits of her Gold Medal obtained in M.Sc. We deem it proper to observe here that although, the Gold Medal is not awarded for M.Phil degree, but in view of the peculiar facts of the case especially when a right had already been accrued to the respondent in the light of the policy prevailing at the relevant time, the appellant cannot be benefited on such ground. As the respondent has got the top merit position in the selection process, therefore, he cannot be deprived of his right for appointment by making any subsequent amendment in the rules/policy already holding the field. The perusal of the impugned judgment shows that the learned High Court has thoroughly attended to and resolved all the points involved in the matter and has not committed any illegality.

In the light of the above discussion,
this appeal having no force, is hereby
dismissed with no order as to costs.

Muzaffarabad,
_.03.2019

JUDGE

CHIEF JUSTICE