

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

**PRESENT:**

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

Civil Appeal No.362 of 2018  
(PLA filed on 10.09.2018)

Rubila Khanum d/o Sardar Feroz Khan, r/o  
Dhrak, Tehsil Bloch, District Sudhnoti.

....APPELLANT

**VERSUS**

1. Rehana Siddique, Temporary Qaria,  
Government Girls Inter College Kalan,  
District Sudhnoti.
2. Divisional Director Schools (Female),  
Azad Government of the State of  
Jammu and Kashmir, Poonch Division.

....RESPONDENTS

3. Secretary elementary and Secondary  
Education, Azad Government of the  
State of Jammu and Kashmir, having  
his office at New Secretariat,  
Muzaffarabad.

4. Director Public Instructions Schools (Female), Azad Government of the State of Jammu and Kashmir, having his office at Old Secretariat, Muzaffarabad.
5. District Education Officer Schools (Female), Pallandri, District Sudhnoti.
6. National Testing Service Pakistan through its Focal Person, Secretary, Elementary and Secondary Education, Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat, Muzaffarabad.
7. Selection Committee through its Chairperson/Divisional Director Schools (Female), Azad Government of the State of Jammu and Kashmir, Poonch Division, Rawalakot.

....PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 17.07.2018 in writ petition No.1476 of 2017 and writ petition No.605 of 2018)

FOR THE APPELLANT:	Sardar Hameed Advocate.	Abdul Khan,
FOR THE RESPONDENTS:	M/s Nazia,	Saeed,

Advocate and  
Mehmood Hussain  
Ch., Addl. Advocate-  
General.

Date of hearing: 03.04.2019

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**— This appeal by leave of the Court has been directed against the judgment of the High Court dated 17.07.2018, whereby the writ petition filed by respondent No.1, herein, has been accepted, whereas, the writ petition filed by the appellant, herein, has been dismissed.

2. The facts necessary for disposal of this appeal are that the Education Department advertised two posts of *Qaria* (BPS-9), pertaining to constituency No.6, Sudhnoti. Respondent No.1, herein, by filing writ petition challenged the advertisement on the ground that one of the advertised posts pertained to constituency No.5, Sudhnoti which has illegally

been advertised against the quota of constituency No.6. The appellant, herein, by filing writ petition claimed that the Education Department advertised two posts of *Qaria* (BPS-9), and in pursuance of the advertisement she participated in the selection process and got 2<sup>nd</sup> merit position but the concerned authorities did not issue her appointment order without any justification. She sought direction for issuance of her appointment order. The learned High Court consolidated both the writ petitions and after hearing the parties decided the same in the following terms:-

“13. The crux of above discussion is that by accepting writ petition No.1476/2017, the impugned advertisement dated 14.03.2017, is quashed as without lawful authority, hence, having no legal effect, to the extent of one

disputed post of Qaria B-09, and respondents are hereby directed to advertise the same against constituency No.5, within a period of two months and make appointment as per merit. The petitioner Rehana Siddique, being qualified may participate in competitive examination, as per law. However, writ petition No.605/2018 titled Rubila Khanum V. Divisional Director Schools (Female) Poonch Rawalakot, is hereby dismissed....”

Now through the instant appeal by leave of the Court the appellant has challenged the validity of the judgment of the High Court.

3. In the matter in hand during the pendency of appeal an application was moved that the counsel for the appellant, Sardar Abdul Hameed Khan, Advocate, was previously counsel for the respondent, therefore, he cannot represent both sides. On this

application, the learned Advocate in the light of the Court's order filed written reply along with the relevant record of the case referred in the application in which he previously represented the respondent. The written reply is also supported by an affidavit. The perusal of the written reply and the relevant record of the case in which previously the learned Advocate represented the respondent it appears that the controversy involved in the previous matter has no nexus with the case in hand and the objection raised through application is baseless. Thus, by repelling the objection the learned counsel for the appellant was allowed to argue the case. He submitted that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that respondent No.1 by accepting the legality of advertisement dated 15.03.2017,

participated in the selection process and failed to attain the merit position and thereafter she challenged the advertisement, therefore, the writ petition filed by respondent No.1 was hit by the principles of acquiescence, estoppel and *laches* but the learned High Court failed to appreciate this important aspect of the case. He forcefully argued that the appellant participated in the selection process and attained merit position, therefore, she could not be penalized for any fault of public functionary, but this point too escaped the notice of the High Court. He added that after securing the merit position right of appointment against the disputed post was accrued to the appellant which has been violated through the impugned judgment, thus, interference by this Court is warranted under law.

4. On the other hand, Mrs. Nazia Saeed, Advocate, the learned counsel for respondent No.1, strongly controverted the arguments advanced by the learned counsel for the appellant. She submitted that the impugned judgment is perfectly legal which is not open for interference by this Court. She contended that the impugned judgment has been implemented in letter and spirit and this appeal has become infructuous and liable to be dismissed on this sole ground. At this juncture, a query was made to the learned counsel for the appellant in this regard, he submitted that he was not aware about the fact that in pursuance of the direction issued by the High Court the departmental authorities re-advertised the post. He further submitted that this is mockery on the part of the authorities if they advertised the post during the pendency of petition/appeal before this Court.



5. Mr.Mehmood Hussain Chaudhary, the learned Additional Advocate-General adopted the arguments advanced by learned counsel for respondent No.1 and prayed for dismissal of appeal.

6. In the light of the arguments addressed at bar, we have examined the record. In the impugned judgment dated 17.07.2018, a direction was issued by the High Court to advertise the post in question against constituency No.5, within a period of two months. The record shows that the appellant against the judgment of the High Court filed petition for leave to appeal before this Court on 10.09.2018 and this Court vide order dated 13.12.2018 suspended the operation of the impugned judgment, however, the concerned departmental authorities prior to the suspension of the operation of the impugned judgment had already advertised the post in

question on 08.11.2018 in compliance of the direction issued by the High Court. Admittedly, the selection process has also been completed and in consequence thereof a right has been accrued to the successful candidate. In such state of affairs, the stance taken by the counsel for respondent No.1 that after implementation of the impugned judgment this appeal has become infructuous, appears to have substance. As the appellant has not challenged the subsequent advertisement/selection process (published/conducted in the light of the direction issued in the impugned judgment by the High Court) by making amendment, therefore, in view of the succeeding development prayed relief cannot be granted to her. Keeping in view the peculiar facts of the instant case, discussed hereinabove, we do not intend to discuss the

points raised by the counsel for the appellant as the same will be a futile exercise.

This appeal stands dismissed with no order as to costs.

Muzaffarabad,  
\_\_\_ .04.2019

**JUDGE**

**CHIEF JUSTICE**

