

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.137 of 2018
(PLA filed on 04.05.2018)

Shabir Ahmed Qureshi Driver Central
Transport Pool, Muzaffarabad.

....APPELLANT

VERSUS

1. Azad Government of the State of Jammu and Kashmir through Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Secretary Services and General Administration having his office at New Secretariat, Muzaffarabad.
3. Department of Finance through Secretary Finance having his office at New Secretariat, Muzaffarabad.
4. Incharge Central Transport Pool having his office at New Secretariat, Muzaffarabad.

5. Minister Finance of Government of Azad Jammu and Kashmir having his office at New Secretariat, Muzaffarabad.

....PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 19.04.2018 in writ petition No.1549 of 2018)

FOR THE APPELLANT: Mr.Noorullah Qureshi,
Advocate.

FOR THE RESPONDENTS: Raja Ayaz Farid
Khan, Assistant
Advocate-General.

Date of hearing: 04.04.2019

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal by leave of the Court has been directed against the judgment of the High Court dated 19.04.2018, whereby the writ petition filed by the appellant, herein, has been dismissed in limine.

2. The facts as emerged from this appeal are that the appellant, herein, was appointed as Driver in the Central Transport

Pool, vide order dated 04.12.2002. A proposal was sent to the Prime Minister/Chief Executive for up-gradation/re-designation of the post of Driver (BPS-5), held by the appellant, as Supervisor (BPS-11) which was approved. The Secretary Services and General Administration Department wrote a letter to the Finance Department for financial concurrence, however, the same was not accorded. The appellant by filing writ petition sought implementation of the directive issued by the Prime Minister and claimed that non-issuance of the notification in the light of the directive of the Prime Minister is clear violation of the Constitutional provisions. During the pendency of writ petition the order sought to be implemented was reviewed by the Prime Minister. The learned High Court after hearing the parties dismissed the writ petition in limine

vide impugned judgment dated 19.04.2018, hence, this appeal by leave of the Court.

3. Mr. Noorullah Qureshi, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He submitted that during the pendency of writ petition the case was submitted twice before the Prime Minister for review but the same was rejected, thereafter, the Finance Department again referred the matter for review without bringing into the notice of the authority that previously the review has already been rejected. He forcefully contended that when the matter was subjudice before the High Court the Finance Department had no jurisdiction to send the same for review without prior permission of the Court and the authority was also not justified to review the same. The learned counsel referred to and

relied upon the case law reported as *Zaib-un-Nisa v. Tahira Khanum and 5 others* [2015 SCR 860].

4. On the other hand, Raja Ayaz Farid, Assistant Advocate-General, strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. He submitted that the Chief Executive issued an order for creation of a post without getting financial concurrence which was rightly reviewed later on; moreover, the appellant was most junior driver and if he was up-graded then the seniority of the others incumbents was affected. He referred to and relied upon the case law reported as *Azad Jammu and Kashmir Government and 2 others v.*

Khursheed Ahmed Chaudhary [2017 SCR 936]
and prayed for dismissal of appeal.

5. We have heard the arguments and examined the record carefully. The appellant filed writ petition for implementation of the order of the Prime Minister dated 17.01.2014 through which by relaxing the relevant rules approval was accorded for up-gradation/re-designation of the post of Driver (BPS-5), held by the appellant, as Supervisor (BPS-11). It will be useful to reproduce here the relevant order of the Prime Minister which reads as under:-

"مفاد سرکار کے پیش نظر شبیر قریشی ڈرائیور سینئر ٹرانسپورٹ پول BPS-5 کی اسامی کو بطور ٹرانسپورٹ سپروائزر بی پی ایس-11 اپ گریڈ کرنے کی منظوری اور جملہ قواعد میں نرمی کی منظور بھی دی جاتی ہے۔"

مطابق احکام جاری ہوں۔

وزیراعظم"

The Finance Department applied for review of the above referred directive of the Prime

Minister on the ground that the appellant is junior and his up-gradation shall set a bad precedent and shall open floodgate of such case. The relevant portion of the letter of the Finance Department, available at page 30 of the paper book, is as under:-

“2. It is submitted that Mr. Shabbir Ahmed Qureshi is a junior driver and falls on Serial No.54 of seniority list of drivers of Central Transport Pool (Annex “C”). His upgradation shall set a bad precedent and shall open floodgate of such cases.”

After going through the reproduction supra, it becomes clear that the Prime Minister accorded the approval for creation/up-gradation of a post without consultation with the Finance Department and taking into consideration that the rights of the other civil servants of the department, who are senior to the appellant in

the same cadre, will be affected. Thus, such order clearly comes within the purview of a void order which under law could not be implemented. In this regard, the learned Assistant Advocate-General has rightly relied upon the case law reported as *Azad Jammu and Kashmir Government and 2 others v. Khursheed Ahmed Chaudhary* [2017 SCR 936], wherein this Court has held that under the provisions of Rules of Business, 1985, where change in the number or grading of the posts or the terms and conditions of service of Government servants or their rights and privileges which have financial implications are involved the prior consultation with the Finance Department is mandatory and furthermore, a void order of the Prime Minister cannot be implemented under law. For better appreciation the relevant portions of the

referred pronouncement are reproduced here
which read as under:-

"7. ... Rule 15 of the Rules of Business, 1985, postulates that without prior consultation with the finance department no department shall be authorized to issue any order which directly or indirectly affects the finance of the Government. Furthermore, clause (c) of sub-rule (1) of the Rule 15, speaks that the matters where change in the number or grading of the posts or the terms and conditions of service of Government servants or their rights and privileges which have financial implication, are involved the prior consultation with the Finance Department is mandatory....

.....The argument of the learned counsel for the respondent that the Prime Minister being Chief Executive of the State is empowered to accord such approval, cannot be

considered as a valid argument as no one is above law including the President and the Prime Minister. It may be observed here that the persons holding the highest posts of the State should be more careful while dealing with such like matters and they cannot be supposed to violate the rules and regulations. As no justification has come on the record to grant the special treatment to the respondent, therefore, the approval accorded by the worthy Prime Minister cannot be given a legal cover, rather the same comes within the purview of void order which cannot be implemented under law.”

As we have come to the conclusion that the directive for implementation of which the appellant filed writ petition before the High Court was void and could not be implemented; therefore, there is no need to discuss the other points raised by the learned counsel for the

appellant mere for an academic discussion. The learned High Court has rightly dismissed the writ petition in limine and the case law referred to by the appellant's counsel having distinguishable facts and features is not applicable in the case in hand.

For the reason recorded above, we do not find any merit in this appeal. It is accordingly dismissed with no order as to costs.

Muzaffarabad,
___ .04.2019

JUDGE

JUDGE

