

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Ghulam Mustafa Mughal, J

Civil Appeal No. 40 of 2019

(PLA filed on 26.11.2018)

1. Development Authority Muzaffarabad through its Chairman having his office at Tariq Abad Road, Muzaffarabad.
2. Chairman Development Authority, Muzaffarabad having his office at Tariq Abad Road, Muzaffarabad.
3. Assistant Director (Administration) Development Muzaffarabad having his office at Tariq Abad Road, Muzaffarabad.

.....APPELLANTS

VERSUS

1. Raja Shahzad Akhtar S/o Raja Rehmat Ali Khan R/o Upper Plate, Muzaffarabad.

.....RESPONDENT

2. Finance Department Govt. of the State of Azad Jammu & Kashmir, through Secretary Finance of AJ&K Muzaffarabad.
3. Communication and Works Department, Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad through Secretary Communication and Works Department Muzaffarabad.
4. Physical Planning and Housing Department Azad Govt. of the State of Jammu & Kashmir through Secretary Physical Planning and Housing Muzaffarabad.
5. Accountant General AJ&K, Muzaffarabad.
6. Law, Justice, Parliamentary Affairs and Human Rights Department, Azad Govt. of the State of Jammu & Kashmir through Secretary Law

Justice, Parliamentary Affairs and Human Rights Department Muzaffarabad.

7. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary to Azad Govt. Civil Secretariat, Muzaffarabad.
8. Babar Mir Forester, previously, Junior Clerk Development Authority, Muzaffarabad.
9. Manzoor Ahmed, Field Assistant, presently Inspector (Encroachments), Development Authority, Muzaffarabad.

.....PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court dated 26.09.2018 in writ petition No. 48 of 2017]

FOR THE APPELLANTS: Mr. Aftab Ahmed Awan,
Advocate.

FOR THE RESPONDENTS: M/s. Abdul Rashid Abbasi
& M. Dawood Khan Abbasi,
Advocates.

Date of hearing: 09.05.2019

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.– The titled appeal by leave of the Court has been directed against the judgment of the High Court dated 26.09.2018, whereby the writ petition filed by the respondent, herein, has been accepted.

2. The brief facts of the case are that respondent, herein, is an employee of Development Authority, Muzaffarabad. Vide notification dated 21.04.2001, he along with several other employees of

the department were removed from service. The aforesaid notification was challenged by 42 employees by filing three writ petitions before the High Court. The learned High Court vide consolidated judgment dated 07.02.2006, declared the aforesaid removal order to have been passed without lawful authority. In compliance with the judgment of the High Court vide order dated 07.03.2007, all the employees, except those who were adjusted in other departments or proceeded abroad, were reinstated from the date of their removal. It is contended by the respondent that he had never been adjusted in any Government department nor proceeded abroad, however, he was not reinstated in service. The matter went in Courts of law during pendency of which vide order dated 06.06.2016 he was reinstated in service and adjusted to the post of Garden Superintendent. Thereafter, the aforesaid order was cancelled from date of its issuance vide order dated 19.10.2016. Feeling aggrieved, the respondent filed a writ petition before the High Court which has been accepted through the impugned

judgment dated 26.09.2018, hence, this appeal by leave of the Court.

3. Mr. Aftab Ahmed Awan, Advocate, the learned counsel for the appellants after narration of necessary facts submitted that the impugned judgment of the learned High Court is against the law and facts. The respondent by clever tactics has succeeded in obtaining the judgment while concealing the material facts. In the impugned judgment the moot point i.e. validity of reinstatement order dated 06.06.2016 has not been determined, whereas, the same has been agitated in the pleadings of the parties. Same like the other important proposition of laches has also not been properly attended by the High Court. The earlier writ petition (758/2015) filed by the respondent is also the part of the record of writ petition No. 48 of 2017/. He submitted that earlier the writ petition was dismissed on merit and on the same subject, subsequently, the writ petition was not maintainable. This point was specifically raised as preliminary objection No. (iv). Relating to the so called reinstatement order dated 06.06.2016, in reply in the

Para 7, a specific stand has been taken that the said order was not issued by the authority, rather, it was forged and self-prepared of the respondent. Same like the learned High Court has also misconceived the matter of dismissal of petition for leave to appeal by the apex Court. As the said order was on the request of the respondent and through the said order his petition for leave to appeal was dismissed as withdrawn, therefore, dismissal of petition for leave to appeal as withdrawn does not amount to justify the genuineness of the forged order. All these points have not been resolved by the learned High Court.

4. Mr. M. Dawood Khan Abbasi, Advocate appearing on behalf of the proforma-respondents also supported the version of the learned counsel for the appellants.

5. Conversely, Mr. Abdul Rashid Abbasi, Advocate, the learned counsel for the respondent forcefully defended the impugned judgment and argued the case at some length. He referred numerous contents of documents and record. He submitted that the learned High Court has resolved all the

propositions and it has been specifically observed that the subsequent termination order was passed without providing opportunity of hearing. So far as the genuineness of the reinstatement order dated 06.06.2016 is concerned, it is passed and closed matter, because the same has not been objected by the appellants before this apex Court, thus, in this regard, the findings of the learned High Court are quite in accordance with law. He further submitted that the basic judgment of the High Court through which all the employees have been reinstated and only the respondent has been discriminated. He further argued that the appellants-authority has only adapted the hostile attitude against the respondent merely to accommodate some their favourites against the post of the respondent and just for the protection of ill-gotton gains of such person, the respondent has been made rolling stone and deprived him from his legal vested rights. Therefore, this appeal has no substance.

6. We have considered the arguments of the learned counsel for the parties and examined the record made available. In our considered opinion, in

this case, in view of the pleading of the parties and previous litigation history, there are two vital legal propositions which have not been properly attended and decided by the learned High Court. The first is the effect of the decision of the writ petition No. 758 of 2015 in the light of the clear stance taken in the writ, for convenience, the averred facts are summarized in para 4 which are reproduced as follows:-

“That after the termination dated 21.04.2001 the petitioner become jobless, in this connection the petitioner got an opportunity of work in Pakistan to make the relation of the Bread and Butter of the family. The petitioner is a very poor person and supporting his family alone and also the wife of the petitioner under treatment in Shoukat Khanum Cancer Hospital Lahore (Medical reference No. 101828) from 2011 to date. It is very important to mention here that due to the unavoidable circumstances and cancer problem of the petitioner’s wife, the petitioner has evacuated Muzaffarabad and shifted to Lahore for the treatment of wife and due to jobless condition has to live in Lahore.”

This writ petition was filed on 22.04.2015 and ultimately dismissed on merit by the learned High

Court on 15.03.2016. Whether in presence of such decision, the subsequent writ petition on the same subject is competent or not.

Same like, the other moot point which goes to the root of the case is the genuineness of the alleged reinstatement order dated 06.06.2016 regarding which the appellants, herein, have taken a specific stand in their pleadings that the alleged order is tempered and bogus and the learned High Court has not attended and resolved this legal and factual proposition according to the pleading of the parties and material brought on record.

7. So far as the arguments of the learned counsel for the respondent that the reinstatement order dated 06.06.2016 has been affirmed by this Court while deciding the Civil Petition for leave to appeal No. 180 is concerned, in our opinion, the order passed is speaking one and it is expressly recorded that on request of the learned counsel for the petitioner (therein), the petition for leave to appeal is dismissed as withdrawn. As the petition has not been decided on merit, thus, the dismissal of the same as

withdrawn on the request of the petitioner does not mean that the genuineness of the alleged reinstatement order has been determined or confirmed by this Court or stood admitted by the other party. Therefore, in our considered view, these vital propositions require thorough and comprehensive deliberation and findings of the learned High Court. Without having first wisdom of the High Court, if the propositions are directly decided by this Court, it may amount to deprive any of the party from the right of appeal.

Therefore, for the above stated reasons, while setting aside the impugned judgment, accepting this appeal, the writ petition is remanded to the learned High Court to rehear the parties and decide afresh while attending all the propositions raised by the parties specially, the abovementioned propositions.

With these observations, this appeal stands disposed of.

CHIEF JUSTICE

JUDGE
(J-II)

Muzaffarabad,
09.05.2019

