

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No. 62 of 2019

(PLA Filed on 5.12.2018)

1. Secretary Higher Education, Azad Government of the State of Jammu & Kashmir having his office at New Secretariat, Muzaffarabad.
2. Azad Govt. of the State of Jammu & Kashmir, through Chief Secretary having his office at New Secretariat Muzaffarabad.
3. Director Education Colleges, Azad Govt. of the State of Jammu & Kashmir having his office at New District Complex, Muzaffarabad.
4. Chairman Public Service Commission, Azad Govt. of the State of Jammu & Kashmir having his office at New District Complex, Muzaffarabad.
5. Secretary Public Service Commission, Azad Govt. of the State of Jammu & Kashmir having his office at New Secretariat, Muzaffarabad.

.... APPELLANTS

VERSUS

1. Kishwar Anjum Abbasi d/o Muhammad Server Abbasi, Ad-hoc Lecturer Urdu, presently posted at Govt. Post Graduate College, Bagh Azad Kashmir.

..... RESPONDENT

2. Secretary Education Schools, Azad Govt. of the State of Jammu & Kashmir having his office at New Secretariat, Muzaffarabad.
PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 6.8.2018 in Writ Petition No. 1345 of 2012))

FOR THE APPELLANT: Syed Ashfaq Hussain
 Kazmi, Advocate.

FOR THE RESPONDENTS: Ch. Shabir Ahmed,
 Advocate.

Date of hearing: 14.5.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal arises out of the judgment dated 6.8.2018 passed by the Azad Jammu & Kashmir High Court in Writ Petition No. 1345 of 2012.

2. The precise facts forming the background of the captioned appeal are that the Azad Jammu & Kashmir Public Service Commission issued advertisement No. 1/2009, whereby the applications were called for appointment of Lecturer including Lecturer

Urdu-B-17. One post was allocated against the quota of District Bagh. Among others the respondent, herein, participated in the test and interview but could not attain the merit position. She was placed at serial No. 4 of the waiting list. It was alleged that some posts were available at the time of the advertisement but have been withheld by the department and if the same were sent to the Public Service Commission, the respondent would have been amongst the selected candidates. The writ petition was contested by the respondents, whereby the claim of the petitioner was refuted and it was stated that the respondent, herein, was not on merit and only one post was advertised. It was further stated that some posts were advertised subsequently but those were withdrawn from Public Service Commission and the candidates from the general order of merit have been adjusted. It was stated that as the respondent was not on merit, therefore, she could not have been adjusted. It was

categorically stated that no post was available despite that the learned High Court after hearing the parties has issued direction for appointment of respondent, herein, through the impugned judgment.

3. Syed Ashfaq Hussain Qazmi, the learned Advocate appearing for the appellants has argued with vehemence that the appointment was claimed by the respondent, herein, in college department but the Secretary Colleges was not impleaded in line of respondents, therefore, the proper comments were not filed and impugned judgment has been given in absence of necessary party. The learned Advocate argued that subsequently through advertisement No. 2/2010 some posts were advertised but no post of Lecturer Urdu was allocated against the quota of District Bagh. The learned Advocate further argued that the impugned judgment was announced in absence of the parties rather the learned Judge in the High Court has directed that the parties may be

informed through notice. He submitted that no notice was served upon the respondents personally regarding the announcement of the judgment and the appellants came to know about the judgment only when the respondent moved the Secretary Higher Education for her appointment in light of the Court order. Thereafter, necessary approval for filing the leave to appeal was obtained. The copies were also applied and received. The learned Advocate argued that the petition is within limitation from the date of knowledge. The learned Advocate argued that even otherwise the judgment has been given in vacuum because no any figure and data has been placed before the Court regarding the withheld posts. He argued that the direction could not be given even otherwise because the merit list is valid only for a period of 6 months and the writ has been filed by the respondent before the High Court on 6.7.2012, whereas the merit list was issued on 19th October, 2010.

4. Ch. Shabir Ahmed, the learned Advocate appearing for the respondent argued that the Government was impleaded as party, therefore, the Secretary Higher Education was no more necessary party. He submitted that the respondent was appointed on ad-hoc basis vide notification dated 22.4.2003 and her ad-hoc appointment has been extended from time to time. It was next argued by the learned counsel that in the year 2009 the Public Service Commission advertised a post of Lecturer Urdu against the quota of District Bagh. He submitted that the name of the respondent was placed at serial No.4 of the merit list but the same post was intentionally withheld by the appellants, herein, therefore, the respondent could not be adjusted due to mala-fide act on the part of the appellants, herein. The learned Advocate in support of his submission has placed reliance on the following cases:-

1. PLJ 2013 SC (AJK) 83;
2. Secretary Education Elementary and Secondary Schools and others vs.

Syeda Alia Kazmi (Civil Appeal No .154 of 2016 decided on 22.2.2017); and

3. Azad Government and others vs. Muhammad Javed Khan and others (Civil Appeal No. 23 of 2012 decided on 11.10.2012).

The learned Advocate further argued that the appeal is hopelessly time barred because the judgment was announced on 6.8.2018 and the petition for leave to appeal has been filed on 5.12.2018 without any explanation, therefore, the same is liable to be dismissed without attending the merits of the case.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. Firstly, we would like to take-up the objection regarding the maintainability of the appeal on the question of limitation. A perusal of the record reveals that the office has reported that the appeal is time-barred by 61 days and the appellants, herein, have filed an application for condonation of delay. A perusal of the file of the High Court reveals that the arguments in the case before the

High Court were heard on 20.7.2018 and the judgment was reserved. On 6.8.2018 it was directed by the learned Judge seized with the case that the judgment is signed and the office is directed to apprise the learned counsel for the parties accordingly. A perusal of the record reveals that no notice is available on the original file, which means that the notice has not been given as was directed by the learned Chief Justice of the High Court, therefore, the stand taken by the appellants, herein, that they received the knowledge about the judgment when the respondent, herein, applied for her appointment, cannot be brushed aside rather is acceptable. The delay thereafter has been explained properly and the appeal before this Court though is time barred but is within limitation from the date of knowledge. There is an additional reason for condonation of delay that the Secretary Colleges, who was necessary party, is not impleaded in line of respondents. He has to file the written statement on behalf of

the Government and was also in possession of the relevant facts and figures. The respondent, herein, deliberately impleaded the Secretary Education Schools in line of respondents although he has applied for the post of Lecturer Urdu. The person who is not party in the case can file appeal competently within a reasonable time as has been held in the case reported as *Muhammad Naseer Jahangiri and 13 others vs. Abdus Sami Khan and another* (1997 SCR 26). The objection regarding the limitation is, therefore, overruled. It has rightly been argued by Syed Ashfaq Hussain Kazmi, the learned Advocate for the appellants that the merit list remains valid for a period of 180 days. In the present case, the merit list was issued by the Public Service Commission on 19th October, 2010, whereas, the writ petition has been filed before the Azad Jammu & Kashmir on 6.7.2012 almost after a period of 2 years. Thus, at the time of filing of writ petition the merit list was dead and no more valid, therefore, no writ could

have been filed. Similarly, the direction could also not be issued. We have also noticed that no any data regarding the withheld posts is furnished before the High Court. A bare statement of a candidate regarding withholding of post is not sufficient until and unless the breakup of the posts is given. We are not convinced with the reasons listed by the learned High Court for acceptance of writ petition in paragraph No. 8 of the impugned judgment as under:-

“8. As per record, petitioner qualified test and interview, conducted by the Public Service Commission, who was placed at serial No. 4 of the waiting merit list pertaining to quota of District Bagh. The first three candidates have already been appointed by respondents. The petitioner is, therefore, entitled to equitable relief of writ jurisdiction accordingly.”

A perusal of the above would show that no reason has been recorded. No material is placed on the record that the candidates listed a-head

to the respondent in the general order of merit was appointed or not.

In view of the above, we are constrained to accept the appeal and set aside the impugned judgment dated 6.8.2018 of the learned High Court passed in writ petition No. 1345 of 2012. Resultantly, writ petition No. 1345 of 2012 filed by the respondent, herein, stands dismissed with no order as to costs.

JUDGE

Muzaffarabad.
15.5.2019

JUDGE.