

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.225 of 2018
(PLA filed on 08.05.2018)

Syed Nazakat Hussain Shah s/o Syed Kabir Hussain
Shah, sub-Inspector, Police Department, Azad Jammu
& Kashmir

.... APPELLANT

VERSUS

1. Zeeshan Azam s/o Muhammad Azam, caste
Gujjar, r/o Mangat Kalar, Tehsil Kamoke, District
Gujranwala, Punjab Pakistan.

.....RESPONDENT

2. Azad Jammu & Kashmir Government through its
Chief Secretary, Azad Jammu & Kashmir having
his office at New Secretariat, Muzaffarabad.
3. Inspector General of Police, Azad Jammu &
Kashmir having his office at New Secretariat,
Complex, Chatter, Muzaffarabad.
4. Superintendent Police, District Bagh, Azad
Kashmir.
5. Public Service Commission, Azad Jammu &
Kashmir through its Chairman, having his office
at Jalalabad, Muzaffarabad.
6. Selection Committee for appointment of Assistant
Sub-Inspectors Police through Secretary Public
Service Commission Azad Jammu & Kashmir
having his office at Jalalabad, Muzaffarabad.

7. Deputy Commissioner, District Bagh, Azad Jammu & Kashmir.
8. Assistant Commissioner, District Bagh, Azad Jammu & Kashmir.
9. Deputy Commissioner, Rehabilitation having his office at Mirpur Azad Kashmir.
10. Registrar Central Police Office, Azad Jammu & Kashmir
11. Ehtesab Bureau, Azad Jammu & Kashmir through its Chairman, having his office at New Secretariat Complex, Chatter, Muzaffarabad.

.....PROFORMA-RESPONDENTS

(On appeal from the judgment of the High Court dated 20.04.2018 in Writ Petition No.2061 of 2016)

FOR THE APPELLANT:

Ch. Shoukat Aziz,
Advocate.

FOR THE RESPONDENTS:

M/s Sardar Amjad Aslam
Khan, Chief Prosecutor
Ehtesab Bureau, Abdul
Rashid Abbasi and Saqib
Javed, Advocates.

Date of hearing: 17.04.2019

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been filed against the judgment dated 20.04.2018,

passed by the Azad Jammu & Kashmir High Court in Writ Petition No.2061/2016.

2. The facts forming the background of the captioned appeal are that the Public Service Commission through advertisement dated 08.04.2008, advertised 53 posts of Assistant Sub-Inspector out of which 15 posts were reserved for the quota of refugees settled in Pakistan. Later on, the number of the posts was reduced and total 44 posts were advertised out of which 12 posts were allocated against the quota of the refugees settled in Pakistan. Amongst others, the appellant, herein, applied against advertised posts reserved for the refugees' quota and participated in the test and interview. After the test and interview, a merit list was prepared, wherein, the appellant, herein, was placed at serial No.11. The Public Service Commission issued a handout on 04.01.2011, whereby, the appellant, herein, was

declared successful candidate, hence, was appointed as Assistant Sub-Inspector vide order dated 24.05.2011. The respondent, herein, challenged the appointment order of the appellant, herein, dated 24.05.2011 through a writ petition on 30.06.2016. It was stated that the appellant, herein, is not a refugee settled in Pakistan and he has been selected on the basis of forged and fabricated documents i.e. domicile and State Subject Certificate. It was alleged that the appellant, herein, was a refugee settled in District Bagh, Azad Kashmir and could not obtain merit position against the quota reserved for refugees settled in Pakistan. It was further alleged that the domicile issued in favour of the appellant, herein, by the District Coordination Officer Attock on 15.05.2008 was illegal and fraudulent as the appellant, herein, admittedly obtained the State Subject Certificate on

13.05.2008 which shows that he is a resident of village Chatter, Tehsil Bagh. The writ petition was contested by the other side by filing comments/written statement whereby, the claim of the petitioner/respondent, herein, was refuted. It was stated that the petitioner/respondent, herein, after becoming unsuccessful to get the merit position has filed a baseless writ petition which may be dismissed. The learned High Court, after necessary proceedings, through the impugned judgment dated 20.04.2018, has accepted the writ petition and while setting aside the appointment order of the appellant, herein, dated 24.05.2011, ordered the official-respondents, therein, to appoint Zeeshan Azam, respondent, herein, as Assistant Sub-Inspector.

3. Ch. Shoukat Aziz, the learned Advocate appearing for the appellant, argued that the appellant, herein, admittedly is a refugee from

the Occupied part of Kashmir. He is settled in village Jaffar, District Attock, Pakistan and has rightly applied for appointment as Assistant Sub-Inspector against the quota reserved for refugees settled in Pakistan. The learned Advocate further argued that respondent, herein, who could not qualify for appointment as Sub-Inspector, filed a writ of quo-warranto as well as mandamus with *mala fide* intention for quashment of the appointment of the appellant, herein, and has also sought a direction for his appointment. The learned Advocate further argued that the writ petition was liable to be dismissed solely on the ground that move of the respondent, herein, was not *bona fide* because through the same writ petition he has prayed relief for himself. The learned Advocate further argued that the appellant, herein, has not committed any fraud or forgery, whereas, fact of the matter is that he

obtained domicile certificate from District Bagh where his parents are allegedly settled after migration. The learned Advocate submitted that the respondent, herein, did not raise objection before the Public Service Commission and subsequently before the authority, hence, he was not entitled to raise the same after appointment on the ground of estoppel and acquiescence. The learned Advocate further submitted that if it is assumed for the sake of arguments that the appellant, herein, could not legally apply for appointment against the quota reserved for refugees settled in Pakistan even then wrong can be rectified by transferring his quota against District Bagh and he can be saved from hardships which occurred due to the fact that the appellant, herein, considering himself as bona fide refugee settled in Pakistan, applied against the said quota and was appointed as such. In support of his

submissions, the learned Advocate placed reliance on the cases reported as *Bashir Ahmed & 25 others vs. Azad Govt. & 19 others* [2018 SCR 195], *Mst. Nafeesa Manzoor vs. AJ&K University & 7 others* [2016 SCR 304], *Alam Din vs. Mayor, Municipal Corporation Mirpur & 4 others* [1999 SCR 343] and *Azad Govt. & 3 others vs. Genuine Rights Commission AJK and 7 others* [1999 SCR 1].

4. Conversely, Mr. Abdul Rashid Abbasi, the learned Advocate appearing for the other side argued that the appellant, herein, obtained State Subject certificate from District Bagh showing himself a permanent resident of the said District, whereas, the refugees settled in Pakistan obtain domicile from Deputy Commissioner Mirpur as per Govt. notification. The learned Advocate submitted that after migration the father of the appellant,

herein, got settled in Bagh Azad Kashmir and was also allotted land in the said district, therefore, in view of the Govt. notification dated 24.08.1972, he would be deemed refugee settled in AJ&K. The learned Advocate further argued that that the land measuring 53 *kanal*, 10 *marla* was allotted to the father of the appellant, herein, in District Bagh Azad Kashmir and his younger brother has obtained Govt. service against the quota of said District and was appointed as Assistant Commissioner, therefore, it cannot be said that the appellant, herein, by any stretch of imagination is refugee settled in Pakistan, hence, cannot apply against the said quota and all the proceedings conducted by the Public Service Commission for his appointment are illegal which cannot be saved on any ground. The learned Advocate

further argued that fraud vitiates most solemn proceedings and no one can be allowed to reap fruits on its own fraud, that too, in writ jurisdiction. In support of his submissions, the learned Advocate placed reliance on the cases reported as *Maria Tazarrat vs. Abid Hussain Dar and 5 others* [PLD 2006 SC (AJ&K) 10], *Muhammad Akram and another vs. Custodian of Evacuee Property & 7 others* [2003 SCR 442], *Muhammad Ayub and 4 others vs. Muhammad Fazil and 17 others* [2004 SCR 452], *Umar Hayat vs. Azad Govt. and 3 others* [1999 SCR 243], and *Miss Shahida Bano vs. Azad Govt. 5 others* [1997 SCR 301].

5. We have heard the learned counsel for the parties and have gone through the record of the case. A perusal of the record reveals that AJ&K Public Service Commission

advertised 44 posts of Sub-Inspectors vide advertisement No.1/2008, dated 08.04.2008, published in daily '*Jung*'. Out of the advertised posts, 14 were allocated to the quota of refugees settled in Pakistan. The appellant, herein, applied against the said quota and succeeded in getting appointment vide notification dated 24.05.2011 and joined his duty. The appointment of the appellant, herein, was challenged through writ petition under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, on 20.06.2016 on the ground that the father of the appellant, herein, is a refugee settled in AJ&K, therefore, the appellant, herein, was not eligible to apply against the quota reserved for refugees settled in Pakistan. A direction was also sought by the petitioner/respondent, herein, for his

appointment. The contention of Ch. Shoukat Aziz, Advocate, that the appellant was entitled to apply against the quota of refugees settled in Pakistan is devoid of any force. Admittedly, the father of appellant, herein, has been allotted land measuring 53 *kanal*, 10 *marla*, in District Bagh AJ&K, as is evident from proprietary rights transfer order Nos. 42 and 42 dated 28.06.1993 which leads to the conclusion that after migration, the father of the appellant, herein, got settled in AJ&K, therefore, the appellant cannot be considered refugee settled in Pakistan. The other contention of the learned counsel for the appellant that the respondent, herein, was not aggrieved as he has not qualified the test and interview for appointment as Assistant Sub-Inspector against the quota of refugees settled

in Pakistan is also not correct. Fact of the matter is that if direction cannot be given for appointment of the respondent, herein, even then he is aggrieved person and can ask the Court to re-advertise the post, so, he may get right to compete against the post vacated by the appellant, herein. It has been observed by this Court in various cases that to qualify an aggrieved person, it is not necessary that a right in the strict juristic sense must be in the possession of a petitioner. If a person has tangible interest in the case, he can seek remedy against respondent(s) to act in accordance with law and would be considered as an aggrieved person for the purpose of filing writ petition under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974. The next contention of Ch. Shoukat Aziz,

Advocate, that the respondent, herein, was not an aggrieved person as he sought relief for himself in a writ of quo warranto has also not substance in it. Ordinarily, a person who files a writ of quo warranto, is supposed to file the same for *bona fide* reasons and supremacy of law but in a recent judgment rendered in Muhammad Yaqoob Khan's case [1999 SCR 404], this Court has held that a writ of quo warranto can be filed by an aggrieved person. The relevant observation is reproduced as under:-

“another observation made under Raja Muhammad Azad's case seems to be relevant here. We have already noted that the appellant in that case challenged the authority of a successor to hold the post of Registrar which tended to show that the aforementioned appointee was aggrieved by his transfer but this was not treated as hindrance in the way of filing a writ of quo

warranto. In the present case, the position is the same. Since a writ of quo warranto can be filed by any person, it follows that even an aggrieved person can file a writ of quo warranto. The only condition is that the petitioner in a writ of quo warranto cannot get any relief for himself. The conclusion, therefore, is that the view taken by the High Court is not sustainable and we have no hesitation in vacating it. The correct legal position is that the quo warranto writ filed by the appellant was maintainable in the High Court.”

As we have reached the conclusion that the appellant, herein, is not a refugee settled in Pakistan, hence, was not entitled to apply against the said quota, therefore, the recommendations made by the Public Service Commission in his favour and subsequently the appointment order dated 24.05.2011 is null and void. However, as no proof for qualifying the test and interview has been placed before

the High Court and the respondent, herein, is not listed in the successful candidates of the quota of refugees settled in Pakistan, therefore, High Court should not have issued the direction for his appointment in vacuum.

The upshot of the above discussion is that this appeal is partly accepted in the manner that the direction issued by the High Court to appoint the respondent, herein, is set aside, instead, it is directed that the post vacated by the appellant, herein, shall be re-advertised and appointment shall be made in accordance with law. With above modification the impugned judgment is maintained.

Muzaffarabad.
19.04.2019.

JUDGE

J-II

JUDGE

J-I