

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Review Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Civil Review No. 38 of 2018

(Filed on 06.12.2018)

Syed Zahoor Hussain Shah, Stenographer, B-14,
Department of Wildlife & Fisheries Muzaffarabad.

.....PETITIONER

VERSUS

1. AJK Govt. through its Secretary Forest, Wildlife & Fisheries having its office at new Secretariat Complex Muzaffarabad.
2. Rules Committee through its Chairman, Additional Chief Secretary (General) having his office at New Secretariat Muzaffarabad.
3. Secretary Services & General Administration Department, having his office at New Secretariat Complex Muzaffarabad.
4. Secretary Forest, Wildlife & Fisheries having his office at New Secretariat Complex Muzaffarabad.
5. Selection Board No. 3 through Secretary Forest, Wildlife & Fisheries having his office at New Secretariat Complex Muzaffarabad.
6. Director Wildlife & Fisheries, having his office at F-Block New District Complex Muzaffarabad.
7. Syed Abid Hussain Shah, Head Clerk Fisheries & Wildlife Department Muzaffarabad.
8. Muhammad Sadiq Tareen, Head Clerk Fisheries & Wildlife Department Muzaffarabad.
9. Tariq Mehmood, Head Clerk Fisheries & Wildlife Department Muzaffarabad.

.....RESPONDENTS

[In the matter of review of the judgment of this Court dated 07.11.2018 in Civil PLA No. 430 of 2018]

FOR THE PETITIONER: Syed Asim Masood Gillani, Advocate.

FOR THE RESPONDENTS: Mr. M. Maqsood Ahmed Sulehria, Advocate.

Date of hearing: 02.04.2019.

ORDER:

Ch. Muhammad Ibrahim Zia, C.J.—This petition has been filed for review of judgment of this Court dated 07.11.2018, whereby the petition for leave to appeal filed by the petitioner, herein, has been dismissed.

2. The brief facts of the case are that the petitioner, herein, filed an appeal in the Service Tribunal claiming therein that he is a permanent civil servant and presently serving as Stenographer in AJK Wildlife & Fisheries Department. In the past, the Tourism, Wildlife & Fisheries were combined Departments and the post of Superintendent was not existing at the time while the post for promotion amongst the Stenographers and Head Clerks had been promoted as Admin Officer. In the

year, 2003 vide Notification dated 09.07.2003, Wildlife & Fisheries was formed as separate functional unit. In 2004, a post of Superintendent in Mangla Dam on the strength of Wildlife & Fisheries Department was created against which one Syed Imtiaz Hussain Naqvi Head Clerk was promoted as Superintendent vide Notification dated 06.08.2005. The rules known as Forestry, Fisheries and Wildlife were framed vide notification dated 18.04.2008 wherein the post of Superintendent BPS-16 had to be filled by promotion on the basis of seniority-cum-fitness from amongst the stenographer in BS-12 and Head Clerks/ Accountants B-11 with 5 & 6 years service respectively in the Department. Vide notification dated 13.05.2013, the post of Stenographer B-12 was up-graded to BPS-14 and vide Notification dated 03.04.2015, the post of Superintendent BPS-16 was up-graded to BPS-17. Later on, vide Notification dated 03.06.2016, the post of Head Clerk BPS-14 was up-graded to BPS-16. A post of Superintendent B-17 fell vacant due to demise of one Syed Imtiaz Hussain Naqvi. The

department submitted a working paper to the respondent No. 4 in order to fill the post of Superintendent B-17 under departmental rules 2009 wherein the name of the petitioner was also included. The matter was referred to the Selection Board but the said Board did nothing. The post of Superintendent was upgraded from BPS-16 to BPS-17, whereby, the department submitted the proposed Rules for making amendment in regard with the upgraded posts and an amendment was introduced in Azad Jammu & Kashmir Fisheries and Wildlife Department Service Rules, 2008 regarding the up-graded posts vide Notification dated 15.01.2018. In the amended Rules, the post of Superintendent B-17 is to be filled in by promotion on the basis of seniority-cum-fitness from amongst Head Clerks B-16, 5 years' service in the department and the post of Stenographer has been excluded without any legal justification whereby the petitioner has been deprived of his right to promotion, whereas, he is the senior most employee of the Department and is entitled for

promotion against the post of Superintendent BPS-17. The impugned rules have been framed with mala-fide intension just to deprive the petitioner from his right of promotion. The post of Superintendent BPS-17 fell vacant in 2015. The Department sent the working papers as well wherein the name of the petitioner was also included and he could have been promoted against the post of Superintendent BPS-17 according to the Rules in vogue at that time but the promotion has not been made according to the working paper and now the amendment has been made in the Rules just to deprive the petitioner from his right to promotion. The terms and conditions of the petitioner's service have badly been affected by issuance of the rules regarding the post of Superintendent BPS-17. The learned Service Tribunal after necessary proceedings dismissed the appeal through impugned judgment. Against the said judgment, the petitioner, herein, filed a petition for leave to appeal before this Court. This

Court vide its order dated 07.11.2018 has also dismissed the petition, hence, this review petition.

3. Syed Asim Masood Gillani, Advocate, the learned counsel for the petitioner after narration of necessary facts submitted that leaving aside all other facts and proposition the important aspect of the matter which escaped the sight of learned Service Tribunal as well as this Court is that the working paper for promotion against the post of Superintendent B-17 was sent to the authority on 03.06.2016 according to the rules enforced at the relevant time but the contesting respondents with mala fide intention filed a writ petition to set-aside the promotion proposal and meanwhile they maneuvered for amendment in the impugned rules. The important proposition whether the matter of promotion already submitted to the department has to be finalized according to the rules enforced at the relevant time or on the basis of subsequently amended rules, is of public importance which has not been properly resolved by this Court. Hence, admission of the review petition is justified.

4. Conversely, Mr. Muhammad Maqsood Ahmed Sulehria, Advocate, the learned counsel for the contesting respondent opposed the petition on the ground that neither the point argued by the counsel for the petitioner has been seriously raised nor argued during hearing of the petition for leave to appeal. Moreover, it has no nexus with the case in hand. The judgment under review is quite in accordance with law. The petitioner has failed to point out any error or mistake apparent on the face of record, therefore, this review petition is liable to be dismissed.

5. I have heard the learned counsel for the parties and gone through the record made available. Although, *prima facie* no error or mistake apparent on the record has been pointed out but the argument that the legal proposition of public importance, as raised by the counsel for the petitioner, remained unattended by the learned Service Tribunal as well as this Court; in my opinion, to some extent has substance. Therefore, for doing complete justice this review petition is

admitted for regular hearing. The parties are directed to file detailed arguments and documents. After completion of record, the file shall be placed before the Court on _____.

Muzaffarabad.
06.04.2019

CHIEF JUSTICE