

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 81 of 2019

(PLA Filed on 17.12.2018)

Umar Mehmood s/o Mehmood Khan, Nursery
Man B-1 Bagh Division Forests Department
Bagh, Azad Kashmir.

.... APPELLANT

VERSUS

1. Minister for Forests, Wild Life and Fisheries, Azad Govt. of the State of Jammu & Kashmir having his office at Minister Block Chatter Muzaffarabad.
2. Chief Conservator Forests, Azad Govt. of the State of Jammu & Kashmir having his office at Bank Road Muzaffarabad.
3. Conservator Forests Poonch Circle Rawalakot.
4. Divisional Forests Officer District Bagh, Azad Kashmir.
5. Selection Committee for Appointment of Nursery Man B-1 through its Chairman Deputy Conservator Forests District Bagh, Azad Kashmir.

..... RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 20.10.2018 in Service Appeal No. 1017 of 2017)

FOR THE APPELLANT: Sardar M.R. Khan,
Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Hanif Khan
Minhas, Advocate.

Date of hearing: 10.4.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 20.10.2018 passed by the Azad Jammu & Kashmir Service Tribunal in service appeal No. 1017 of 2017.

2. The facts forming the background of the captioned appeal are that the appellant, herein, filed an appeal before the Azad Jammu & Kashmir Service Tribunal on 21.9.2017, alleging therein that he is a permanent employee of the Forests Department and serving as Nursery Man in grade B-1. It was further alleged that the official respondents advertised one post of Nursery Man B-1 for constituency No. LA-15, Bagh, vide advertisement dated 3.5.2016 and in response to said advertisement, the appellant applied and appeared before the Selection

Committee for interview. It was alleged that after the interview, the merit list was prepared wherein the appellant was placed at serial No. 1. Later on, on the recommendations of the respective selection committee, the appellant was appointed as Nursery Man B-1 vide order dated 11.5.2016. It was further alleged that in compliance of the aforesaid appointment order the appellant submitted his joining report and was allowed to join his duty. It was averred that during the service, the appellant came to know that the respondents are going to cancel his appointment order, so in view of this apprehension the appellant filed a writ petition before the Azad Jammu & Kashmir High Court. When the respondents filed their comments on 7.10.2016 before the High Court, the impugned order came into the knowledge of the appellant on 26.7.2016. It was alleged that the official respondents through order dated 7.10.2016 has cancelled the appointment order of the appellant dated 11.5.2016. It was alleged that the terms

and conditions of the service of the appellant have been badly affected, therefore, the order dated 7.10.20106 is liable to be set aside. The appeal was admitted for regular hearing and the learned Service Tribunal sought comments/objections from the respondents. The official respondents filed comments on 6.12.2017, wherein it was stated that one Muhammad Mushtaq who was earlier promoted to the post of Forest Guard and due to his promotion the post of Nursery Man B-1 fell vacant, against which the appellant has been appointed. It was further stated that Muhammad Mushtaq did not fulfill the required qualification for the post of Forests Guard, therefore, he has been restored against his original post of Nursery Man B-1 and as there was no independent post of Nursery Man, hence, the impugned order has rightly been issued as two employees are not entitled to get the salary against one post. The learned Service Tribunal after hearing the parties through the

impugned judgment dated 20.10.2018 has dismissed the appeal.

3. Sardar M.R. Khan, the learned Advocate appearing for the appellant has argued with vehemence that the appellant was appointed as Nursery Man B-1 in the Forests Division Bagh against a vacant post after due process of law vide order dated 11.5.2016 and he joined his duty. The learned Advocate argued that the promotion of Muhammad Mushtaq against whose post the appellant, herein, was appointed, was cancelled by the Minister for having been made in violation of rules vide order dated 7.12.2016, resultantly the appointment of the appellant was cancelled through the same order. The learned Advocate argued that the appellant challenged the legality and correctness of order dated 7.10.2016 through an appeal before the Azad Jammu & Kashmir Service Tribunal, which was contested by the respondents. He argued that during the pendency of the appeal, the Forests Department

recalled his order dated 7.10.2016 to the extent of Muhammad Mushtaq, Forest Guard vide order dated 3.4.2018. The order dated 3.4.2018 was brought into the notice of the Service Tribunal, upon which the learned Service Tribunal has held that the appeal has become infructuous. The learned Advocate argued that it is given an impression that the service of the appellant has been terminated and the department is not going to adjust him.

4. Conversely, Mr. Muhammad Hanif Khan Minhas, the learned Advocate appearing for the respondents has argued that the appellant was appointed on temporary basis and he has been relieved from service after passing the order of the Minister and his appeal has rightly been declared infructuous by the learned Service Tribunal. He defended the impugned judgment and prayed for dismissal of the appeal.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. A perusal of the record

reveals that a post of Nursery Man B-1 was advertised vide advertisement dated 3.5.2016. According to merit list placed on the record as annexure "PA/1" dated 9.5.2016, the petitioner-appellant secured merit position and was appointed as Nursery Man B-1 vide order dated 11.5.2016. He submitted his joining report on the same date, however, on 7th October, 2016 when the appointment order was acted upon the Minister Forests cancelled the promotion of one Muhammad Mushtaq against whose post fell vacant and was advertised and the appellant, herein, was appointed. On the same order further proceedings were asked to be taken by the Chief Conservator Forests. It appears that no specific order for termination of the appellant, herein, was passed; however, he was not allowed to perform his duty. Vide order dated 3.4.2018 the Minister Forests cancelled his earlier order dated 7.10.2016, resultantly, the promotion as well as the appointment of one Muhammad Mushtaq stood restored. In such state of affairs,

the appellant has not been terminated and would be deemed to be on duty in absence of specific order. The Advocate representing the respondents was confronted with the situation and was asked to produce or refer any order regarding the termination of the appellant, but in vain. The Forests Minister, even otherwise, under the rules has no authority to cancel any promotion or appointment order, therefore, we accept the appeal of the appellant and modify the judgment of the Service Tribunal dated 20.10.2018 in the terms that the appeal of the appellant before the Service Tribunal would be deemed to have been accepted and the appellant would be treated as on duty.

JUDGE

CHIEF JUSTICE

Muzaffarabad.
11.4.2019.

