

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(APPELLATE JURISDICTION)

**PRESENT:**

**Ch. Muhammad Ibrahim Zia, C.J.**

**Ghulam Mustafa Mughal, J.**

Civil Appeal No.12 of 2019  
(PLA filed on 15.11.2018)

Effat Chaudhary d/o Taj Din, r/o Palhot, Union Council Kai Manja, p/o Garhi Dupatta, Tehsil and District Muzaffarabad.

....APPELLANT

**VERSUS**

1. Education Department, Elementary and Secondary through its Secretary, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat, Muzaffarabad.
2. Secretary Education, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat, Muzaffarabad.
3. District Education Officer (Female), Elementary and Secondary Education, Muzaffarabad.
4. Selection Committee through its Chairman for the selection of Primary Teacher, District Muzaffarabad.
5. Deputy Commissioner, Muzaffarabad.
6. Assistant Commissioner, Muzaffarabad.
7. Tehsildar, Muzaffarabad.
8. Farzana Bibi d/o Shair Zaman Usmani, w/o Amjad Kareem Ganai, r/o Hattian Dupatta Town, Tehsil and District Muzaffarabad.

9. National Testing Service through its Chairman having his office at NTS, Headquarter No.96, Street No.4, H-8/1, Islamabad.
10. Accountant General of Azad Jammu & Kashmir having his office at Sathra, Muzaffarabad.

....RESPONDENTS

(On appeal from the judgment of the High Court dated 01.11.2018 in Writ Petition No.1840 of 2018)

FOR THE APPELLANT: Ch. Shoukat Aziz, Advocate.

FOR THE RESPONDENTS: Sh. Attiq-ur-Rehman and Mr. Sajid Hussain Abbasi, Advocates.

Date of hearing: 26.06.2019

**JUDGMENT:**

**Ghulam Mustafa Mughal, J.**— The titled appeal by leave of the Court has been directed against the judgment dated 01.11.2018, passed by the Azad Jammu & Kashmir High Court in Writ Petition No.1840 of 2018.

2. The facts forming the background of the captioned appeal are that the Education Department,

Elementary and Secondary (Female), Azad Jammu & Kashmir, advertised 4 posts of Primary Teacher (Female), for Union Council *Kai Manja, Tehsil* and District Muzaffarabad. The appellant and respondent No.8, herein, being eligible applied for appointment against the advertised posts along with other candidates. After test in interview, the appellant, herein, was placed at serial No.6, whereas, respondent No.8, herein, was placed at serial No.2 of the merit list. The appellant, herein, filed a writ petition before the Azad Jammu & Kashmir High Court claiming, therein, that respondent No.8, herein, being not a resident of Union Council *Kai Manja*, was not entitled to apply against the post of the said Union Council. It was prayed that while accepting the writ petition, the impugned merit list to the extent of serial No.2, may be declared as against law and the official respondents may be restrained from issuing the appointment order of respondent No.8, herein. She also sought direction for her appointment. The learned High

Court through the impugned judgment dated 01.11.2018 has dismissed the writ petition in limine.

3. Ch. Shoukat Aziz, the learned Advocate appearing for the appellant argued with vehemence that admittedly respondent No.8, herein, was residing permanently in local limits of the Town Committee Hattian Dupatta, Ward No.7 and the same address is mentioned in her *Nikahnama*, voter list and CNIC, hence, was not entitled to apply against the post of Primary Teacher advertised for Union Council *Kai Manja*. He further submitted that the last date for receipt of the application was 10.03.2018 and at that time neither respondent No.8, nor her husband was in possession of the domicile certificate/State subject of village Palhot, Union Council *Kai Manja* from where respondent No.8 applied posing to be the resident of that Union Council. The learned Advocate further argued that the State Subject, Domicile and the Permanent Resident Certificate (PRC) were obtained by respondent No.8, herein, after the last date fixed for receipt of the

application but this aspect of the matter has not taken into consideration by the learned High Court and dismissed the writ petition in limine without affording an opportunity to respondent No.8 for filing replication. In support of his submissions, the learned Advocate placed reliance of the cases reported as *Miss Rakhshanda Aslam and another vs. Nomination Board of Azad Jammu and Kashmir through its Secretary, Muzaffarabad and 2 others* [PLD 1986 SC (AJ&K), 1] and *Liaqat Ali vs. Jehangir & another* [1996 SCR 359].

4. Conversely, Sh. Attiq-ur-Rehman, the learned Advocate appearing for respondent No.8 argued that the appellant, herein, was residing within the local limits of Hattian Dupatta on temporary basis and fact of the matter is that her husband and father in law are residing in village Palhot, Union Council *Kai Manja*, hence, she competently applied for appointment against the post of the said Union Council. He submitted that no illegality has been committed by the learned High Court in dismissing the writ petition in limine.

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 an advertisement was issued by the Education Department, whereby, 4 posts of Primary Teacher (Female) were advertised. A copy of the advertisement was appended with the writ petition. A perusal of the same reveals that the last date for receipt of the applications was fixed as 10.03.2018. Condition No.8 of the advertisement clearly postulates that along with the application, a copy of the CNIC and the Domicile Certificate must be attached. At that time respondent No.8, herein, was not in possession of CNIC and Domicile Certificate showing her a resident of village *Palhot*, Union Council *Kai Manja*. Admittedly, she has obtained these documents from Union Council *Kai Manja* after the last date fixed for receipt of the applications and prior to that her husband was residing permanently in Union Council *Hattian Dupatta*. The question, as to whether, respondent No. 8, herein, was entitled to apply against the post of Union Council *Kai*

*Manja* on the basis of the documents which were obtained by her after the last date fixed for receipt of the application, was a question of first impression and was liable to be resolved by the learned High Court after admitting the writ petition for regular hearing and providing an opportunity of hearing to the parties.

In view of the above, this appeal is accepted and the impugned judgment dated 01.11.2018 is hereby set aside. Resultantly, the writ petition before the High Court is admitted for regular hearing to examine question formulated hereinabove. The learned High Court shall now proceed further in accordance with law.

**JUDGE**

**CHIEF JUSTICE**

Muzaffarabad  
27.06.2019