

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No. 195 of 2019  
(PLA Filed on 28.2.2019)

1. Muhammad Bashir Khan, Ex-Project Coordinator (B-20), Project Co-ordination Unit/Climate Change Centre, Flood Emergency Reconstruction and Resilience Project (FERRP), Muzaffarabad.
2. Raja Muhammad Sharif Khan, Chief Engineer Highways (North) Communication and Works Department, Azad Govt. of the State of Jammu & Kashmir (Ex-Project Director Flood Emergency Re-Construction and Resilience Project (FERRP), Muzaffarabad.
3. Syed Rashid Hussain Shah, Director (B-19), Project Co-ordination Unit/Climate Change Centre, FERRP, Muzaffarabad.
4. Zia-ul-Haq Abbasi, Deputy Director Finance (B-18) Project Co-ordination Unit/Climate Change Centre Flood Emergency Reconstruction and Resilience Project (FERRP), resident of Shaukat Line, Muzaffarabad.
5. Syed Rizwan Haider Bukhari, Deputy Director I/A (B-18), Project Co-ordination Unit/Climate Change Centre, Flood Emergency Reconstruction and Resilience Project (FERRP), resident of Shouakt Lines, Muzaffarabad.

.... APPELLANTS

## **VERSUS**

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary to Azad Govt., Civil Secretariat, Muzaffarabad.
2. Planning and Development Department, Azad Govt. of the State of Jammu & Kashmir through Secretary P&DD, Civil Secretariat, Muzaffarabad.
3. Services and General Administration Department, Azad Govt. of the State of Jammu & Kashmir through Secretary S&GAD, Civil Secretariat, Muzaffarabad.
4. Communication and Works Department, Azad Govt. of the State of Jammu & Kashmir through Secretary Communication and Works, Civil Secretariat, Muzaffarabad.
5. Finance Department, Azad Govt. of the State of Jammu & Kashmir through Secretary Finance, Civil Secretariat, Muzaffarabad.
6. Project Director, Flood Emergency Re-Construction and Resilience Project (FERRP), Muzaffarabad.

## .... RESPONDENTS

7. Accountant General, Azad Jammu & Kashmir, Muzaffarabad.
8. Dr. Raja Aurangzeb Khan, Director General (B-20), FERRP, Muzaffarabad.
9. Imtiaz Hussain Bahahr, Project Director, PIU (FERRP), Rawalakot.
10. Basharat Nabi, Ex-Deputy Deputy Project Director (B-19) Project Co-ordination Unit /Climate Change Centre, Flood Emergency Re-construction and Resilience Project (FERRP), r/o near Sangam Hotel, Muzaffarabad.
11. S. Habib Mughal, Deputy Director (Co-ordination/M&E), Project Implementation Unit/Climate change centre Flood Emergency Reconstruction and Resilience Project (FERRP), resident of Shaukat Lnes, Gojra Muzaffarabad.

12. Mubashar Saif, Deputy Director (M&E) B-18, Project Co-ordination Unit/Climate change centre Flood Emergency Reconstruction and Resilience Project (FERRP), resident of Shaukat Lines, Gojra Muzaffarabad.
13. Tahir Iqbal Mughal, Deputy Director Finance (B-18) Project Co-ordination Unit/Climate change centre Flood Emergency Reconstruction and Resilience Project (FERRP), presently posted in World Islamic Bank, Jalalabad, Muzaffarabad.
14. Tahir Muzaffar Malik, Deputy Director (Safeguard), Project Implementation Unit Flood Emergency Reconstruction and Resilience Project (FERRP), Rawalakot.
15. Syed Tufail Hussain Shah, Account Officer, Flood Emergency Reconstruction and Resilience Project (FERRP), Rawalakot.
16. Sarfraz Hussain Shah, Senior Auditor (B-16), Project Co-ordination Unit/Climate change centre Flood Emergency Reconstruction and Resilience Project (FERRP), Muzaffarabad, presently posted at Accountant General Office, Muzaffarabad.
17. Zohabi Khalil, Draftsman, Project Implementation Unit Flood Emergency Reconstruction and Resilience Project (FERRP), Muzaffarabad.
18. Muhammad Rehmat Khan, Cashier, Project Implementation Unit Flood Emergency Reconstruction and Resilience Project (FERRP), Rawalakot.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 27.12.2018 in Writ Petition No. 1284 of 2018)

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FOR THE APPELLANTS: Mr. Abdul Rasheed Abbasi,  
Advocate.

FOR THE RESPONDENTS: M/s Muhammad Pervaiz  
Mughal Advocate and Sardar  
Karam Dad Khan, Advocate  
General.

*Date of hearing:* 27.6.2019.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal arises out of the judgment dated 27.12.2018 passed by the Azad Jammu & Kashmir High Court in writ petition No. 1284 of 2018.

2. The facts forming the background of the captioned appeal are that the appellants, herein, filed a writ petition before the Azad Jammu & Kashmir High Court on 18.7.2018 claiming therein that they were deputed to serve in a Foreign Aided Development Project (sponsored by Asian Development Bank) known as “Flood Emergency Re-Construction and Resilience Project (FERRP)”. It was averred that the said project was approved by the Azad Government of the State of Jammu & Kashmir with a cost of Rs.6641.00 million vide notification dated 20.8.2015. It was further averred that the Government vide notification dated 21.12.2017 has accorded approval for

grant of project allowance to the persons posted in the project as per their basic scales. The allowance was sanctioned in addition to the admissible salary and allowances, but despite repeated request by the petitioners the respondents are procrastinating the matter. It was further averred that the notification dated 21.12.2017 is against the fundamental rights as enshrined and guaranteed in the Azad Jammu & Kashmir Interim Constitution, 1974, hence, is liable to be amended and the petitioners may be declared entitled for grant of project allowance from the date of commencement of the project. The writ petition was contested by the Accountant General, Communication and Works Department and Service and General Administration Department by filing written statement, whereby the claim of the petitioners was admitted, however, S&GAD has taken stance that the notification dated 21.12.2017 has been made applicable with immediate effect and the petitioners cannot be granted project

allowance with back date effect. The learned High Court after hearing the parties vide impugned judgment dated 27.12.2018 has dismissed the writ petition.

3. Mr. Abdul Rasheed Abbasi, the learned Advocate appearing for the appellants has argued with vehemence that the learned High Court has not properly appreciated the record of the case while deciding the writ petition and dismissed the same on the ground of laches. The learned Advocate further argued that that a cause of action arose in this case only after the meeting of the committee, which was held on 6.6.2018 and the decision was notified on 13.6.2018 and after knowing about the decision the writ petition was filed within a period of one month and five days, hence, the principle of laches is not attracted in this case. The learned Advocate further argued that the impugned judgment of the learned High Court suffers from misreading and non-reading of record and the conclusion reached at by the High Court is alien

to the pleadings as well as the comments filed by the respondents. The learned Advocate further argued that a declaration was sought that notification dated 21.12.2017 insofar as it deprives those employees of the project transferred and posted in the project prior to issuance of notification may be declared illegal and without any reason as well as discriminatory, but this fact has not been considered by the learned High Court at all. The learned Advocate argued that the observation of the learned High Court as to whether sufficient funds are available for payment of the project allowance is also against the record. In support of his submission the learned Advocate has placed reliance on the case reported as *I.A Sharwani and others vs. Government of Pakistan through Secretary Finance Division, Islamabad and others* (1991 SCMR 1041).

4. Conversely, Sardar Karam Dad Khan, the learned Advocate General and Muhammad Pervaiz Mughal, the learned Advocate appearing

for the respondents have defended the impugned judgment of the High Court and submitted that no any illegality has been committed by the learned High Court and fixation of the date in the notification is discrimination with the Government.

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 foreign aided project sponsored by Asian Development Bank known as “Flood Emergency Re-Construction and Resilience Project (FERRP)” was approved and notified by the Government of the Azad Jammu & Kashmir vide notification dated 28.8.2015. It further reveals that the appellants and proforma responses, herein, were transferred and posted on deputation during the year 2015-16 through different notifications annexed as “PD/1 to “PD/9”. A perusal of annexure PC, reveals that a considerable amount has been reserved for payment of T.A/D.A and project allowance to the



employees serving in the project. Annexure “PJ” appended with the appeal reveals that sufficient amount has been reserved and allocated for the payment of project allowance from the date of commencement of the project i.e. 28.8.2015. On refund of payment, a Committee was constituted for consideration of the demand of the appellants and proforma respondents, herein, by the Government of AJ&K. The Committee held a meeting on 6.6.2018 and deferred the case of the appellants, herein, without deciding the fate of notification dated 21.12.2017. The claim of the appellants and proforma respondents, herein, that date given in the notification dated 21.12.2017 is violative of PC/1 as well as rule of equality before law, has a substance. As stated above that the record reveals that a sufficient amount has been allocated for non-payment of T.A. D.A. and project allowance from the date of commencement of the project i.e. 28.8.2015 and this fact has been admitted by the Government while issuing the notification dated 21.12.2017,

however the date has not been assigned properly and no reason has been listed for payment of project allowance from the said date. The learned Advocate has heavily relied upon the case reported as *I.A Sharwani and others vs. Government of Pakistan through Secretary Finance Division, Islamabad and others* (1991 SCMR 1041), wherein at page 1089 of the report it was observed as under:-

“30. It may be stated that as a general proposition it cannot be laid down that in no case a specified date can be made basis for classification. It will depend on the facts of each case and if the specification of a particular date is based on an intelligible differentia, which in turn has nexus to the object for which the relevant statute has been enacted, such classification will be legal and valid but if the specification of a date is arbitrary or whimsical, it cannot be made basis for classification as has been held in the above case of *D.S. Nakara and others v. Union of India* (supra) by the Indian Supreme Court, Furthermore, a distinction is to be

drawn between a case in which a date is specified for the purpose of qualifying for certain benefit under certain enactment/scheme and a date which may be specified for the enforcement of a particular Taxing Statue or a notification granting certain concession from payment of taxes and excise duty. In our view, the former category should pass the test of reasonable classification, whereas for the latter category, there is no such requirement as the Legislature or the Government has the discretion/power to fix a date for the enforcement of a particular statute or for granting certain concession in respect of tax or exercise duty, and for that purpose, there cannot be any mathematical or logical way of fixing a date except that the Legislature or the Government may fix the same according to its own need and convenience.”

As no reason has been listed by the Committee for not giving the project allowance to the appellants from the date of commencement of the project despite availability of funds, therefore, we are of the view that the date

mentioned in the notification is discriminatory. As stated in the earlier part of the judgment that the learned High Court has dismissed the writ petition mainly on the ground of laches and non-availability of funds, which was not justified because the appellants-petitioners filed writ petition within a period of one month and five days after gaining knowledge of the decision of the Committee, therefore, the question of principle of laches does not arise. Similarly, the record reveals that sufficient funds are available for payment of the claimed allowance from the date of commencement of the project and this fact escaped the notice of the High Court while deciding the writ petition otherwise conclusion might have been different.

The upshot of the above discussion is that the appeal is accepted, the impugned judgment of the High Court is set aside and the writ petition filed by the petitioners before the High Court is hereby accepted. The respondents are directed to amend notification dated

21.12.2017 and make payment of the project allowance to the appellants and proforma respondents, herein, from the allocated funds of the project for the period they remained posted and served in the project. No order as to costs.

JUDGE  
Muzaffarabad.  
1.7.2019.

CHIEF JUSTICE.