

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

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

Civil Appeal No.170 of 2019  
(PLA Filed on 13.3.2019)

Imtiaz Ahmed, Forester at Forest Training School, Tandali Tehsil and District Muzaffarabad.

.... APPELLANT

**VERSUS**

1. Secretary Forests, Muzaffarabad, having his office at New Secretariat, Muzaffarabad.
2. Chief Conservator Forests, Muzaffarabad having his office at Bank Road, Muzaffarabad.
3. Conservator Forests department having his office at Bank Road Muzaffarabad.
4. Accountant General of Azad Jammu & Kashmir Muzaffarabad.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated  
17.1.2019 in Writ Petition No. 1846 of 2017)

FOR THE APPELLANT: Ch. Ghulam Nabi,  
Advocate.

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

*Date of hearing:* 13.11.2019.

**JUDGMENT:**

***Ghulam Mustafa Mughal, J—*** The captioned appeal by leave of the Court arises out of the judgment dated 17.1.2019 passed by the Azad Jammu & Kashmir High Court in writ petition No. 1846 of 2017.

2. The brief facts forming the background of the captioned appeal are that the appellant, herein, filed a writ petition before the Azad Jammu & Kashmir High Court on 17.1.2019 claiming therein that he participated in the test and interview conducted by the respondents for appointment as Forester B-11. He qualified the same. It was averred that initially the name of the appellant was wrongly placed at serial No. 15 of the merit list of District Muzaffarabad. The appellant qualified the test and interview for appointment against the quota of District Jhelum Valley, hence, he applied to the respondents that he has made the application against the quota of District Jhelum Valley,

therefore, he may be included in the list of the said District. It is alleged that the respondents made correction to that effect and the appellant was placed at serial No. 5 of the merit list pertaining to District Jhelum Valley. It was further averred that the appellant was appointed as Forester B-11 vide order 14.10.2015, however, was declared surplus by the respondents. The appellant, herein, filed a writ petition before the High Court for his adjustment, which was contested by the other side and the learned High Court dismissed the same through the impugned judgment dated 17.1.2019.

3. Ch. Ghulam Nabi, the learned Advocate appearing for the appellant argued with vehemence that Forest Department advertised some posts of Forester B-11 through an advertisement for different divisions including Jhelum Valley division. He argued that among others the appellant also participated in the test and interview and qualified the same

and was placed at serial No. 15 of the merit list of the successful candidates pertaining to division Muzaffarabad. The learned Advocate further argued that the appellant applied to the respondents to shift his name because he had not contested against any post for Muzaffarabad division. Consequently, his name was placed at serial No. 5 vide order dated 2.3.2016 in the merit list pertaining to District Hattian. The learned Advocate further argued that thereafter the appointment order of the appellant was issued on 14<sup>th</sup> October, 2015, but the respondents have not adjusted the appellant. He argued that the appellant filed a writ petition before the Azad Jammu & Kashmir High Court on 8.11.2017, but the writ petition has been dismissed by the learned High Court arbitrarily and erroneously without taking into consideration the legal and factual aspect of the case. The learned Advocate added that the impugned judgment of the learned High Court dated 17.1.2019 is contradictory as on one hand

the learned High Court has observed that the order dated 14.10.2015 is fake and on the other the departmental authority was directed to decide about the fate of the order of appointment of the appellant. The learned Advocate submitted that order dated 14.10.2015 has attained finality as the same has not been challenged by anybody, therefore, was liable to be implemented. The learned Advocate contended that previously on 16.3.2016 one Waseem Rafique challenged the legality and correctness of the orders, in which the appellant was listed at serial No. 9 in line of the respondents. The writ petition was accepted by the learned High Court vide order dated 21.11.2017. He argued that in this perspective of the matter the appointment of the appellant was not declared illegal and Waseem Rafique, who was listed after him in the merit list has been directed to be appointed by the learned High Court vide judgment dated 21.11.2017.

4. Mr. Muhammad Hanif Khan Minhas, the learned Advocate appearing for the respondents has defended the impugned judgment and submitted that the order passed by the learned High Court is quite in accordance with law and no any interference is required because the appellant, herein, is not on merit and his appontiemnt is bad in law, hence, cannot be implemented. The learned Advocate further argued that it is well settled principle of law that ill-gotten gain cannot be protected. He argued that only two posts were advertised for Jhelum Valley division, against which only two appointments could be made and third appontiemnt was illegal, hence, the writ petition has rightly been dismissed.

5. We have heard the learned Advocates representing the parties and have gone through the record of the case. It may be stated that vide order dated 2.3.2016, a corrigendum was issued by the Department, which is not denied by the respondents, in which the appellant, herein, has

been ordered to be listed at serial No. 5 of the merit list of the candidates of District Jhelum Valley. One Wasim Rafique, who was listed at serial No. 8 of the merit list pertaining to Jhelum Valley division has been appointed. A perusal of the record reveals that Waseem Rafique, who was listed after the appellant, filed a writ petition before the Azad Jammu and Kashmir High Court seeking a direction of his appointment on 16.3.2016. In this writ petition Imtiaz Ahmed, appellant, herein, was listed at serial No.9 in line of the respondents and his appointment was also challenged, as is evident from the prayer clause of his writ petition available at page 54 of the paper book. This writ petition was accepted by the learned High Court vide judgment dated 21.11.2017 and a direction has been issued to the department for appointment of Wasim Rafique, petitioner, therein. Nothing has been said in this judgment against Imtiaz Ahmed, appellant, herein. Moreover, the impugned judgment appears to be

contradictory as on the one hand the learned High Court has observed that the appointment order of the appellant is fake, fabricated and fictitious and on the other has left the same at the discretion of the departmental authority for deciding the fate of the case. The order dated 14.10.2015 has been issued on the basis of the recommendations of selection committee, which, up till now, has not been cancelled and in view of the earlier decision of the High Court dated 21.11.2017, the appellant, herein, deserves to be adjusted. It is pertinent to mention here that on the basis of the lapse committed by the department or any public functionary, a candidate cannot be penalized. After making the appointment, the respondent cannot come with volta-face and take an inconsistent position while saying that the appointment order of the appellant is fake and illegal. Reference can be made to the case reported as *Sardar Asif Mehmood Raza vs. Abdul Khamid and 7 others*

(2004 SCR 298) wherein, in paragraph 8 of the report, it was observed as under:-

“8. The whole exercise of the official respondents cannot be terms as bona-fide. If at the time of induction of respondent in service the post was not advertised who is to be blamed for this lapse. The answer definitely is that the respondent cannot be blamed as he had not to advertise the post. The competent authority has been guilty of making irregular appointments, therefore, it cannot be allowed to turn round and terminate the service of the respondent after inducting him in service on permanent basis particularly when his appointment was not challenged in time by any other desirous person. The competent authority in the light of peculiar facts of this case was not vested with the powers to remove him from service on the ground that his induction in service was not regular. The benefit of lapses committed by the competent authority at the time of induction of the respondent in service cannot be allowed to take away the right of service which had vested to

respondent as order of his appointment was given effect and in furtherance to the same he served the department as Driver.”

Again in a case reported as Secretary to *Government of N.W.F.P. Zakat/Social Welfare Department, Peshawar and another vs. Sadullah Khan* [1996 SCMR 413], wherein, at page 415, para 6 of the report, it has been observed as under:-

“It is disturbing to note that in this case petitioner No.2 had himself been guilty of making irregular appointment on what has been described ‘purely temporary basis’. The petitioners have now turned around and terminated his services due to irregularity and violation of rule 10(2) *ibid*. The premise, to say the least, is utterly untenable. The case of the petitioners was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to

take benefit of their lapses in order to terminate the services of the respondent merely because they have themselves committed irregularity in violating the procedure governing the appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality or irregularity in reinstating the respondent.”

The same view was taken and followed by this Court in the case reported as *Director Kashmir Institute and another vs. Ali Afsar Abbasi and 2 others* [2017 SCR 869].

In the case in hand the appellant was at serial No. 6 of the merit list and he was appointed by the respondents. Now the candidate listed after him at serial No. 9 has been appointed, therefore, in our view the appellant cannot be discriminated.

The upshot of the above discussion is that the appeal is accepted, the impugned judgment of the High Court is set aside and the

respondents are directed to adjust the appellant  
against any available post.

JUDGE

JUDGE

Mirpur.  
.11.2019.