

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

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

Civil Appeal No.242 of 2018
(PLA Filed on 2.6.2018)

Aftab Gul s/o Abdul Shakoor r/o Azad Barra
Tehsil and District Bagh.

.... APPELLANT

VERSUS

1. Senior Member Board of Revenue, Azad Govt. of the State of Jammu & Kashmir having his office at New Secretariat Muzaffarabad.
2. Deputy Commissioner/Collector District Bagh.
3. Naib Sadar Qanoongow in the office of Deputy Commissioner Bagh.
4. Husnain Abbas s/o Shakoor Hussain newly appointed as Patwari, Department Hadbandi Forest District Bagh.
5. Fahad Khalil s/o Khalil Ahmed Aqeel newly appointed as Patwari in the office of Tehsildar Bagh.
6. Khaliq-ur-Rehman s/o Muhammad Saddique Khan newly appointed as Patwari in office of XEN Highway Division Bagh.
7. Zameer Akbar Khan s/o Ali Akbar Khan newly appointed as Patwari Halqa Makhyala, Tehsil Dhirkot District Bagh.
8. Shahzad Hussain Shah s/o Waseem Hussain Shah newly appointed as Patwari Halqa Rangla Dhirkot Bagh.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated
25.4.2018 in Writ Petition No. 1858 of 2017)

FOR THE APPELLANT: Mr. Muhammad Pervaiz
Mughal & Ch. Muhammad
Riaz, Advocate.

FOR THE RESPONDENTS: Sardar Abdul Sammie
Khan, Sardar Karam Dad
Khan and Sh. Muhammad
Saleem, Advocates.

Date of hearing: 12.12.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J— The captioned appeal by leave of the Court arises out of the judgment dated 25.4.2018 passed by the Azad Jammu & Kashmir High Court in writ petition No. 1858 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 and Kashmir High Court on 13.2.2009 alleging therein that he is first class State Subject of Azad Jammu & Kashmir. It was averred that the petitioner filed a writ petition on

13.2.2009 before the High Court, which was accepted vide order dated 17.12.2011. It was claimed that a post of Patwari fell vacant in District Bagh in Highways Department and in the light of the judgment of the High Court dated 17.12.2011 the petitioner filed a writ petition for seeking direction regarding his appointment. The writ petition was accepted vide judgment dated 2.3.2016. It was claimed that in the light of the judgment dated 2.3.2016 passed by the High Court, the petitioner filed an application before Commissioner Poonch Division Rawalakot for his appointment, which was forwarded to the Deputy Commissioner Collector District Bagh. It was averred that the Deputy Commissioner/Collector Bagh instated of making appointment of the petitioner issued appointment orders of respondents No. 4 to 8 in sheer violation of the judgment of the Hon'ble High Court. It was stated that the petitioner applied for the certified copies of the appointment orders of respondents No. 4 to 8 but the same were refused. It was

stated that the official respondents deliberately and intentionally ignored the judgments of the High Court passed on 17.12.2011 and 2.3.2016 and as such committed contempt of Court. On filing of the writ petition, the learned High Court sought comments/objections from the respondents, which were filed separately. It was stated therein that the petitioner has not participated in any test and interview and has attempted to get his appointment order under the cover of the Court order. It was further stated that in compliance of the Court order dated 17.12.2011 the petitioner has been approved as 'Umeedwar Patwari' and his name has been listed at serial No. 63 of the list issued on 9.1.2016. It was stated that neither any post fell vacant nor any appointment could be made due to prohibitory order of the High Court. It was further stated that the appointments of the private respondents have been made in compliance of the Court orders. After necessary proceedings, the learned High Court has

dismissed the writ petition through the impugned judgment dated 25.4.2018.

3. Arguments in the case were heard on 12.12.2019 and the parties were directed to file written arguments, which have been filed.

4. Mr. Muhammad Pervaiz Mughal, the learned Advocate appearing for the appellant has submitted in the written arguments that the appellant, herein, completed Patwar Course on 29.8.2005 but despite that his name was not entered in the seniority list of District Bagh. It is further submitted that two separate petitions for inclusion of the name of the appellant was filed before the learned High Court, which were accepted by the learned High Court and in pursuance of the direction the name of the appellant was entered as such. It is further stated that private respondent No.4 has completed the Patwar Course on 3.9.2006, whereas the appellant has completed the same on 29.8.2005 and private respondent No.4 has been appointed but the appellant has not been

considered without any legal justification. It is further stated in the written arguments that the appellant filed writ petition before the learned High Court for a direction for his appointment. The appellant participated in the test and interview conducted by the competent authority i.e. Deputy Commissioner Bagh on 28.11.2006 and qualified the same but he has not been considered, instead the private respondents have been appointed illegally and on political intervention. He prayed for setting aside the appointment of the respondents.

5. In the written statements filed on behalf of the respondents, it has been stated that the appellant has not participated in the test and interview, hence, mere entering of his name in the seniority list does not confer any right on him for his appointment until he qualifies for the job after test and interview.

6. We have considered the written arguments of the learned Advocates representing the parties as well as the impugned judgment of

the learned High Court. After perusing the impugned judgment, we are of the view that the judgment of the learned High Court does not suffer from any legal infirmity. While handing down the impugned judgment, the learned Judge in the High Court has concluded in para 10 as under:-

“10. It may be observed that mere approval of a person as ‘Umeedwar Patwari’ does not confer any right of induction upon a candidate rather there is a process of selection, i.e. test and interview etc. and the file is also in consonance with regard to participation of the petitioner in any test and interview or selection process. Even, the petitioner has not placed on record any document, whereby it could be ascertained that the petitioner has made any positive attempt for his appointment rather the file contains numerous writ petitions and contempt application as well and it seems that the petitioner wants to be accommodated, solely on the Court order and he has nothing to do, else.”

The conclusion reached at by the learned High Court is neither illegal nor perverse because mere entering the name of a candidate in the seniority list does not confer any right for appointment until and unless a candidate appeared in the test and interview conducted by the competent authority and qualified the same while attaining merit position. No such material has been placed on record from which it can be ascertained that the appellant has ever appeared in the test and interview and attained merit position and has been ignored by the respondents arbitrarily. The appellant has filed successive writ petitions before the learned High Court. If any direction was issued and has not been complied with, he can file an application for contempt before the learned High Court. Another writ petition cannot be filed without any legal justification.

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

JUDGE

JUDGE

Muzaffarabad.
16.1.2020

Aftab Gul vs. Senior Member Board of Revenue &
others.

ORDER:

Judgment has been signed. It shall be
announced by the Registrar after notice to the
learned counsel for the parties.

Muzaffarabad
16.1.2020.

JUDGE

JUDGE