

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[APPELLATE JURISDICTION]

PRESENT:

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

Civil Appeal No. 168 of 2019
(PLA filed on 22.06.2019)

Nisar Ahmed, Primary Teacher Boys Middle School New City, Mirpur.

.....APPELLANT

VERSUS

1. Divisional Director Elementary and Secondary Education, Mirpur Division, Mirpur.
2. Assistant Director Elementary and Secondary Education, Mirpur Division, Mirpur.
3. District Education Officer (Male) Mirpur.
4. District Accounts Officer Mirpur.
5. Kafait Ali, Junior Teacher Boys High School Kalyal Shahroo, Mirpur.
6. Tahir-ul-Islam Junior Teacher, Boys High School Kharak Mirpur.

.....RESPONDENTS

[On appeal from the judgment of the Service Tribunal dated 27.05.2019 in service appeal No. 24 of 2019]

FOR THE APPELLANT: Mr. Babar Ali Khan,
Advocate.

FOR THE RESPONDENTS: Ex-parte.

Date of hearing: 25.11.2020.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court has been directed against the judgment dated 27.05.2019, passed by the Azad Jammu & Kashmir Service Tribunal in service appeal No. 24 of 2019.

2. The precise facts forming the background of the captioned appeal are that the appellant, herein, filed an appeal before the Azad Jammu & Kashmir Service Tribunal on 10.05.2019, against the departmental order dated 11.02.2019. The appeal was admitted for regular hearing and the learned Senior Member of the Service Tribunal ordered to deposit the security fee within a period of one week and the next date was fixed as 27.05.2019. The appellant,

herein, filed an application for submission of security fee on the date fixed i.e. 27.05.2019. The learned Service Tribunal vide order dated 27.05.2019, dismissed the appeal for want of non-compliance of the Court order dated 10.05.2019.

3. Mr. Babar Ali Khan, the learned Advocate for the appellant argued that an appeal was filed by the appellant, herein, against the order dated 11.02.2019, passed by the Divisional Director Elementary and Secondary Education Mirpur. The learned Advocate argued that the arguments were heard by the learned Member on 27.05.2019 and the judgment was reserved. The learned Advocate argued that later on it transpires that the appeal has been dismissed for non-compliance of the order dated 10.05.2019. He argued that after hearing of the appeal, no date was fixed for announcement of the judgment, therefore, it was not in the knowledge of the appellant that the learned

Service Tribunal has given any direction for depositing of the security fee under Rule 11 (3) of Azad Jammu & Kashmir Service Tribunal (Procedure) Rules, 1976. The learned Advocate further argued that as no notice was issued, therefore, dismissal of the appeal by the Senior Member was coram-non-judice and violative of the rules as the full Tribunal has to pass the order under Rule (4) of Rule 11. In support of his submission, the learned Advocate placed reliance on a case reported as *Abdul Hameed Khan vs. Azad Govt. & others* [2009 SCR 400].

4. Nobody has turned up on behalf of the other side, hence, the ex-parte proceedings were ordered.

5. After hearing the learned Advocate for the appellant, we have perused the record. A perusal of the record reveals that after reserving the order of admission of appeal, the order was not announced in

the open Court, rather subsequently, the appellant was informed through an order dated 10.05.2019. It was not in the knowledge of the appellant that he has to deposit security as well as process fee on target date because no notice was issued by the learned Service Tribunal for the purpose which was mandatory. Moreover, it has rightly been contended by the learned Advocate for the appellant that only Tribunal has to pass the order as has been observed in the case reported as *Abdul Hameed Khan vs. Azad Govt. & others [2009 SCR 400]*, wherein, it was held that: -

“12. It would not be out of place to mention here that if the appeal is admitted for regular hearing by a single member, after that it shall be heard by the Tribunal, not by single member because rule 11 sub-rule(2) of the Rules of 1976 contains that if the appeal is not dismissed in limine, notices of admission of appeal and of the day fixed for its regular hearing shall be served on the appellant, the

respondents and such other persons as the Tribunal may deem proper. Here the word 'Tribunal' has been used. The powers have been given to the Tribunal that if the Tribunal deems proper then it can issue notice to any other person. After the admission of the appeal, the single member of the Tribunal cannot issue a notice, but only the Tribunal can issue notice, which means that after the admission of appeal it shall be heard by the Tribunal only."

In view of the above, while setting aside the impugned order of the learned Service Tribunal, the appeal stands restored on its original number and it is directed that the learned Service Tribunal shall give reasonable time to the appellant for doing the needful after receiving the file.

JUDGE

ACTING CHIEF JUSTICE

Mirpur,
26.11.2020.

