

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

[Appellate Jurisdiction]

**PRESENT:**

**Ghulam Mustafa Mughal, J.**

Civil PLA No.194 of 2020

Civil Misc. No.88 of 2020

(Filed on 06.08.2020)

Shakeel Ahmed

....PETITIONER

**VERSUS**

Muhammad Sagheer & others

.... RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 14.09.2020, in Service Appeal No.233 of 2018)

FOR THE PETITIONER: Sh. Masood Iqbal, Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Khalil Ghazi, Advocate.

*Date of hearing:* 23.11.2020

**ORDER:**

**Ghulam Mustafa Mughal, J.**— The captioned petition for leave to appeal has been directed against the judgment dated 14.09.2020, passed by the Azad Jammu & Kashmir Service Tribunal in Service Appeal No.233 of 2018.

2. The facts forming the background of the captioned petition for leave to appeal shortly stated are that vide order dated 21.05.2018, the cadre of respondent No.1, herein, who was serving as Naib Qasid in the education department, was changed to Chowkidar and the cadre of the petitioner, herein, was changed from Chowkidar to Naib Qasid. Respondent No.1, herein, challenged the legality and correctness of the order dated 21.05.2018, through appeal before the Azad Jammu & Kashmir Service Tribunal on 29.08.2018. The appeal was contested by the other side by filing comments/written statement, whereby, the claim of the appellant/respondent No.1, herein, was refuted. The learned Service Tribunal after necessary proceedings vide impugned judgment dated 14.09.2020, accepted the appeal and set aside the order dated 29.08.2018.

3. Sh. Masood Iqbal, the learned Advocate appearing for the petitioner argued that the petitioner,

herein, was appointed as Naib Qasid and has been performing his duties as such from the very 1<sup>st</sup> day of his service. The learned Advocate further argued that the cadre was changed with the consent of respondent No.1, herein, hence, now he cannot take an inconsistent stand but the learned Service Tribunal has not taken into consideration this vital aspect of the matter and accepted the appeal erroneously while setting aside the order dated 21.05.2015, which was quite valid one. The learned Advocate submitted that the appeal before the learned Service Tribunal was hopelessly time barred being filed after 3 months and 7 days, hence, was liable to be dismissed on this sole ground. The learned Advocate further submitted that the post of Naib Qasid and Chowkidar are interchangeable and their change comes within the sole domain of the department, hence, appeal before the learned Service Tribunal against the order dated 21.05.2018, was not maintainable.

4. Conversely, Mr. Muhammad Khalil Ghazi, the learned Advocate appearing for the other side has defended the impugned judgment and submitted that no illegality has been committed by the learned Service Tribunal while setting aside the order dated 21.05.2015, which on the face of it was illegal. He submitted that no any legal question of public importance is involved in this petition, therefore, leave may be refused.

5. After hearing the learned counsel for the petitioners and going through the record appended with the petition, I am of the view that beside others, the question, as to whether, the appeal before the learned Service Tribunal against the order dated 21.05.2018, was maintainable, is a legal question of public importance which require resolution in a regular appeal. Leave to appeal is, therefore, granted. The office is directed to complete the file and place

the same before the Hon'ble Chief Justice for constitution of the Bench.

There is also an application for interim relief. As leave has been granted, therefore, keeping in view the overall circumstances of the case and the rules governing interim injunctions i.e. *prima facie* case, balance of convenience and irreparable loss, I deem it proper to order that the status quo prevailing at the moment shall be maintained till final decision of the appeal.

**JUDGE**

Mirpur.  
23.11.2020.