SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Civil PLA No. 06 of 2021

Civil Misc. No. 08 2021

(Filed on 20.01.2021)

Haroon Anayat Chughtai Forester B-11 Kotli division Kotli, Azad Jammu & Kashmir.

……PETITIONER

VERSUS

1. Azad Government of the State of Jammu & Kashmir through Secretary Forest Azad Government of the State of Jammu & Kashmir, having his office at New Secretariat Muzaffarabad.
2. Secretary Forest Azad Government of the State of Jammu & Kashmir, having his office at New Secretariat Muzaffarabad.
3. Chief Conservator Forest (Principle) having his office at Bank Road Muzaffarabad, Azad Kashmir.
4. Chief Conservator Forest (Territory) Azad Jammu & Kashmir having his office at Bank Road Muzaffarabad.
5. Conservator Forest District Mirpur Division Mirpur, Azad Jamu & Kashmir.

6. Divisional Forest Officer Kotli Division Kotli, having his office at District Kotli, Azad Jammu & Kashmir.

.....RESPONDENTS

[On appeal from the judgment of the High Court dated 13.01.2021 in writ petition No. 1907 of 2020]

(Application for interim relief)

FOR THE PETITIONER: Sardar M. Azam Khan, Advocate.

FOR THE RESPONDENTS: Raja Wasim Younas, Addl. Advocate-General.

Date of hearing: 22.06.2021.

ORDER:

Raza Ali Khan, J.– The captioned petition for leave to appeal has been directed against the judgment of the High Court of Azad Jammu & Kashmir dated, 13.01.2021, passed in writ petition No. 1907 of 2020.

2. The relevant and necessary facts forming the background of the captioned petition for leave to

appeal are that the petitioner, herein, was appointed as a Forester BS-11 on temporary basis in the Forest Division Kotli, vide order dated 24.12.2020. The appointment of the petitioner along-with the others was cancelled vide order dated 28.12.2020, and was recalled on the very next day i.e. on 29.12.2020. The petitioner, herein, for protection of his appointment order, filed a writ petition before the High Court of Azad Jammu & Kashmir and stated that he is qualified as BS(IT) Hon's and is eligible to be appointed on the aforesaid post. The learned High Court on application for interim relief granted the status quo order, vide order dated 29.12.2020, however, after hearing the preliminary arguments, has dismissed the writ petition in limine, through the impugned judgment/order dated 13.01.2021.

3. Sardar M. Azam Khan, advocate, the learned counsel for the petitioner forcefully, argued that the impugned judgment of the learned High Court is not according to law. He argued that without discussing the merits of the case, the learned High Court while passing a telegraphic order has dismissed the writ petition in limine. He argued that the petitioner filed a writ petition for the protection of his appointment order and restraining the official respondents not to amend or cancel the said order but the learned High Court has ignored this point while passing the impugned judgment. He prayed for grant of leave.

4. In reply, Raja Wasim Younas, the learned Additional Advocate-General defended the impugned judgment and submitted that the learned High Court has rightly passed the impugned judgment and has

not committed any illegality. He argued that the learned High Corut has rightly observed that even the adhoc order of appointment has to be made after advertising the post. Therefore, no question of law of public importance is involved in the case, therefore, this petition for leave to appeal is not maintainable.

5. I have heard the learned advocate for the petitioner as well the learned Additional Advocate-General and perused the record. The perusal of the record divulges that the official respondents appointed the petitioner, herein, as Forester B-11. The said order was cancelled by the authority on 24.12.2020, but the same was recalled on 29.12.2020. The petitioner on the apprehension of cancellation or modification of his appointment order, filed a writ petition before the High Court but the learned High Court has dismissed the same

in limine through the impugned judgment/order dated 13.01.2021.

6. From the perusal of appointment order of the petitioner dated 24.12.2020, It manifests that a post of Forester fell vacant owing to the retirement of one Khalid Mehmood Forester and on application, the petitioner, herein, was appointed on the said post on temporary basis subject to the conditions mentioned therein. In my view the order dated 24.12.2020, has been issued against the law as it is well settled law that any post whether temporary or permanent has to be filled in after due advertisement. The authority has not adopted due process of law while filling in the post of the petitioner, herein. The official respondents ought to have advertised the post, conduct test and interview and make appointment on the basis of merit but the authority just on a simple application from the petitioner has issued his

appointment order. The learned High Court has rightly observed in the impugned judgment that according to Rule 23 of Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, an appointment even on adhoc basis has to be made after due advertisement of the post. It is useful to reproduce here the relevant rules:-

> *"23 (1) When a post is required to be filled, the appointing authority shall forward a requisition to the selection authority immediately after decision is taken to fill the post.*
>
> *(2) After forwarding a requisition to the selection authority, the appointing authority may, if it considers necessary in the public interest, fill the post on adhoc basis for a period not exceeding six month pending nomination of a candidate by the selection authority.*
>
> *Provided*
>
> *(1) The vacancy is advertised properly in the newspaper;*
>
> *(2) The appointment is made of a person duly qualified in accordance with the rules and order applicable to the post.*

(3) The selection is made on the basis of merit determined by objective criteria;

(4) the appointment order certifies that a requisition has been sent to the selection authority and

(5) the appointment is made subject to revocation at any time by the competent authority;

Provided further that adhoc appointment shall not confer any right on the persons so appointed in the matter of regular appointment to the same post nor the service will count towards seniority in the grade."

For appointment of a civil servant, the process has been provided in the aforementioned rules, therefore, it was enjoined upon the department to follow the same in letter and spirit but in the case in hand, the department has failed to adopt due process of law and appoint the petitioner in derogation of these rules. The learned High Court has not committed any illegality or legal infirmity while handing down the impugned judgment.

In the light of what has been stated above, this petition for leave to appeal along-with the application for interim relief is dismissed.

JUDGE

Mirpur,
22.06.2021.