

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, CJ.

Civil PLA No.66 of 2021
Civil Misc. No.83 of 2021
(Filed on 29.04.2021)

Muhammad Shabbir Khan, Senior Teacher Government
Boys High Schook Khandar, District Kotli.

.....PETITIONER

VERSUS

1. Zaffar Iqbal, Assistant Education Officer (Male),
Fatehpur Thakyala, District Kotli.

..... RESPONDENT

2. Azad Government of the State of Jammu and
Kashmir through its Secretary Elementary and
Secondary Education, having his office at New
Secretariat, Muzaffarabad.

3. Secretary Elementary & Secondary Education,
having his office at New Secretariat,
Muzaffarabad.

4. Director Public Instructions (Male), Elementary
and Secondary Education, having his office at
District Complex, Muzaffarabad.

5. District Education Officer, District Kotli.

6. Accountant General of Azad Jammu and Kashmir,
Muzaffarabad.

... PROFORMA RESPONDENTS

[On appeal from the judgment of the Service Tribunal
dated 24.04.2021 in Service Appeal No.87/2021]

(Application for interim relief)

FOR THE PETITIONER: Raja Khalid Mehmood
Khan, Advocate.

FOR RESPONDENT NO.1: Syed Zulqarnain Raza
Naqvi, Advocate.

Date of hearing: 21.06.2021

ORDER

Raja Saeed Akram Khan, CJ– The captioned petition for leave to appeal is the outcome of the judgment of the Service Tribunal dated 24.04.2021, whereby the appeal filed by respondent No.1, herein, has been accepted.

2. Vide notification dated 17.02.2021, respondent No.1, herein, who was serving as Senior Teacher at Boys High School Khandar was transferred and posted as Assistant Education Officer (Male), Fatehpur Thakyala, District Kotli. Subsequently, through notification dated 22.02.2021, respondent No.1 was again transferred and posted as Senior Teacher Boys Middle School Khandar, Fatepur in place of petitioner, herein. The respondent challenged the notification dated 22.02.2021 by filing an appeal before the Service Tribunal which has been accepted through the impugned judgment, hence, this petition for leave to appeal.

3. Raja Khalid Mehmood Khan, Advocate, the learned counsel for the petitioner submitted that the impugned judgment of the Service Tribunal is against the law and facts. He placed on record the copy of Azad Jammu and Kashmir School Cadre Service Rules, 1989 and submitted that the post of Assistant Education Officer can only be filled by transfer from amongst Senior School Teachers having five years' service as such. The respondent was promoted as Senior School Teacher on current charge basis, hence, he cannot be transferred against the disputed post. He added that the so-called corrigendum has no value in the eye of law. Furthermore, the petitioner, herein, specifically brought into the notice of the Service Tribunal that the promotion order of respondent No.1 is under challenge in an appeal filed by Muhammad Naeem but this point has not been considered by the learned Service Tribunal while handing down the impugned judgment. As important legal propositions are involved, hence, grant of leave is justified.

4. Conversely, Syed Zulqarnain Raza Naqvi, Advocate, the learned counsel for respondent No.1 stated that the arguments of learned counsel for the

petitioner are baseless. He stated that the Rules referred by the learned counsel for the petitioner have been amended and now the post of Assistant Education Officer has to be filled 100% by initial recruitment. He added that the notification dated 22.02.2021 has never been acted upon. The respondent has been promoted vide order dated 09.12.2020 in the light of direction issued by the High Court. In fact, the petitioner, herein, wants to get the benefit of appeal filed by another person which is not permissible under law. If the petitioner has any grievance pertaining to the promotion of the petitioner, he should have approached the concerned forum but in this case no such ground is available to him. The learned Service Tribunal has rightly passed by impugned judgment which is not open for interference, hence, this petition is liable to be dismissed.

5. I have heard the arguments of learned counsel for the parties and gone through the record. Vide order dated 22.01.2021 the petitioner, herein, was transferred in place of respondent No.1, who, feeling dissatisfied, filed an appeal before the Service Tribunal on the ground that the impugned order has been issued

within short span of time. The contention of the learned counsel for the petitioner is that the respondent No.1 was promoted as Senior Teacher on current charge basis, hence, he was not eligible to be transferred against the post of Assistant Education Officer. Even otherwise, he does not possess the required experience of 5 years. It has rightly been pointed out by the learned counsel for respondent No.1 that the Rules referred by the learned counsel for the petitioner have been amended, hence, the old Rules have no nexus with the case in hand. The argument of learned counsel for the petitioner that the promotion order of respondent No.1 is under challenge before the Service Tribunal; is also not of worth consideration as the petitioner cannot claim benefit of appeal filed by another person. If the petitioner had any grievance, he should have filed the appeal himself. The record shows that through corrigendum dated 09.12.2020, issued in the light of direction of the High Court, the petitioner was promoted against the post of Senior School Teacher on the recommendations of Selection Board, hence, the argument that the respondent was never promoted as Senior School Teacher, is also repelled. It

is also evident from the record that the order dated 22.02.2021 was never acted upon. The learned Service Tribunal has rightly held that such practice of transferring the civil servants within a short span of time without assigning any reason is malpractice and cannot be approved. No legal ground exists for grant of leave.

Resultantly, finding no force, this petition is dismissed with no order as to costs.

CHIEF JUSTICE

Mirpur,
21.06.2021