

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Kh. Muhammad Naseem, J.

Raza Ali Khan, J.

Civil Appeal 398 of 2020
(PLA filed on 27.04.2019)

Kh. Javaid Iqbal s/o Kh. Abdul Samad, r/o
Morimilvan, District Haveli, Collector Land
Acquisition (r), Muzaffarabad.

.... APPELLANT

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Senior Member Board of Revenue, having his office at New Secretariat, Muzaffarabad.
2. Board of Revenue through Senior Member Board of Revenue, having his office at New Secretariat, Muzaffarabad.
3. Senior Member Board of Revenue, having his office at New Secretariat, Muzaffarabad.
4. Project Director, Neelum Jehlum Hydro Electric Project, having his office at Old Secretariat, Muzaffarabad.
5. Neelum Jehlum Hydro Electric Project, Noseri, Tehsil Pattikah (Naseerabad), through General Manager/Project Director NJHEP, Office at House No. B-4, Upper Chatter, Muzaffarabad.

.....RESPONDENTS

[On appeal from the judgment of the High Court dated 28.02.2019 in Writ Petition No.345/2018]

FOR THE APPELLANT: Sardar M.R. Khan,
Advocate.

FOR RESPONDENTS NO.1 TO 3: Nemo.

FOR RESPONDENTS NO.4 & 5: Ch. Shabbir Ahmed,
Advocate.

Date of hearing: 12.07.2021.

JUDGMENT:

Kh. Muhammad Naseem, J.— The titled appeal by leave of the Court has been directed against the judgment of the High Court dated 28.02.2019, whereby the writ petition filed by appellant, herein, has been dismissed in limine.

2. The facts of the case briefly stated are that the appellant, herein, filed a writ petition before the Azad Jammu & Kashmir High Court on 27.03.2018, stating therein, that the appellant, herein, was a permanent employee of the Revenue

Department and has performed his duties as Collector Land Acquisition (Rural) as well as Collector Land Acquisition (Urban) against City Development Project from June, 2008 to March, 2009, May, 2011 to December, 2011 and May, 2015 to May, 2017. It was stated that for the said project, thousands of *kanal* land was acquired from different areas of Muzaffarabad. The process of land acquisition and payment of compensation was done through Collector Land Acquisition, Muzaffarabad and Patikah (Naseerabad), where the appellant, herein, had performed his duties in addition to his routine departmental affairs, however, he was not paid any project allowance for doing the additional project duties in light of notification dated 22.04.2008, whereby, the official-respondents, herein, have approved a policy called “Uniform Pay Package Policy in

order to run Development Projects”. It was prayed by the appellant that while accepting his writ petition, a direction may be issued to the respondents to grant him project allowance as per notification dated 22.04.2008, for the additional duty he performed as Collector Land Acquisition. The learned High Court after hearing the parties vide impugned judgment dated 28.02.2019, has dismissed the writ petition in limine, against which, the captioned appeal by leave of the Court has been preferred.

2. The learned counsel for the appellant, Sardar M.R. Khan, argued the case at some length and stated that the appellant, herein, has performed his duties as Collector Land Acquisition (Rural) and Collector Land Acquisition (Urban) in addition to his routine duty for a period mentioned in the appeal but the project allowance was not granted to him as per notification dated 22.04.2008. He further stated that

project allowance was granted to some other employees on the direction of the learned High Court but the writ petition filed by the appellant, herein, was dismissed in limine. He added that in this way a discrimination has been committed to the appellant, herein, which is against the norms of justice. The learned Advocate alleged that the questions raised in the writ petition could only be resolved after obtaining written statement from the respondents in view of the factual controversy involved therein, and dismissal of the writ petition in limine was not justified at all. In support of his submissions, the learned counsel referred to and relied upon a case reported as:-

Chiragh vs. Abdul & others [PLD 1999 Lahore 340],

and unreported judgments of the High Court titled:-

- i. *Tehzeeb-un-Nisa & another vs. Azad Govt. & others* (decided on 14.12.2010)
- ii. *Kh. Ejaz Ahmed & another vs. Azad Govt. & others* (decided on 17.09.2011),

and prayed for acceptance of the appeal.

In Tehzeeb-un-Nisa's case referred to, hereinabove, it was observed as under:-

“ In view of above, petition is admitted for regular hearing and stands disposed of, on the basis of admission of the respondents, with the direction that the respondents shall pay Rs.30,000/- to the petitioners in view of their commitment from the date the petitioners have been deputed against the project and shall also receive the same allowance till they are retained in the project.”

In the second case, referred to hereinabove, it was held in para 7 as under:-

“7. In view of above, the respondents are hereby directed to pay Rs.30,000/- per month to petitioners as project allowance on the basis of Govt. notification dated 22.04.2008, for period mentioned in earlier part (para 2) of this order i.e. for period they performed additional duties in projects.”

3. While controverting the arguments of the learned counsel for the appellant, Ch. Shabbir

Ahmed, Advocate, the learned counsel representing respondents No.4 and 5, defended the impugned judgment and stated that the impugned judgment of the learned High Court is perfect and legal. The learned counsel further argued that the appellant, herein, earlier filed a writ petition before the High Court which was dismissed vide judgment dated 28.02.2017, and subsequently another writ petition was filed by him on the same grounds which has rightly been dismissed by the learned High Court in limine vide impugned judgment dated 28.02.2019 and prayed for dismissal of the appeal.

4. We have considered the respective arguments of the learned Advocates representing the parties and have perused the record made available. A perusal of the record reveals that the appellant, herein, filed a writ petition before the Azad Jammu & Kashmir High Court, whereby, a

direction in the nature of mandamus was solicited against the respondents to pay the project allowance to the appellant against the services rendered by him in Neelum Jehlum Hydro Electric Project according to notification dated 22.04.2018. The appellant in ground 'D' of his appeal has specifically stated that in the cases titled *Tehzeeb-un-Nisa & another vs. Azad Govt. & others* (decided on 14.12.2010) and *Kh. Ejaz Ahmed & another vs. Azad Govt. & others* (decided on 17.09.2011), the learned High Court has granted the same relief to the petitioners, therein, and their writ petitions were accepted but the writ petition filed by the appellant, herein, has been dismissed in limine which is discrimination. A perusal of the impugned judgment of the learned High Court reveals that the learned High Court did not consider the above mentioned judgments while

dismissing his writ petition in limine. The learned counsel for the appellant has rightly relied upon the unreported judgments of the High Court. Thus, without going into the merits of the case, this appeal is accepted and the impugned judgment of the learned High Court dated 28.02.2019 is, hereby, set aside. The case is remanded to the learned High Court while admitting the writ petition for regular hearing with a direction to decide the same on merits in accordance with law. The parties are at liberty to raise all the points before the learned High Court. The record of the case shall be transmitted to the High Court forthwith.

This appeal stands accepted in the manner indicated above.

JUDGE

Muzaffarabad.
14.07.2021

JUDGE

JII