SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:
Khawaja Muhammad Nasim, J.
Raza Ali Khan, J.

1. Civil Appeal 163 of 2018
(Filed on 04.09.2018)

Muhammad Qadir Khan s/o Muhammad Ayub Khan, r/o Chothala, Tehsil and District Muzaffarabad, presently Serving as Junior Science Teacher, High School Rara, Muzaffarabad.

…. APPELALNT

VERSUS

1. Muhammad Amjad Khan s/o Muhammad Khurshid Khan, r/o Village Katkair, Tehsil and District Muzaffarabad, Azad Jammu & Kashmir.

……RESPONDENT

2. Director Public Instructions, Elementary and Secondary Educations Schools, (male), having his office at New District Complex, Muzaffarabad.

3. Divisional Director Schools (Male), Muzaffarabad Division, having his office at New District Complex, Muzaffarabad.

4. Abid Rahim s/o Muhammad Rahim, r/o Chinal Bang, Tehsil and District Muzaffarabad.

…. PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated 23.11.2018 in Writ Petition No.2255/2012]

FOR THE APPELLANT: Ch. Shoukat Aziz, Advocate.

FOR RESPONDENTS NO.1: Mir Abdul Latif, Advocate.

2. Civil Appeal No.166 of 2019
(PLA filed on 22.01.2019)

1. Director Public Instructions, Elementary and Secondary Educations Schools, (male), having his office at New District Complex, Muzaffarabad.
2. Divisional Director Schools (Male), Muzaffarabad Division, having his office at New District Complex, Muzaffarabad.

…. APPELLANTS

VERSUS

1. Muhammad Amjad Khan s/o Muhammad Khurshid Khan, r/o Village Katkair, Tehsil and District Muzaffarabad, Azad Jammu & Kashmir.

……RESPONDENT

2. Muhammad Qadir Khan s/o Muhammad Ayub Khan, r/o Chothala, Tehsil and District Muzaffarabad, presently serving as Junior

Science Teacher, High School Rara, Muzaffarabad.

3. Abid Rahim s/o Muhammad Rahim, r/o Chinal Bang, Tehsil and District Muzaffarabad.

…. PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated 23.11.2018 in Writ Petition No.2255/2012]

FOR THE APPELLANTS: Raja Ayyaz Ahmed, Assistant Advocate-General.

FOR RESPONDENTS NO.1: Mir Abdul Latif, Advocate.

Date of hearing: 01.07.2021.

JUDGMENT:

Khawaja Muhammad Nasim, J.— The titled appeals by leave of the Court have been directed against the judgment of the High Court dated 23.11.2018, whereby the writ petition filed by respondent No.1 has been accepted and the appointment order of the appellant, Muhammad

Qadir Khan, has been set aside, while issuing the direction for appointment of respondent No.1, herein.

2. The facts of the case are that respondent No.1, herein, filed a writ petition in the High Court alleging therein, that he is first class State Subject, hailing from village Katkair, Tehsil and District Muzaffarabad. He alleged that the official respondents through advertisement dated 13.04.2012 published various posts of Junior Teachers (B-9), of different cadres. Being qualified as M.Sc., B.Ed. he applied against the post reserved for Constituency No.4, Muzaffarabad. After conducting test and interview a merit list was compiled, wherein, he was placed at serial No.7 of the merit list dated 28.05.2012. He alleged that the official respondents issued the appointment orders of candidates, who were

falling at serial Nos. 1 to 6, 8 and 15, however, with *mala fide* intention, he was not appointed despite the fact that he was placed at serial No.7 in the merit list. He sought direction for his appointment. After necessary proceedings, the learned High Court through the impugned judgment dated 23.11.2018, accepted the writ petition in the following terms:

> "The gist of above discussion is that by accepting the instant writ petition the appointment order of private respondent No.4, dated 02.11.2012 is set aside as without lawful authority, hence, having no legal effect. The official respondents jointly and severally are hereby directed to appoint petitioner against the post of Junior General/Science Teacher B-9, by removing private respondent No.4, within 01 month period…."

Against the aforesaid judgment of the learned High Court both; the private and official respondents have filed the separate petitions.

Since the above captioned appeals are on the same subject-matter, therefore, the same are being disposed of through this consolidated judgment.

2. Ch. Shoukat Aziz, the learned Advocate and Raja Ayaz Ahmed Khan, the learned Assistant Advocate-General, representing the appellants in both the appeals argued the case at some length and stated that respondent No.1 was not having the required qualification for appointment as Junior Science Teacher so he could not be appointed as such. They further argued that the appellant, herein, was appointed as Junior Science Teacher on the recommendations of the respective selection committee vide order dated 02.11.2012, but the selection committee was not impleaded as party and in absence of the necessary party, no effective writ could have been issued but the learned High Court has not properly attended this

important aspect of the case. In support of their submission, the learned counsel referred to and relied upon the following cases of this Court:-

I. *Raeesa Mustafa vs. AJK Government & 6 others* [2014 SCR 165]

II. *Inspector General of Police & 17 others vs. Muhammad Fareed & 62 others* [2019 SCR 351],

and prayed for dismissal of the appeals.

3. While controverting the arguments of the learned counsel for the appellants, Mir Abdul Latif, Advocate, the learned counsel representing respondent No.1 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 respondent No.1 was at serial No.7 of the merit list while the appellant's name was placed at serial No.15 and thereafter a corrigendum was issued, wherein, his name was entered at serial No.8 of the merit list. In this way, the name of respondent No.1 was

placed before the appellant's name but despite this, respondent No.1 was not appointed and the appellant's appointment order was issued contrary to the merit list so the impugned judgment is in accordance with law. The learned counsel lastly prayed for dismissal of the appeals.

4. We have considered the arguments of the learned counsels representing the parties and have gone through the record of the case made available. A perusal of the record reveals that the official-respondents advertised various posts of Junior Teacher BPS-9 of different cadres. Respondent No.1, herein, applied for appointment against the quota of Constituency No.4, Muzaffarabad. The selection committee after conducting the test and interview placed respondent No.1, herein, at serial No.7 of the merit list and vide corrigendum issued later on, the

name of the appellant, herein, was entered at serial No.8 (b) of the merit list. Vide order dated 02.11.2012, the appellant, herein, was appointed as Junior Science Teacher on the recommendations of the respective selection committee. Respondent No.1, herein, challenged the said appointment order by way of writ petition before the High Court. The learned High Court accepted the writ petition and set aside the appointment order of the appellant, herein, and directed the official-respondents to appoint respondent No.1, herein, vide judgment dated 23.11.2018. A careful examination of the record shows that the appellant, herein, categorically stated in his written statement that the appointment of the appellant, herein, was made on the recommendations of the respective selection committee but the selection committee has not

been arrayed as party in the line of respondents. Leaving aside all other aspects, according to the record the appointment order of the appellant, herein, was made on the recommendations of the Selection Committee and without arraying the Selection Committee as party the writ petition was not properly filed and in absence of the necessary party no effective writ could be issued. In this state of affairs, the writ petition before the learned High Court, in our view, was not maintainable and in absence of the necessary party no effective writ could be issued but this important aspect of the case has not been properly attended by the learned High Court, hence, the impugned judgment is not sustainable in the eye of law. The identical proposition came under consideration before this Court in the case reported as *Shafqat Hayyat vs.*

Muhammad Shahid Ashraf & 18 others (2005 SCR 57), wherein, it has been observed as under:-

> "18. The writ was not properly constituted as the impugned orders were passed on the recommend-dations of the Selection Committee. However, the selection authority was not impleaded in the line of answering respondents before the High Court. In *Qazi Liaqat Ali Qureshi vs. Hafiz Muhammad Ishaq and 3 others* [1997 SCR 239] it was laid down that if a necessary party in whose absence no effective writ could be issued was not impleaded, the writ is liable to be dismissed on this sole ground."

The same proposition was resolved by this Court in the case reported as *Kh. Ghulam Qadir & 5 others vs. Divisional Forest Officer Demarcation & 3 others* [1996 SCR 161] and at page 165 of the report, observed as under:-

> "6. We have also noticed that the appellants before the High Court did not array Board of Revenue as one of the respondents. Member Board of Revenue was however, arrayed as one of the respondents in

> the writ petition. In our view the writ petition filed before the High Court by the appellants was not competent on account of non-joinder of the necessary party…..”

In view of the above discussion of facts and case law, both the appeals are accepted. Consequently, the impugned judgment dated 23.11.2018, passed by the learned High Court is, hereby, set aside. No order as to costs.

JUDGE **JUDGE**

Muzaffarabad.
02.07.2021.