

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Mr. Raza Ali Khan, J.

Civil PLA No. 123 of 2021

(PLA filed on 19.03.2021)

1. Azad Government of the State of Jammu & Kashmir through Secretary Local Government Board of Azad Jammu & Kashmir, having its office at Upper Chatter Muzaffarabad.
2. Finance Department of Azad Jammu & Kashmir through Secretary Finance, office at New Secretariat Muzaffarabad.
3. Secretary Local Government & Rural Development of Azad Jammu and Kashmir having its office at Lower Chatter Muzaffarabad.
4. Secretary Local Government, Board of Azad Jammu and Kashmir, having its office at Upper Chatter Muzaffarabad.
5. Rules Making Committee, Secretary Services and General Administration Department, office at New Secretariat Muzaffarabad.

(PETITIONERS)

VERSUS

1. Raja Mehmood Khan, Secretary B-11, Municipal Committee Dadyal, Azad Jammu & Kashmir.
2. Ashfaq Hussain Shah, Secretary B-15, Municipal committee Athmuqam Neelum, Azad Jammu and Kashmir.
3. Shahzad Nadeem, Secretary B-11, Municipal Committee, Samahni, Azad Jammu and Kashmir.
4. Afraz Hussain, Secretary B-11, Municipal Committee, Chaksawari Mirpur, Azad Jammu & Kashmir.

5. Mohammad Asif Khan, Secretary B-11, Municipal Corporation, Rawalakot, Azad Jammu and Kashmir.
6. Nadeem Ahmed, Secretary B-11, Municipal Committee, Hattian Bala, Azad Jammu & Kashmir.
7. Khuram Jahangir, Secretary B-11, Town Committee, Islam-Garh, Mirpur, Azad Jammu and Kashmir.
8. Khan Alam Khan, Secretary B-11, Town Committee, Kail, District Neelum, Azad Jammu & Kashmir.
9. Syed Abid Gillani, Secretary B-11 attached with Local Government Board of Azad Jammu & Kashmir.
10. Asjid Yousaf s/o Mohammad Yousaf, Secretary B-11, Municipal Committee, Sehnsa District Kotli, Azad Jammu & Kashmir.
11. Yasir Mehmood s/o Raja Mango Khan, Secretary B-11, Municipal Committee, Charhoi District Kotli, Azad Jammu and Kashmir.

(Real Respondents)

12. Chairman Local Government Board/Minister Local Government Board of Azad Jammu and Kashmir, office at New Secretariat Muzaffarabad.
13. Muhammad Pervaiz B-11, Town Committee Abbaspur.
14. Muhammad Naseer Khan, Secretary B-11, Municipal Committee Patikah Muzaffarabad.
15. Zaffar Iqbal, Secretary B-11, Town Committee, Khaigala Rawalakot, Azad Kashmir.
16. Abdul Qayyum, Secretary B-11, Municipal Committee Haveli (Kahuta), Azad Kashmir.
17. Zulfiqar Khan, Secretary B-11, Municipal Committee Kotli Sehnsa, Azad Kashmir.
18. Liaqat Hayyat, Secretary B-11, Municipal committee Sakandarabad Nikyal, District Kotli, Azad Kashmir.

19. Muhammad Atif Razzaq Khan, Secretary B-11, Municipal Committee Dhirkot, Azad Kashmir.
20. Amjad Mehmood, Secretary B-11, Municipal Committee Pallandri, Azad Kashmir.
21. Ajmal Hussain, Secretary B-11, Municipal Committee Hajira, District Rawalakot, Azad Kashmir.
22. Sikandar Khan, Secretary B-11, Town Committee Khoiratta Kotli, Azad Kashmir.
23. Gulfam Khan, Secretary B-11, Municipal Committee Charhoi, District Kotli, Azad Kashmir.
24. Sheikh Rashid Iqbal, Secretary B-11, Town Committee Ghari Dupatta, Azad Kashmir.

(PRO-FORMA RESPONDENTS)

[On appeal from the judgment of the High Court dated 19.01.2021 in Writ Petition No. 1173/2019]

FOR THE PETITIONERS: Raja Ayyaz Ahmed Khan,
Assistant Advocate
General.

FOR THE RESPONDENTS: Sardar Jahandad Khan
Mughal, Advocate.

Date of hearing: 06.07.2021.

ORDER:

Mr. Raza Ali Khan, J.– This order shall decide the titled petition for leave to appeal filed against the judgment of the learned High Court, dated 19.01.2021.

2. The succinct facts forming the background of the captioned petition for leave to appeal are that respondents, No. 1 to 11, herein, filed a writ petition before the learned High Court, alleging therein, that there were total 21 posts of Secretary Town Committee/ Municipal Committee B-11, in the Department, out of which 12 employees holding the posts, have filed a Writ Petition No. 168/2018, dated 23.01.2018, before the High Court for up-gradation of the post of Secretaries Town Committee/Municipal Committee from B-11 to B-16. It was alleged that the aforementioned judgment was passed only to the extent of those who knocked the door of the Court, and no order was passed to the extent of respondents No. 1 to 11, herein. It was further alleged that respondents No. 1 to 11, herein, have not been upgraded, as such, they are the aggrieved person. It was prayed that a direction may be issued to the petitioners, herein, for upgradation of respondents No. 1 to 11, in the light of the judgment

dated 09.04.2019, passed earlier by the High Court in writ petition No. 168/2018. The writ was contested by the other side by filing written statement, wherein, the claim of respondents No. 1 to 11, herein, was refuted. The learned High Court after necessary proceedings has accepted the writ petition, vide impugned judgment, dated 19.01.2021.

3. Raja Ayyaz Ahmed Khan, the learned Assistant Advocate-General, after narration of the necessary facts, submitted that the impugned judgment of the learned High Court is against law, rules and the facts of the case. He argued that respondents No. 1 to 11, herein, neither challenged the judgment, dated 09.04.2019, nor they filed any review against the said judgment, hence, the judgment of the learned High Court has attained finality, which cannot be interfered. He further argued that the respondents, herein, on one hand prayed to implement the judgment of the learned

High Court dated 09.04.2019, craving for upgradation of their posts similar to the pro-forma respondents, herein, and on the other hand, they took divergent stance in order to stop the legal procedure, for which they cannot be allowed. The learned High Court did not consider this important aspect of the matter of the case. He further argued that the learned High Court has upgraded respondents No. 1 to 11, without concurrence of the Finance Department, therefore, the judgment of the learned High Court is not maintainable and is liable to be set-aside. He further argued that the judgment dated 09.04.2019, was passed only to the extent of the pro-forma respondents, herein, and not to the extent of all the Secretaries, Town Committees/Municipal Committees. He further argued that important legal questions are involved in the case in hand, therefore, leave may be granted in the interest of justice.

4. Conversely, Sardar Jahandad Khan Mughal, Advocate, the learned counsel for the respondents forcefully defended the impugned judgment and submitted that the same is quite in accordance with law and calling for no interference by this Court. He further argued that the petitioners, herein, has not challenged the main judgment of the learned High Court dated 09.04.2019, titled "*Muhammad Pervaiz & others vs. Azad Govt. & others*" through which the learned High Court has issued a direction to upgrade all the posts of Secretaries Town Committees/Municipal Committees from B-11 to B-16, hence, the same has attained finality. He further argued that without challenging the judgment dated 09.04.2019, the judgment dated 19.01.2021 cannot be challenged. He further argued that the petitioners were going to upgrade only those 12 employees who filed a writ petition before the High Court, which is not only against the judgment dated 09.04.2019 passed by the learned High Court, but also against

the “*Upgradations of Posts Rules, 1984*”. He further argued that the petitioners have misled the learned Court while stating that the judgment dated 09.04.2019, was issued only to the extent of pro-forma respondents, whereas, in the said judgment the learned High Court has issued the direction for the upgradation of all the posts of Secretaries Town Committee from B-11 to B-16. He further argued that the petitioners have failed to point out any illegality in the impugned judgment dated 19.01.2021, and also did not point out any legal question of public importance, therefore, the petition for leave to appeal is liable to be dismissed.

6. I have heard the arguments of the learned counsel for the parties and examined the record made available. The matter in hand pertains to the upgradation of the Post of Secretary Town Committee/Municipal Committee from B-11 to B16. A perusal of the record reveals that earlier, a writ petition titled “*Muhammad Parvaiz & others vs. Azad*

Govt. & others” was filed, whereby, upgradation of the aforesaid post was sought by the petitioners, therein, and the learned High Court, vide the judgment, dated 09.04.2019, accepted the writ petition and directed the official respondents, therein, to upgrade the post in question from B-11 to B-16. The respondents, therein, in compliance of the judgment of the High Court, dated 09.04.2019, while considering the said judgment as a ‘judgment in personem’ have issued proposal for up-gradation of the post of Secretary Town Committee/Municipal Committee only to the extent of those whole filed earlier writ petition before the learned High Court and formulated proposal in this regard, while ignoring the respondents, herein. Thereafter, the respondents, herein, filed a writ petition No. 1173 of 2019 on 22.07.2019, alleging therein, that they are also serving as Secretary B-11, but the posts occupied by them have not been upgraded by the Department on the ground that they were not party

in the case titled "*Muhammad Parvaiz & others vs. Azad Govt. & others*". It was prayed by the respondents, herein, that they are senior and their seniority position will be violated if their case is not considered for upgradation/promotion. The learned High Court accepted their writ petition and directed the petitioners, herein, to upgrade all the posts of Secretary Town Committee/Municipal Committee from B-11 to B-16 in the light of the judgment, dated 09.04.2019, as the same was passed 'in rem' and not 'in personem'. The learned High Court also declared the summary/proposal dated 20.12.2019 as null and void.

7. In my considered view, the dictum laid down by the learned High Court in the impugned judgment is apt and in accordance with law. The learned High Court lawfully extended the benefit of the earlier judgment, dated 09.04.2019, to the respondents, herein, in the impugned judgment.

This view finds support from the case reported as “*Muhammad Latif Khan & others vs. Azad Govt. & others*” (2017 SCR 1570), wherein it has been held that:-

“A perusal of the above would show that if a proper case is made out then an Appellate Court is competent to grant relief to a non-appealing party. In the case reported as *Province of West Pakistan through the Secretary, Revenue Department, Lahore and 2 others vs. Associated Hotels of India Ltd* (1973 SCMR 367), the apex Court of Pakistan has taken an identical view and observed at page 373 of the report as under:-

“...No appeal had been filed by the Associated Hotels Ltd., but in an appeal before us we can pass any order that ought to have been passed even though the party in whose favour we pass it has not appealed. An ordinary appellate Court has such a power by virtue of Order XLI, rule 33, C.P.C., and for this Court there is similar provision in Order XLIX, rule 5 of the Supreme Court Rules, 1956, but even apart from that rule, there is an inherent power in this Court to pass any order which in its opinion should have been passed.”

The same view was reiterated and followed by this Court in the case reported as *Mst. Fazal Bi and 8 others vs.*

Ghulam Hussain and 4 others (PLJ 1980 SC (AJ&K) 5).”

Reliance in this regard can also be placed on the case reported as “*State Bank of Pakistan & others vs. Mst. Mumtaz Sultana & others*” (2010 SCMR 421), wherein, it has been held as under:-

“Undoubtedly and undisputedly the State Bank of Pakistan was party before this Court in all the abovereferred judgment. The legal position stated and declared by this Court about the scheme was not for one segment of employees. It was for one and all, falling within the purview of the Scheme. The ambit of Articles 189 and 190 of the Constitution of Islamic Republic of Pakistan, 1973 would get attracted with all force. There is no dearth of the precedents where as a result of the legal-position stated by the Court benefits accruing, were given even to those who were not party before this Court. Reference in this context may be made to Hameed Akhtar. Niazi’s case (supra), Chairman Pakistan Railways case (supra), Khawaja Abdul Hameed Nasir’s case (supra) and Amir Ikram’s case (supra).”

8. From the perusal of above reproductions, it becomes crystal clear, that the impugned judgment passed by the learned High Court is quite legal and

speaking one, calling for no interference by this Court. The petitioners, herein, have failed to point out any miss-reading or non-reading of the record. They also failed to substantiate any question of public importance, which is requisite for grant of leave. The impugned judgment of the learned High Court, dated 19.01.2021 is exceptional, hence, stands affirmed.

In view of above, this petition for leave to appeal stands dismissed with no order as to costs.

JUDGE

Muzaffarabad,
06.07.2021.