

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, C.J.

Raza Ali Khan, J.

Muhammad Younis Tahir, J.

1. Civil Appeal No. 07 of 2019

(PLA Filed on 29.10.2018)

Maqsood Ahmed Khan, Sub-Engineer Office of the Project Manager Chakkar District Hattian Bala, Department of Local Govt. and Rural Development, Azad Kashmir.

.... APPELLANT

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Additional Chief Secretary (ACS) General Azad Kashmir Muzaffarabad.
3. Secretary Services & General Administration Department, having his office at New Secretariat Muzaffarabad.
4. Secretary Local Govt. & Rural Development, having his office at New Secretariat Muzaffarabad.
5. Director General Local Govt. & Rural Development, having his office at New Secretariat, Muzaffarabad.
6. Accountant General of Azad Jammu & Kashmir, having his office at Sathra Muzaffarabad.

7. Shakeel Ahmed Sub-Engineer Local Govt. Department & Rural Development Trarkhal, Azad Kashmir.
8. Mukhtar Ahmed Abbasi, Officiating Assistant Engineer Local Govt. & Rural Development Department District Haveli.
9. Muhammad Basit Khawaja, Officiating Assistant Engineer Local Govt. & Rural Development Department AJ&K Misrayal Road Rawalpindi, Pakistan.
10. Muhammad Asghar Anjum, Sub-Engineer Local Govt. & Rural Development Department Kashmir Council Secretariat No. II Islamabad.
11. Zulfiqar Ali Shahzad, Officiating Assistant Engineer Local Govt. & Rural Development Department Mirpur AJ&K.

..... RESPONDENTS

12. Jahangir Aslam, Sub-Engineer Office of Director General Local Govt. & Rural Development Department Lower Chatter Muzaffarabad.
13. Sarfraz Mehmood, Sub-Engineer Office of the Director Muzaffarabad Division Local Govt. and Rural Development of (J) Block District Complex, Muzaffarabad, Azad Kashmir.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 30.08.2018 in Service Appeal No. 1096 of 2015)

FOR THE APPELLANT: Ch. Shoukat Aziz,
Advocate.

FOR THE RESPONDENTS: Raja Amjad Ali
Khan, Advocate and
Kh. Muhammad
Maqbool War,
Advocate General.

2. Civil Appeal No. 230 of 2019
(PLA Filed on 29.10.2018)

1. Aqeel Butt, Assistant Engineer, Local Govt. & Rural Development Department, Muzaffarabad.
2. Zaheer-ud-Dn, Assistant Engineer, Office of Assistant Director Local Govt. and Rural Development Department Muzaffarabad.
3. Mirza Naseem Ejaz Yousaf, Assistant Engineer, Local Govt. & Rural Development Department Mirpur.
4. Azhar Hussain Banvi, Assistant Engineer, Local Govt. & Rural Development Department Bhimber.
5. Hamid Latif Durrani, Assistant Engineer, Local Govt. & Rural Development Department Bagh.
6. Ateeq Ahmed Butt, Assistant Engineer, Office of Assistant Director, Local Govt. & Rural Development Muzaffarabad.

.... APPELLANTS

VERSUS

1. Maqsood Ahmed Khan, Sub-Engineer Local Govt. and Rural Development Department, presently posted at Markaz Chakkar, District Hattian Bala, Azad Kashmir.
2. Muhammad Ashfaq, Sub-Engineer, presently posted in the office of Director General, Local Govt. & Rural Development Department Office at New Secretariat, Lower Chatter Muzaffarabad.

..... RESPONDENTS

3. Azad Govt. of the State of Jammu & Kashmir, through its Chief Secretary having his office at New Secretariat Complex Lower Chatter Muzaffarabad.
4. Selection Board No.3 through its Chairman/Secretary Local Govt. & Rural Development Department Office at Lower Chatter Block No.09, Muzaffarabad.
5. Local Govt. & Rural Development Department through Director General Local Govt. office at Lower Chatter Muzaffarabad.
6. Muhammad Tufail, Assistant Engineer (retired), Local Govt. and Rural Development Department Bagh.
7. Muhammad Ashraf Butt, Assistant Engineer (retired) Local Govt. and Rural Development Department Mirpur.
8. Muhammad Khurshid Sajjad Assistant Engineer (retired) Local Govt. & Rural Development Department Mirpur.
9. Zahoor-ul-Haq, Assistant Engineer Local Govt. and Rural Development Department Bhimber.

10. Sajid Naeem, Assistant Engineer office of Director General Local Govt. & Rural Development Department Muzaffarabad.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 17.01.2019 in Service Appeal No. 931 of 2015)

FOR THE APPELLANTS: Raja Amjid Ali
Khan, Advocate.

FOR THE RESPONDENTS: Ch. Shoukat Aziz,
Mr. Saqib Javid,
Mr. Muhammad
Saghir, Advocates
and Muhammad
Maqbool War,
Advocate General.

3. Civil Appeal No. 475 of 2019
(PLA Filed on 18.03.2019)

1. Azad Govt. of the State of Jammu & Kashmir through Secretary Local Govt. and Rural Development Department having his office at New Secretariat, Muzaffarabad.
2. Selection Board No.3, through its Chairman/Secretary Local Govt. and Rural Development Department, having his office at Lower Chatter, Block No.9, Muzaffarabad.
3. Local Govt. and Rural Development Department, through Director General Local Govt. and Rural Development having his office at Lower Chatter, Muzaffarabad.

.... APPELLANTS
VERSUS

1. Maqsood Ahmed Khan, Sub-Engineer Local Govt. and Rural Development Department, presently posted at Markaz Chakkar, District Hattian Bala, Azad Kashmir.
2. Muhammad Ashfaq, Sub-Engineer, presently posted in the office of Director General, Local Govt. & Rural Development Department Office situated at Lower Chatter Muzaffarabad.

..... RESPONDENTS

3. Muhammad Tufail, Assistant Engineer, Local Govt. and Rural Development Department Bagh.
4. Muhammad Ashraf Butt, Assistant Engineer, Local Govt. and Rural Development Department, Mirpur.
5. Muhammad Khurshid Sajjad, Assistant Engineer, Local Govt. and Rural Development Department, Mirpur.
6. Aqeel Butt, Assistant Engineer, Local Govt. and Rural Development Department, Muzaffarabad.
7. Zaheer-ud-Din, Assistant Engineer, in the office of Assistant Director Local Govt. and Rural Development Department, Muzaffarabad.
8. Mirza Naseem Ejaz Yousaf, Assistant Engineer, Local Govt. and Rural Development Department Mirpur.
9. Azhar Husain Banvi, Assistant Engineer, Local Govt. and Rural Development Department Bhimber.

10. Hamid Latif Durrani, Assistant Engineer, Local Govt. and Rural Development Department Bagh.
11. Zahoor-ul-Haq, Assistant Engineer, Local Govt. and Rural Development Department, Bhimber.
12. Sajid Naeem, Assistant Engineer, office of Director General Local Govt. and Rural Development Department, Muzaffarabad.
13. Ateeq Ahmed Butt, Assistant Engineer, office of Assistant Director, Local Govt. and Rural Development Department Muzaffarabad.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 17.01.2019 in Service Appeal No. 931 of 2015)

FOR THE APPELLANTS: Mr. Muhammad
Sagheer Javed,
Advocate.

FOR THE RESPONDENTS: Ch. Shoukat Aziz,
Advocate.

Date of hearing: 05.12.2022.

JUDGMENT:

Raza Ali Khan, J.— The captioned appeals by leave of the Court, arise out of the

judgments dated 30.08.2018 and 17.01.2019, passed by learned Service Tribunal, in Service Appeals No.1096 of 2015, 619 of 2016 and 931 of 2015. As all the appeals involve common questions of law and the facts, hence, were heard together and are being decided as such.

2. Brief facts for disposal of appeal No. 07 of 2019, are that two appeals were filed in the Service Tribunal by the appellant, herein, along with two others. The first appeal bearing No.1096 of 2015, was filed on 31.12.2015, against the notification dated 10.12.2015, through which the amendment was made in the Azad Jammu & Kashmir Local Government and Rural Development Department Service Rules, 1998, regarding the post of Assistant Engineer (B-17). It was alleged by the appellants, therein, that they are permanent employees of the Local Government Department and holders of B.Tech (Hons) degrees. They alleged that initially, in the

Azad Jammu & Kashmir Local Government and Rural Development Department Service Rules, 1983, 15% quota was fixed for promotion against the post of Assistant Engineers from amongst the Sub-Engineers having qualification of B.Sc. (Engineering) and B.Tech (Hons) degree while making an amendment vide notification dated 22.09.2006, However, through the impugned notification dated 10.12.2015, further amendment has been made in the Azad Jammu and Kashmir Local Government and Rural Development Department Service Rules in 1998, while fixing 50% quota for promotion against the post of Assistant Engineer from amongst the Sub-Engineers, having the minimum qualification prescribed for initial recruitment as Sub-Engineer along with 16 years' service as Sub-Engineer and substituting the previous existing qualification of B.Tech. (Hons) Degree.

The second appeal bearing No.619 of 2016, was filed on 26.05.2016, against the notification dated 25.03.2016, through which respondents No.7 to 11, therein, were promoted as Assistant Engineers on the recommendations of the Selection Board No.3. The appellants, therein, claimed that as the private respondents, therein, have been promoted in the light of the notification dated 10.12.2015, which has already been challenged by filing appeal No.1096, and is pending before the Service Tribunal, therefore, till decision of the said appeal the respondents cannot be promoted and the notification dated 25.03.2016 is illegal. The learned Service Tribunal consolidated both the appeals and after necessary proceedings, dismissed the same, vide impugned judgment dated 30.08.2018.

3. The facts of appeal No. 230 and 475 of 2019, are that respondents No.1 and 2, herein,

filed an appeal in the Service Tribunal whereby they challenged the notification dated 01.09.2015, through which the private respondents therein were promoted as Assistant Engineers B-17, by violating the 15% quota of B.Sc. Engineering. It was alleged by the respondents, herein, that they are permanent employees of the Local Government and Rural Development Department, presently posted as Sub-Engineers (B-11). As per the Azad Jammu and Kashmir Local Government & Rural Development Service Rules, 1983, amended upto date, 15% quota was reserved for the promotion of BE, B.SC Engineering and B.Tech (Hons) against the posts of Assistant Engineers. It was further alleged by the appellants, respondents, herein, that they are eligible for promotion having the qualification of B.Tech (Hons) but the official respondents have violated the said quota and through Notification dated 01.09.2015, have

promoted respondents No.4 to 14, therein, as Assistant Engineers (B-17) due to which the terms and conditions of their services have been adversely effected. They requested for acceptance of appeal. After necessary proceedings, the learned Service Tribunal through the impugned judgment dated 17.01.2019, accepted the appeal in the following terms:

“Resultantly, the instant appeal is accepted and the impugned Notification is set aside with the observations that the appellants shall be promoted against their relevant 15% quota as Assistant Engineers B-17 strictly in accordance with the Azad Jammu and Kashmir Local Government and Rural Development Department Service Rules, 1983 as amended upto date....”

This judgment of the Service Tribunal is subject of the instant appeals.

4. Ch. Shoukat Aziz, Advocate, while appearing on behalf of Maqsood Ahmed Khan in Civil Appeal No.07 of 2019, submitted that the impugned judgment of the learned Service

Tribunal is against law and the record, which is liable to be vacated. He submitted that the learned Service Tribunal while handing down the impugned judgment totally travelled beyond the settled principle of law laid down by this Court. He submitted that as per departmental rules prevailing earlier, 15% quota was fixed for promotion against the post of Assistant Engineers from amongst the Sub-Engineers with the qualification of B.SC and B.Tech (Hons), but the respondents with mala-fide intention and to accommodate their favourites, deleted this requirement of professional degree i.e. B.Tech (Hons), due to which valuable rights accrued in favour of the appellant have been infringed. The learned Service Tribunal failed to consider this aspect of the case and instead of resolving the real controversy dismissed the appeals on the grounds that the appellant is not an aggrieved person and he has also not arrayed the Selection

Board as necessary party in the line of the respondents. He submitted that the appellant got the degree of B.Tech. (Hons) after obtaining NOC from the Department and was eligible for promotion in the light of the departmental rules, but the official respondents, initially, made amendment in the departmental rules and thereafter, promoted the private respondents as Assistant Engineers during the pendency of the appeal through which the amendment was challenged. The learned Service Tribunal failed to consider all these aspects of the case, hence the impugned judgment is not maintainable.

5. Raja Amjid Ali Khan, Advocate, the learned counsel for appellants in appeal No. 230 of 2019 and for respondents No. 7 to 11 in appeal No. 07 of 2019, submitted that the impugned judgment of the learned Service Tribunal is against law and the record of the case, which is not sustainable in the eye of law.

He submitted that as per the Study Leave Rules, 1991, the employees of the Local Government Department are not entitled to avail the study leave, but this most vital aspect of the case has not been kept in mind while handing down the impugned judgment. So there exist no question of obtaining the degree of B.Tech for the Local Government Employees and the appellants, respondents No.1 and 2 are not eligible for promotion on the basis of said B.Tech degree. He submitted that due to non-availability of the qualified employees, 15% quota reserved for the B-Tech Overseers in the Department was rightly shifted into 20% quota reserved for diploma holder Overseers through notification dated 01.09.2015, but the learned Service Tribunal has illegally set aside the said notification. He further submitted that even otherwise, respondents No.1 and 2, herein, challenged the notification dated 01.09.2015, to the extent of 5

posts relating to the B-Tech degree but the Service Tribunal set aside the said notification as a whole without taking into account that six posts were already available for diploma holders and the grievance of the appellants, therein was only to the extent of 5 posts. Thus, the Service Tribunal has committed grave illegality by not appreciating the record in its true perspective. He further submitted that the learned Service Tribunal has also travelled beyond its jurisdiction while issuing the direction to promote the real respondents, Maqsood Ahmed and another. In continuation of his arguments, the learned counsel submitted that the very induction/appointment of respondents No.1 is the outcome of fraud and cheating as he prepared a forged NOC for B-Tech. and in this regard the department has also verified that no NOC has been issued to respondent No.1. The learned Advocate prayed for acceptance of

appeal by setting aside the impugned judgment of the learned Service Tribunal.

6. Kh. Muhammad Maqbool War, the learned Advocate General appearing for Azad Govt. and others argued that the appellant does not fulfill the required qualification as he has not passed the B.Tech. (Hons) Degree with permission of the department. He further argued that 15% quota of B.Tech. (Hons) has rightly been merged in quota of Diploma Holders, therefore, no right of promotion of the appellant has been infringed due to the notification impugned before the learned Service Tribunal, therefore, the impugned judgments of the learned Service Tribunal are liable to be set aside.

7. Mr. Saqib Javed, the learned Advocate appearing for proforma respondent No. 10 and Mr. Saghir Javed, the learned Advocate appearing for proforma respondent No.5 in

appeal No. 230 of 2019, submitted that the impugned judgment dated 17.01.2019, of the learned Service Tribunal has been passed without application of judicial mind, hence, while accepting the appeal, the same may be set aside.

8. We have heard the learned counsel for the parties and gone through the record with their able assistance.

9. First of all, we would like to deal with appeals No. 230 and 475 of 2019 respectively filed by Aqeel Butt & others and Azad Govt. & others. The proposition which cropped up before us for resolution has direct nexus with the Azad Jammu and Kashmir Local Government & Rural Development Service Rules, 1983, as amended vide notification dated 22.09.2006. Under the referred rules, the method of recruitment against the post of Assistant Engineer, B-17, was provided as under:-

- (i) 65% by direct recruitment;
- (ii) 15% by promotion of sub-Engineers possessing the qualification of B.E/B.SC Engineering and B.Tech (Hons); and
- (iii) 20% by promotion of sub-engineers with 16 years' service in the department.

According to rules amended vide notification dated 10.12.2015, for promotion as Assistant Engineer B-17, 50% quota was reserved for Sub-Engineers who fulfill minimum qualification required for initial recruitment as Sub-Engineer along with 16 years' experience as Sub-Engineer in the department. The appellant, Maqsood Ahmed claimed his promotion according to rules amended vide notification 22.09.2006, discussed hereinabove and the notification dated 10.12.2015, had already been challenged by him before the Service Tribunal through an appeal, which has been dismissed.

Admittedly, the contesting parties are the employees of the Local Government & Rural

Development Department serving as sub-Engineers. It is the contention of the private respondents (Maqsood Ahmed Khan and Muhammad Ashfaq) that they, being holder of degree of B.Tech (Hons) were eligible to be promoted against the aforesaid 15% quota, however, vide notification dated 01.09.2015, the referred quota has been shifted and the appellants (Aqeel Ahmed Butt & others) have been promoted. Feeling aggrieved, the private respondents challenged the notification dated 01.09.2015 by filing an appeal before the Service Tribunal. Their appeal has been accepted by the learned Service Tribunal through impugned judgment dated 17.01.2019. Against the judgment of the Service Tribunal dated 17.01.2019 two appeals have been filed; one by the appellants, Aqeel Ahmed Butt & others, and the second by the Azad Government and others.

10. As per the arguments as well as the written record, the stance of the private respondents is that they have improved their qualification during the service, hence, a right of promotion against 15% quota stood accrued in their favour, whereas, contrary to this the version of the department is that the private respondents have obtained the degrees without obtaining study leave or NOC from the department. In this state of affairs, the point which emerges and requires deliberation by this Court is whether without obtaining NOC and study leave from the department, the degree of B.Tech (Hons) obtained by the respondents is valid and whether on the basis of said degree the respondents are eligible to be considered for promotion against 15% quota. It has been contended by the learned counsel for the private respondents that there was no need to obtain the study leave because the classes of B.Tech

(Hons) are held at the weekends, however, in our opinion the situation becomes quite obvious from the perusal of the notification dated 25.07.2008, finding place at page No. 36 as annexure "C" of paper book of appeal No. 230 of 2019, which reads as under:-

"آزاد حکومت ریاست جموں و کشمیر
سیکرٹریٹ ورکس/مواصلات
"مظفر آباد"
مورخہ 25 جولائی
2008

نوٹیفکیشن!

نمبر ورکس/82-6471-2008ء جناب صدر آزاد جموں و کشمیر نے محکمہ تعمیرات عامہ کے سب انجینئرز کیلئے مقررہ کوٹہ 15% کے خلاف صرف انہی امیدواران کو ترقیابی کیلئے زیر غور لائے جانے کی منظوری صادر فرمائی ہے۔ جنہوں نے ڈگری کے حصول سے قبل سٹڈی لیو اور باقاعدہ محکمانہ عدم اعتراض سرٹیفکیٹ (N.O.C) کے بعد اپنی تعلیمی استعداد میں اضافہ کیا ہوگا۔

محمد رفیق چوہدری
سیکشن آفیسر
ورکس/مواصلات"

In view of the notification (supra), only those sub-Engineers can be considered for promotion against 15% quota, who have improved their academic qualification after obtaining study leave and NOC from the department. Whereas, it stood established from

the record that both the private respondents neither applied for study leave and NOC nor the same were sanctioned in their favour. However, the private respondent No.1, Maqsood Ahmed Khan, has made an attempt to prove that he has obtained the degree with the prior permission of the department. In this regard, he has brought on record the alleged NOC (Annexure "PC/4", with CA N0.07/2019), however, the department has strongly controverted this NOC on the ground that no such NOC was ever issued. The alleged NOC is bogus and fictitious. In this regard, it is suffice to reproduce here the letter dated 17.01.2019, finding place at page No.104 of the paper book of appeal No. 07 of 2019, written by Deputy Director (Admin), Local Government & Rural Development, Muzaffarabad to Assistant Engineer, Local Government and Rural Development District Jhelum Valley, as under:-

"بخدمت:-

مختیار احمد عباسی صاحب،
اسسٹنٹ انجینئر لوکل گورنمنٹ و دیہی ترقی،
ضلع جہلم ویلی۔

عنوان:- تصدیق مصدقہ نقل حکم نمبری 10-

17908 محرره 2005-09 - 20 نسبت

NOC بحق مقصود احمد اوورسیئر

معاملہ مندرجہ عنوان الصدر میں بحوالہ آپ کی درخواست محرره **15.01.2019** بواپسی تحریر ہے کہ درخواست کی روشنی میں ریکارڈ کا تفصیلی ملاحظہ کیا گیا۔ بمطابق ریکارڈ حکم نمبر 10-17908 محرره **20.09.2005** کے تحت کوئی **NOC** بحق مقصود احمد اوورسیئر بابت سٹڈی لیو **B.Tech** جاری ہونا نہیں پایا جاتا۔ مقصود احمد نے اگر متدائرہ اپیل معزز عدالت العظمیٰ کے ساتھ شامل کر رکھا ہے وہ جعلی اور فرضی ہے۔ ایسا کوئی حکم نظامت اعلیٰ ہذا سے جاری شدہ نہ ہے بلکہ اصل ترسیل نمبر 16-17908 محرره **20.9.2005** پر درج ہے وہ ترسیل نمبر دراصل تیاری سکیم ہا کشمیر کونسل بابت سال **2005-06** کے متعلق ہے۔ جس کی مصدقہ نقل (رجسٹر ترسیل ڈاک) تحت ضابطہ آپ کو جاری جاتی ہے۔

ڈپٹی ڈائریکٹر

(انتظامیہ)

لوکل گورنمنٹ و دیہی

ترقی

مظفر آباد"

Although it is clear from the above letter that the NOC produced by private respondent No.1 is fictitious but to remove the ambiguity and for our own satisfaction, we directed the Advocate General to contact the concerned department and apprise the Court regarding the genuineness of the alleged NOC.

The learned Advocate General in compliance of the direction of this Court, produced the letter dated 06.12.2022, which is reproduced below:-

" ڈائریکٹوریٹ جنرل لوکل گورنمنٹ و دیہی ترقی
آزاد حکومت ریاست جموں و کشمیر مظفرآباد
نمبر ڈ ج ل گ / 12782 / 2022 مورخہ
06-12-2022

عنوان:- تصدیق سٹڈی لیو/ **NOC** بحق
مقصود احمد خان اوورسیئر

معاملہ عنوان الصدر میں تحریر خدمت ہے
کہ مسٹر مقصود احمد خان اوور سیئر لوکل
گورنمنٹ و دیہی ترقی کے حق میں مطابق
ریکارڈ دفتر ہذا سٹڈی لیو / **NOC** کی
اتھارٹی مجاز سے منظوری جاری ہونا نہیں
پائی جاتی، اندریں بارہ مفصل رپورٹ زیر
نمبر 21-8618 مورخہ 07-2015-
23 مجاز اتھارٹی کو ارسال ہوئی، کی نقل
لف ہذا بغرض مزید کارروائی ارسال خدمت
ہے۔

ایڈمن آفیسر
لوکل گورنمنٹ و دیہی
ترقی
مظفرآباد"

In addition to this, the Local Government and Rural Development Department in its comments filed before the learned Service Tribunal categorically stated that none of the officials in the Department has duly enhanced qualification as B.Tech. (Hons) by obtaining N.O.C. and study leave. For proper appreciation the relevant

portion of the comments filed by the department is reproduced as following: -

"ضمن نمبر 1 : یہ کہ ضمن نمبر 1 کے ابتدائی حصہ اپیلانٹس کے سروس تعلیمی ریکارڈ سے متعلقہ ہے۔ بقیہ ضمن کے جواب میں عرض ہے کہ ریسپانڈنٹ نمبر 3 نے محکمانہ مفاد کے پیش نظر عرصہ دراز سے محکمہ میں خدمات انجام دینے والے اوورسیران کی ترقیابی کے لیے کارروائی کی ہے۔ اس طرح کوئی غیر قانونی کام نہ کیا ہے۔ وضاحتاً عرض ہے کہ محکمہ لوکل گورنمنٹ و دیہی ترقی میں باضابطہ طور پر محکمانہ NOC اور سٹیڈی لیو۔ محکمانہ قواعد کے مطابق کسی بھی اہلکار نے اپنی تعلیمی قابلیت کو بڑھانے کے لیے B.Tec نہ کیا ہے۔ اس طرح 15% کوٹہ B-Tec کے لیے رکھا گیا تھا ڈپلومہ ہولڈرز کے کوٹہ میں ضم کر دیا گیا۔ اور اپیلانٹ اپیل بذا دائر کرنے کا مجاز نہ ہیں۔"

In view of the above discussion, we feel no hesitation in holding that the degrees of B.Tech (Hons) obtained by the private respondents have no sanctity in the eye of law because the same were obtained without obtaining NOC or study leave from the department. The act of acquiring education during service by the private respondents, is an ill-gotten gain and it is celebrated rule of law that no one can be benefited of an ill-gotten gain. Therefore, on the basis of said degrees the private respondents cannot claim their right of promotion against 15% quota.

10. Furthermore, if the provisional law is gone into; it transpires that under Rule 3 of Study Leave Rules, 1991, specific departments have been mentioned who can avail study leaves and Rule 4 of the same states the ground on which such leave is granted which is that it must be in the public interest to pursue any special course of study or investigation of some nature. For better appreciation, these rules are reproduced as under:-

- “3. The rules shall apply to the Departments of Health, Forestry and Wildlife, Agriculture, Education Communication and Works, Industries and Mineral Development, Irrigation and Power, Livestock and Dairy Development, Housing Physical, Environment Planning Development and Labour Department.
4. The rules may be extended by the authorities empowered to sanction study leave to any Government servant, including Government servant of a Federal Service, and belonging to any of the departments mentioned above, in whose case if the sanctioning authority is of the opinion that leave should be granted in the Public interest to pursue a special course of

study or investigation of scientific or technical nature.”

Even otherwise, Rule 3 does not include department of Local Government, which clearly means that appellants do not, in any way, fall under this category and the question of grant of study leave to the extent of cases under discussion is unattracted to.

11. At this juncture, it may be mentioned here that under section 4 of the of the Azad Jammu and Kashmir Service Tribunals Act, 1975, only an aggrieved civil servant is competent to prefer an appeal before the Service Tribunal. According to the scheme of law, civil servant can only be termed as aggrieved when any order adversely affecting his legally determined terms and conditions of service is issued. If the claim of civil servant is not based upon any such legally determined or prescribed terms and conditions of service, he has got no legal cause of action or locus standi to file the

appeal before the Service Tribunal. Once we have reached the conclusion that the private respondents are not in possession of valid degree, as obtained without prior permission of the department or study leave, the proposition involved in disposal of this matter becomes narrow because the fate of all the titled appeals revolve around this proposition. In appeals No. 230 and 475 of 2019, the notification dated 01.09.2015, is impugned through which the appellants (Aqeel Ahmed Butt & others) were promoted as Assistant Engineer, BPS-17, by shifting of 15% quota. The private respondents, challenged this notification by filing an appeal before this Court, whereas, the fact of the matter is that, in view of above observations, they were not possessing the required qualification, hence, neither they were aggrieved person nor had locus standi to file appeal before the Service Tribunal in terms of section 4 of the Azad

Jammu and Kashmir Service Tribunals Act, 1975. In this way, the learned Service Tribunal erred while accepting their appeal and setting aside the impugned notification. Consequently, appeals No.230 and 475 of 2019 are liable to be accepted.

12. So far as appeal No.07 of 2019 is concerned, the controversy involved in this appeal is that through notification dated 10.12.2015, an amendment was made in the Local Government and Rural Development Department Service Rules, 1983, by which 15% quota of holders of B.Tech (Hons) degree was deleted. Maqsood Ahmed Khan and two others filed an appeal before the Service Tribunal. During the pendency of said appeal, the private respondents (in appeal No.07/2019) were promoted in the light of amended rules, vide notification dated 25.03.2016. This notification was challenged through separate appeal. The

learned Service Tribunal dismissed both the appeals through judgment dated 30.08.2018, We have held in the preceding paragraphs that the attempt made by the appellant, Maqsood Ahmed Khan, to prove that he had obtained the degree of B.Tech (Hons) with prior permission of the department, failed, hence, he was also not an aggrieved person and was not legally competent to file the appeal before the Service Tribunal. In this way, the judgment dated 30.08.2018, passed by the Service Tribunal, is fully in consonance with the law and facts of the case.

13. It is also pertinent to mention here that the appellant (Maqsood Ahmed) provided forged document (NOC) to his counsel in order to present the same before the Court is very disappointing. Appellant has intentionally and knowingly tried to dodge the Court, which cannot be taken lightly and if factum of

production of forged documents is not taken seriously, then the Courts will be flooded with such type of documents and it would become difficult to impart justice, hence, the Secretary Local Government is directed to initiate criminal and civil proceedings against the appellant (Maqsood Ahmed) forthwith and intimate this Court through Registrar of this Court positively within fortnight. Moreover, counsel for the parties are also advised to avoid any sort of negligence and beware of such fraudulent act of the parties.

14. The upshot of the above discussion is that appeals No. 230 of 2019 filed by Aqeel Butt and others and appeal No. 475 of 2019 filed by Azad Government and others are accepted and the impugned judgment of the learned Service Tribunal dated 17.01.2019 is set aside, whereas, appeal No. 07 of 2019 filed by Maqsood Ahmed Khan is hereby dismissed having no force.

No order as to costs.

JUDGE
II

CHIEF JUSTICE

JUDGE
III

Muzaffarabad.
11.01.2023