**SUPREME COURT OF AZAD JAMMU AND KASHMIR**
[Appellate Jurisdiction]

**PRESENT:**
*Kh. Muhammad Nasim, J.*
*Muhammad Younas Tahir, J.*

Civil Appeal No.167of 2022
(PLA filed on 12.09.2022)

1. Azad Jammu and Kashmir Government through Secretary Inland Revenue, Azad Jammu and Kashmir.
2. Chief Secretary Azad Jammu and Kashmir Government, Civil Secretariat Muzaffarabad.
3. Board of Inland Revenue, Azad Jammu and Kashmir Government through Chairman Board of Inland Revenue, Azad Jammu and Kashmir Civil Secretariat.
4. Secretary Services and General Administration Azad Jammu and Kashmir Government through Secretary Services and General Administration Civil Secretariat Muzaffarabad.
5. Secretariat Inland Revenue, Azad Jammu & Kashmir Government through Secretary Inland Revenue, Civil Secretariat Muzaffarabad.
6. Mushtaq Ahmed Tahir, S/o Ghulam Rasool, presently Registrar High Court, R/o Shahidan Wali Tehsil & District Mandi Bahauddin.

……APPELLANTS

**VERSUS**

Fiyaz Haider Nawabi, Advocate, Supreme Court Mirpur
Member Azad Jammu and Kashmir Bar Council.

…..RESPONDENT

[On appeal from the judgment of the High Court
dated 26.07.2022 in Writ Petition No.1617 of 2022]

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| FOR THE APPELLANTS: | Raja Mazhar Waheed Khan, Additional Advocate-General and Mr. Tahir Aziz Khan, Advocate. |
| FOR THE RESPONDENT: | Raja Muhammad Hanif Khan, Advocate. |

Date of hearing: 19.01.2023.

**JUDGMENT:**

***Kh. Muhammad Nasim- J.-*** The captioned appeal by leave of the Court, has been directed against the judgment of the High Court dated 26.07.2022, passed in Writ Petition No.1617 of 2022.

2. The facts of the case briefly stated are that respondent No.1, herein, who is an Advocate of this Court and also remained as Vice Chairman of the Azad Jammu and Kashmir Bar Council, was approved by the Worthy Prime Minister of Azad Jammu and Kashmir (Competent Authority), for the appointment as Chairman Appellate Tribunal Inland Revenue vide approval dated 21.02.2022. The file was sent to the Chief Secretary for issuance of the notification. The Chief Secretary (then) instead of issuing

the notification, submitted a note to the Worthy Prime Minister to review the approval order dated 21.02.2022, whereupon, respondent No.1, herein, filed a writ petition before the High Court and sought the following relief:-

> "It is, therefore, respectfully prayed that while restraining the Respondents from withdrawing the process of the appointment of the Petitioner as well as the approval of the Competent Authority dated 21.02.2022, the Chief Secretary Respondent No.l individually and all the functionaries Respondents may kindly be directed to notify the approval of the Prime Minister dated 21.02.2022 and the appointment of the humble Petitioner to the office of Chairman Appellate Tribunal Inland Revenue Azad Jammu and Kashmir may kindly be notified. Any other relief which is admissible in accordance with law and the Petitioner did not pray, the same may kindly be granted in the interest of justice."

The writ petition was contested by the appellants, herein, by filing the written statements. After necessary proceedings, the learned High Court, through the impugned judgment accepted the writ petition in the following terms:-

> "For the above multiple reasons, instant writ petition is accepted, the subsequent proceedings quo revisiting and withdrawal of the name of the petitioner are nullity in the eye of law; having no legal consequences and the respondents are directed to notify the name of the petitioner in light of the previous approval accorded in his favour on 21.02.2022, within one month."

3. Mr. Tahir Aziz, Khan, the learned Advocate, representing appellant No.6, submitted that the impugned judgment passed by the learned High Court is against law and the record of the case, which is not sustainable in the eye of law. He forcefully argued that the writ petition before the High Court was filed incompetently as the necessary party i.e. the Worthy Prime Minister (competent authority) was not arrayed in the line of the respondents. This point was categorically raised in the written statement and forcefully argued at the time of the arguments but the learned High Court failed to resolve the same in a legal manner. He further argued that in spite of the fact that the competent authority reviewed/withdrawn its approval dated 21.02.2022, the respondent did not challenge the same and the learned High Court has also set aside the same, through the impugned judgment. He contended that the learned High Court has failed to apply its judicial mind while handing down the impugned judgment. He submitted that the learned High Court while accepting the writ petition referred to and relied upon the case reported as [2015 SCR

860], which is not applicable in the case in hand. It is settled law that even a void order has to be challenged within a reasonable time. The learned Advocate further submitted that as the process regarding the appointment was not completed and no notification was ever issued in favour of the respondent, therefore, no legal right was accrued to him. The learned Advocate, made vehemence that a new eventuality has been arisen by issuance of the Ordinance dated 10.12.2022, thus, the impugned judgment passed by the learned High Court is liable to be set at naught. In support of his arguments he referred to and relied upon the cases reported as [1997 SCR 389], [2003 SCR 142], [2004 SCR 329], [2014 SCR 995] and [2022 SCR 179].

4. Raja Mazhar Waheed Khan, the learned Additional Advocate-General, adopted the arguments advanced by the learned counsel for appellant No.6 and prayed for acceptance of appeal.

5. Raja Muhammad Hanif Khan, the learned Advocate, representing the respondent, defended the impugned judgment on all counts and submitted that the learned High Court has committed no illegality while

passing the impugned judgment. He forcefully argued that the arguments advanced on behalf of the appellants regarding the non-impleadment of the Worthy Prime Minister (competent authority) in the writ petition is the result of misconception of law and the facts of the case. He contended that the Worthy Prime Minister approved the name of the respondent herein, for appointment, therefore, there was no need to implead the worthy Prime Minister in the line of the respondents. According to the learned counsel, the Azad Government was very much impleaded as respondent, thus, the objection raised by the learned Advocates for the appellants, has no substance. He further contended that the approval order was reviewed during the pendency of the writ petition and in existence of the status quo order, therefore, such like order was not lawful in the light of the case law reported as [2015 SCR 860]. The said order had no legal sanctity, therefore, it was not necessary for the respondent to challenge the same. He alleged that the objection regarding the impleadment of worthy Prime Minister was not raised by the official respondents in the comments/written statement filed before the High Court.

The learned Advocate, lastly prayed that the concise statement filed by the respondent is comprehensive, the same may be treated as his arguments. In support of his arguments, he referred to and relied upon the cases reported as [PLD 1973 SC 144], [2004 SCR 329], [2015 SCR 860], [2022 SCR 120] and prayed for dismissal of appeal.

5. We have heard the learned Advocates, representing the parties at extensive length and gone through the record made available along with the impugned judgment. The matter in this lis relates to the appointment of the respondent, herein, as Chairman Appellate Tribunal Inland Revenue. It is revealed from the record that the Worthy Prime Minister of the Azad Jammu and Kashmir (Competent Authority), approved the name of the respondent, herein, for appointment as the Chairman Appellate Tribunal Inland Revenue, vide order dated 21.02.2022 and the file was sent to the Chief Secretary for issuance of the notification. Nevertheless, the Chief Secretary submitted a note to the Worthy Prime Minister for review of the approval dated 21.02.2022. The respondent herein, filed a writ petition before the High Court and

prayed for a direction for issuance of the notification in the light of the approval of Worthy Prime Minister dated 21.02.2022. On filing of the aforesaid writ petition, appellants No.1 to 5 and 6, submitted their written statements separately, wherein, the claim of the respondent, herein, was refuted in toto. It was also stated in the written statement that the approval order dated 21.02.2022 has been withdrawn by the worthy Prime Minister, therefore, the writ petition has become infructuous. The learned High Court before passing the impugned judgment summoned the original record, wherein it was found that the approval order has been recalled. The learned High Court while handing down the impugned judgment accepted the writ petition and while setting aside the withdrawal order, issued the direction to the official respondents, therein, to issue the appointment notification of the respondent, herein, in the light of the approval dated 21.02.2022. The judgment of the learned High Court was assailed before this Court, through a petition for leave to appeal. While granting leave, the following legal points were formulated for resolving the controversy:-

(i) Whether without arraying the competent authority (Prime Minister) in the line of the respondents, the writ petition was maintainable?

(ii) Whether without challenging the withdrawal order of the approval dated 21.02.2022, the learned High Court was legally justified to set aside the same?

6. Keeping in view the controversy involved in the matter, firstly, we would like to deal with the second formulated point. From careful perusal of the record it transpired, that the approval order regarding the appointment of respondent was withdrawn by the worthy Prime Minister. Appellant No.6, herein, categorically agitated in his written statement that the approval order has been reviewed/withdrawn by the worthy Prime Minister but despite this fact, respondent herein, did not challenge the same through amendment in the writ petition. In our considered view, it was enjoined upon the respondent to seek the revocation of the withdrawal order but the needful was not done on the one or other pretext, so the same remained unchallenged. In this state of affairs, the learned High Court was not lawfully justified to set aside the withdrawal order which was never challenged in the writ petition. Thus, we are unanimous on the point that the

contention raised by the learned counsel for the respondent that the withdrawal order was issued during the pendency of the writ petition and in existence of the status quo order, there was no need to challenge the same in the writ petition in the light of the case reported as [2015 SCR 860], has no substance and the same is hereby repelled. The case law referred to by the learned counsel has no nexus with the case in hand because in the aforesaid case the transfer order issued during the pendency of service appeal, was challenged but in the case in hand, the situation is totally different. Our this view finds support from the case reported as "*Azad Govt. through Secretary Elementary and Secondary Education and 3 others vs. Mukhtar Ahmed and 12 others"* [2019 YLR 2111], wherein it was observed by this Court as under:-

> "……it is a settled principle of law that a void order which adversely affects the rights of a party must be challenged within a reasonable time…..".

In another case reported as *Said Begum vs. Punnu Khan* [2003 SCR 37], it was observed by this Court as under:-

> "7. We have also noticed that the impugned certificate issued by the learned Judge Family Court, though beyond jurisdiction, is still alive and the same has not been challenged by the appellant, we have observed in so many cases that even if there be a void order, it must be challenged within a reasonable time if it adversely affects the interests of a persons.

Similarly, in the case reported as *Muhammad Ilyas Khan and 5 others vs. Sardar Muhammad Hafeez Khan & 4 others* [2001 SCR 179], it was observed by this Court as under:-

> "…… It has been opined in the judgment under review that respondent was duly promoted vide notification of the Government dated 30.05.1995 with retrospective effect from 16.06.1987. This notification was not challenged by the petitioners, as such the same attained finality. If the said notification was void, the same should have been challenged by the petitioners. The petitioners slept over the matter, thus, their indolence and negligence cannot be excused. There are numerous authorities of this Court that even a void order adversely affecting the interests of a person should be challenged within reasonable time."

7. Now, we advert to the 2nd formulated point regarding non-impleadment of the worthy Prime Minister in the line of respondents. It is an admitted position that according to Rule 7 of the Appellate Tribunal Inland Revenue, (Appointment of Chairperson and Members

Rules, 2020), the Prime Minister shall appoint a Member of the Tribunal as Chairman thereof and except in special circumstances a person which was appointed should be a judicial Member. It depicts from the above referred rule that the Prime Minister is the sole authority for appointment of Chairman Appellate Tribunal Inland Revenue. As we have observed in the preceding paragraph of the judgment that when the approval order was withdrawn by the worthy Prime Minister, then the respondent, herein, was under legal obligation to challenge the same and implead the worthy Prime Minister in the line of respondents but unfortunately, in the case in hand, the respondent, herein, neither challenged the withdrawal order, nor impleaded the Prime Minister in the line of the respondents, so it can safely be held that the respondent has failed to absolve the legal obligation to fulfill the legal requirement. This Court in a number of judgments has held that a Court has to go by the pleading of the parties and it has no jurisdiction to decide a case which has not been put forward by any party, until and unless the party specifically prays for a relief, such relief cannot be granted. In this state of affairs, the writ petition

filed by the respondent was not maintainable. The learned High Court granted such relief which was not part of the pleadings and not prayed for. We are fortified in our view from the case reported as "*Azad Govt. & 3 others vs. Ayesha Shoukat & another"* [2011 SCR 119], wherein it was observed in para 6 as under:-

> "6. The record reveals that none of the candidates, whose recommendations were forwarded by the Commission, refused to join the post nor the department informed the Commission to forward the recommendations of any other candidate. If this would have the position, then a question may arise that the candidate next in number can be appointed. The learned Judge clearly travelled beyond the pleadings of the parties. The Court has to go by the pleadings of the parties and it has no jurisdiction to decide a case which has not been put forward by any party. Until and unless the party specifically prays for a relief such relief cannot be granted. Our above finding is supported by the judgment of this Court delivered in the case titled *Beero v. Mst. Said Bi* [1992 SCR 286] and *Azad Jammu and Kashmir Government and 4 others v. M/s Spintex Limited* [1998 SCR 167]. It will be useful to reproduce the observations of this Court recorded in *Azad Jammu & Kashmir Government and 4 others v. M/s Spintex Limited* [1998 SCR 167]:—
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> > "The second procedural mistake is that a Court has to go by the pleadings of the parties and should not allow the parties to travel beyond them. The order of the Prime Minister which the learned Judge has ordered to be

> implemented does not find any mention in the writ petition. The mere fact that a photostat copy of the order was appended with the writ petition does not warrant that it should have been brought under consideration…."

In another case reported as "*Hafiz Muhammad Abid vs. Azad Govt. & 4 others"* [2014 SCR 1608], it was observed as under:-

> "8. .....When the fact of appointment of respondent No.5 came into the knowledge of the appellant then he has to amend the writ petition or challenged the notification through a separate writ petition. The appointment notification on the strength of which the appellant wants to built up his case in this Court was not challenged before any forum, therefore, no relief can be claimed which is not prayed. It is settled principle of law that no relief can be granted beyond the pleadings. Reliance can be placed on a case reported as *Azad Government and 2 others v. Syed Muhammad Afzal Shah and another* [2003 SCR 22], wherein it has been observed that:-
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> > "11. From the survey of case law, it becomes absolutely clear that the law stands settled on the point that the relief which is not the part of pleadings of a party cannot be given to it by the Courts as the civil law is the law of omission and commission."
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> Similarly, in another case reported as *Raja Muhammad Saeed Khan v. Syed Khani Zaman Khan & 11 others* [2006 SCR 271], it has been held that:-

> "It is well settled principle of law that the parties cannot go beyond their pleadings."

> Even when the above said situation was confronted to the learned counsel for the appellant, he was unable to controvert the same. As the basic notification dated 09.06.2009, upon which the structure of the appellant's case could be built up was not challenged, therefore, we are not intended to discuss the other points raised by the learned counsel for the appellant."

8. So far as the argument of the learned counsel for the appellants regarding the Ordinance issued on 10.12.2022, is concerned, in our estimation as we have reached the conclusion that the writ petition filed by the respondent was not maintainable, therefore, no need to dilate upon the enactment, i.e. the Ordinance.

9. The result of the above is that while accepting the appeal, the impugned judgment passed by the learned High Court dated 26.07.2022, is hereby set aside. Consequently, the writ petition filed by the respondent/petitioner therein, stands dismissed. No order as to costs.

Before parting with the judgment, it may be observed here that the post of Chairman Appellate Tribunal

Inland Revenue is vacant and due to non-appointment of the Chairman of the Appellate Tribunal Inland Revenue, the public at large are suffering inconvenience regarding redressal of their grievance, therefore, the concerned authorities are hereby directed to initiate the fresh process of appointment of the Chairman Appellate Tribunal Inland Revenue as early as possible.

**JUDGE** **JUDGE**

Muzaffarabad. (J-III)
19.01.2023.