

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA SAEED AKRAM KHAN
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL No. 154 OF 2022

(Against the Judgment
dated 17.08.2022 passed
by the Service Tribunal, in
Service Appeal.
No.693/2019)

Azad Government of the State of Jammu & Kashmir
& others.

...Appellants

VERSUS

Imran Khurshid, Head Clerk, B-16, Directorate of
Education, Colleges, Muzaffarabad.

...Respondents

Minister, Higher Education, Azad Government of the
State of Jammu & Kashmir.

...Proforma-Respondent

Appearances:

For the Appellant:

Syed Atif Mushtaq
Gilani, Advocate.

For Respondents: Ch. Shoukat Aziz,
Advocate.

Date of hearing: 29.03.2023

JUDGMENT

RAZA ALI KHAN, J:- The captioned appeal by the leave of the Court has been directed against the judgment dated 17.08.2022, passed by the learned Service Tribunal, in Service Appeal No. 693 of 2019.

2. The facts of the case have sufficiently been incorporated in the impugned judgment of the learned Service Tribunal, hence, need not to be reiterated for the sake of brevity suffice it to observe that in the first round of litigation, both the parties preferred separate appeals before this Court against the judgment of the learned Service Tribunal dated 23.06.2020 and this Court while disposing of the appeals remanded the case to the learned Service Tribunal, vide judgment dated 16.05.2022, with the following observations: -

“6. In our considered view the impugned judgment of the learned Service Tribunal is self-contradictory. The learned Service Tribunal has not decided the matter according to law; if

according to the Service Tribunal the inquiry has not been conducted in accordance with law then how on the basis of the said Inquiry Report the appellant/Imran Khursheed can be removed from service or compulsorily retired? This question itself depicts the entire state of affairs, hence, we are inclined to remand the case to the learned Service Tribunal for decision of the same afresh according to law and the merits of the case within a period of three months after communication of the order of this Court, while providing fair opportunity of hearing to the parties.”

In pursuance of the direction of this Court, the learned Service Tribunal, vide impugned judgment dated 17.08.2022 has accepted the appeal filed by respondent, herein, and while setting aside the notification dated 09.08.2019 directed the respondents to hold *de-novo* inquiry in the matter under law.

3. Syed Atif Mushtaq Gillani, the learned Advocate appearing for the appellants argued that the impugned judgment of the learned Service Tribunal is against law, the facts and the record. He further argued that the learned Service Tribunal has not properly interpreted the sub-section (3) of section 5 of the Azad Jammu & Kashmir Removal from Service (Special Powers) Act, 2001, as the said section is not mandatory rather the same is a directory in nature.

The learned Advocate further argued that the competent authority while furnishing the final show cause notice to respondent No.1, on the basis of the inquiry report dated 13.08.2018, has impliedly granted an extension in the period fixed for the completion of the inquiry, therefore, the observation made by the learned Service Tribunal that the inquiry has not been completed within the period fixed by the authority, is not lawful, hence, the impugned judgment is bad in law. The learned Advocate lastly requested for acceptance of appeal while setting aside the impugned judgment of the Service Tribunal

4. Conversely, Ch. Shoukat Aziz, the learned Advocate appearing for the respondent forcefully defended the impugned judgment of the learned Service Tribunal. He argued that in the first round of litigation, this court rightly held the inquiry proceedings illegal. He argued that all the inquiry proceedings were illegally conducted and the appellants have dragged the respondent in frivolous litigation for more than two years. He argued that the impugned judgment has been passed quite in

accordance with the record and law on the subject, hence, the same warrants no interference by this Court. The learned Advocate further argued that the appellants have miserably failed to point out any illegality in the impugned judgment, hence, the appeal filed by them be dismissed.

4. After hearing the learned counsel for the parties and carefully scrutinizing the material brought on record, we have not been able to persuade ourselves to arrive at a conclusion any different from the one reached by the learned Service Tribunal. The learned counsel for the appellant has also not been able to convince us that there was any legal, procedural, or jurisdictional error, defect, or flaw in the impugned judgment of the Service Tribunal that may furnish the basis for acceptance of the appeal. According to section 5 of the Azad Jammu & Kashmir Civil Servants Removal from Service (Special Powers) Act, 2001, 60-days have been given to the Inquiry Officer for submitting the recommendations and findings to the competent authority after completing the inquiry. But in the case at hand, the Inquiry Officer went beyond

the prescribed period of limitation in submitting the inquiry report. The whole process of inquiry appears to have been initiated against the law and the rules, which has no sanctity in the eye of the law. After juxtaposed perusal of the record and the impugned judgment, we are of the considered view that the learned Service Tribunal has rightly appreciated the record as well as the law on the subject while delivering the impugned judgment, which does not call for any interference by this Court. The appellants have failed to make out any case for acceptance of appeal as they could not point out any illegality or legal infirmity in the impugned judgment.

Even otherwise, the Removal from Service (Special Powers) Act, 2001, has been repealed through the Act known as “Removal from Service (Special Powers) Act, 2019”, which is reproduced as under: -

“2. Repeal of Removal from Service (Special Powers) Act, 2001. (1) The removal from Service (Special Powers) Act, 2001 (Act XXV of 2001), is hereby repealed.

2. All proceedings pending under the repealed Act, immediately before the commencement of this Act, against any person whether in Government Service or Corporation Service, shall continue under the Azad Jammu & Kashmir Civil Servants

Act, 1976 (Act VI of 1976), and the Azad Jammu & Kashmir Civil Servants (Efficiency and Discipline Rules, 1977.

3. Subject to sub-section (2), on the repeal of the said Act, all disciplinary matters relating to persons in Government Service, to whom the Azad Jammu & Kashmir Civil Servants Act, 1976, (Act VI of 1976), and the Azad Jammu & Kashmir Civil Servants (Efficiency and Discipline) Rules, 1977, apply, shall be governed under the aforesaid Act and the rules made thereunder and the persons in Corporation Service or other statutory organizations shall also be governed under the Azad Jammu and Kashmir Civil Servants (Efficiency and Discipline) rules, 1977, if the rules have been made applicable to them under their respective laws.”

After the repeal of the Removal from Service (Special Powers) Act, 2001, all disciplinary matters regarding government servants shall be governed under the Azad Jammu & Kashmir Civil Servants (Efficiency and Discipline) Rules, 1977. As the learned Service Tribunal has ordered for conducting de-novo inquiry and the ‘Removal from Service (Special Powers) Act, 2001 has been repealed, therefore, the de-novo inquiry shall be conducted under the Azad Jammu & Kashmir Civil Servants (Efficiency and Discipline) Rules, 1977.

What has been discussed above, finding no force in this appeal, the same is hereby dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE

Muzaffarabad,
10.04.2023