

SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, C.J.

Raza Ali Khan, J.

CIVIL APPEAL NO.171 OF 2023

(Against the judgment of the High Court dated 04.04.2023 in writ petitions No.1806 and 1808 of 2022)

Ch. Ahsan-ul-Haq

.... Appellant(s)

VERSUS

Muhammad Naeem & others

.... Respondent(s)

For the appellant:

Ch. Muhammad Ismail,
Advocate.

For the respondents:

Syed Mehar Ali Shah
Bukhari and Ch. Aqif-ud-
Din, Advocates.

Date of hearing: 16.08.2023

ORDER

Raja Saeed Akram Khan, C.J.- The petitioner, herein, was appointed as Chowkidar, BPS-1, in the Forest Department vide order dated 18.04.2022 on temporary basis. He filed a writ petition for protection of his appointment order. The learned High Court

clubbed the writ petition with another writ petition of identical nature and disposed of the same through the impugned judgment with a direction to the official respondents to advertise the disputed post on the basis of Union Council and make appointment strictly on merit and recommendation of respective Selection Committee within a period of two months.

2. The learned counsel for the petitioner argued with vehemence that according to the Government notification dated 09.02.1994, the posts of BPS-01 to 05 are to be filled in on the basis of Constituency. This notification was upheld by this Court in the case reported as 2016 SCR 96. The disputed post exists in the office of Range Land Division, Muzaffarabad, hence, the direction of the High Court to advertise the disputed post on the basis of Union Council is against law. To this extent, the impugned judgment of the High Court is liable to be modified.

3. Conversely, the learned counsel for respondent No.1 argued that the impugned judgment passed by the High Court is perfectly legal. The disputed post is lying vacant at Sheep Farm Khawar Mang, Union Council Panjgran, Teshil Patika, whereas, the petitioner

belongs to other Union Council, hence, he is not entitled for appointment against the disputed post. In this state of affairs, the learned High Court has rightly directed for advertisement of the post on the basis of Union Council.

4. We have heard the learned counsel for the parties and gone through the record. At the very outset, it may be stated here that a temporary appointment does not confer any right for regular appointment and to this extent the judgment of the High Court is perfectly legal. The only issue before us is whether the learned High Court has rightly directed to advertise the disputed post on the basis of Union Council. According to the Government notification dated 09.02.1994 the posts of BPS-1 to 5 have to be filled in on merit from amongst the residents of the constituency. It is appropriate to refer here the notification dated 09.02.1994 as follows:-

"سروسز اینڈ جنرل ایڈمنسٹریشن ڈیپارٹمنٹ
آزاد حکومت ریاست جموں و کشمیر۔

مظفر آباد

مورخہ 9 فروری 1994

نوٹیفکیشن

نمبر انتظامیہ/ایس او/ششم/۱۱۱۱-۱۲۶۱/۹۴-۹۴ جناب صدر آزاد جموں و کشمیر نے ذیل منظوری صادر فرمائی

ہے۔

پے سکیل اتنا ۵۵ تک کے ملازمین کی تقرری حلقہ انتخاب کے امیدواروں سے میرٹ کی بنیاد پر عمل میں لائی جائے گی۔
البتہ محکمہ تعلیم شعبہ خواتین میں پرائمری معلمہ کی خالی آسامی پر حلقہ انتخاب کے بجائے صرف متعلقہ لوکل کونسل کی امیدوارہ
ہی کی تقرری ہوگی۔ عدم دستیابی موزوں امیدوارہ متعلقہ لوکل کونسل کی صورت میں ملحقہ لوکل کونسل کی موزوں امیدوارہ
کی تقرری میرٹ کی بنیاد پر کی جائے گی۔

دستخط

سیکشن آفیسر (قواعد) ""

The effect of notification dated 09.02.1994 has already been considered by this Court in a case reported as *Aurangzeb vs. Muhammad Zia & others* [2016 SCR 96] as follows:-

“The notification dated 9th February, 1994 which has been reproduced herein above was issued for meeting two eventualities for the posts of BPS-1 to 5. The posts of BPS-1 to 5 shall be filled in from the residents of constituency on merit and posts of primary teacheresses in the Education Department shall be filled in on local council basis and not on the constituency basis. There is wisdom behind this notification that the employees of lower grade shall be appointed within their constituency and primary teacheresses shall be appointed within their local councils so that they may serve near to their residence. There is no ambiguity in the notification. The said notification has been issued for facilitating the lower grade civil servants.

*The effect of notification dated 9th February, 1994 has been considered in a recent judgment of this Court titled *Faisal Iqbal vs. Deputy Director Commercial & 5 others* [2014 SCR 553], wherein a post fell vacant in the Electricity Division Mirpur, it is clarified that the status of Electricity Division is not like that of the Revenue Administrative Division. In Electricity Department Division is established at constituency level, it was observed that notification dated 9th February, 1994, posts of BPS-1 to 5 are reserved for the residents of the relevant constituency. In the said report, it was observed as under:-*

“According to the notification dated 9th February, 1994, the posts of B-1 to B-5 have been specifically reserved for the residents of the constituency, wherein the posts fell vacant or created. If a post falls vacant in the territorial limits of any particular constituent, only a person from the said constituency can be appointed against the said posts and none else. The wisdom behind the notification is that the persons in lower grade may be appointed near to their homes station. This notification has been issued to facilitate the employees of the lower grade so that they can be appointed near to their home station. The notification No.S&GAD/R-4/(347)-99, dated

26th May, 2003, through which 20% quota for the children for disable servants of grade B-1 to B-5 either serving or retired is reserved does not override or supersede the provision of notification dated 9th February, 1994. The former notification shall be acted upon in the light of notification dated 9th February, 1994, which reserved the posts of grade B-1 to B-5 for the residents of the relevant constituency. The children of serving or retired civil servants B-1 to B-5 are entitled to avail 20% quota in their respective constituencies.”

7. *While considering the above reproduced notifications, it is to be seen that whether the posts of BPS-1 to 5, like chowkidar, Qasid, Naib Qasid and like posts in the offices at district headquarter are reserved only for the residents of the constituency where such offices are situated or the candidates of whole districts are eligible to apply. Similarly, the posts of BPS-1 to 5 in offices, at Secretariat, Special institutions, the High Court, the Supreme Court and autonomous bodies, whether, only the candidates from the constituency where these offices are situated, can apply or the candidates from whole of the Azad Jammu & Kashmir are eligible, needs resolution. A combined study of the notification dated 12th March, 1972, 5th July, 1972 and 9th February, 1994 makes it clear that there is no ambiguity in the quota notifications. The non-gazetted posts in a district have to be filled in from the residents of a district. The notification dated 9th February, 1994 carves out a special situation, where a right to apply and be inducted against the posts of BPS-1 to 5 in the constituency and for the primary teacheresses in the union council has been provided. Such posts can only be filled in from the residents of the constituency and the union council.*

8. *The posts in offices at district headquarter, despite the notification dated 9th February, 1994 cannot be reserved for the constituency because the right to service in a district headquarter is not a right of only the resident of the said constituency at district headquarter. The residents of whole district have a right to the posts in offices at district headquarter like, the district administration, district education offices, the district headquarter hospital, district health offices, colleges, the district Courts, animal husbandry etc. Every resident of the district is entitled to apply against the posts at district headquarter. It may be clarified that the posts of BPS-1 to 5 in the institutions, the nature of which is not that of district level post, like the post in a primary school or in a*

high school and such like offices has to be filled in from the residents of constituency where the district headquarter is situated.

9. *The same principle is applicable to the posts of BPS-1 to 5 in any of the offices situate in the capital, like the Secretariat, the Supreme Court, the High Court, attached departments, special institutions, autonomous bodies, the residents of whole of Azad Jammu & Kashmir and refugees settled in Pakistan are entitled to apply against such posts. These posts are not reserved for the residents of constituency.”*

As the disputed post is lying vacant at Range Land Division, Muzaffarabad, hence, the appointment against the post cannot be limited to any Union Council rather the same has to be advertised on the basis of Constituency in the light of principle of law laid down by this Court in the aforesaid judgment.

The result of the above discussion is that this appeal is partially accepted, and the impugned judgment of the High Court is modified with a direction to the official respondents to advertise the disputed post on the basis of Constituency. No order as to costs.

Muzaffarabad,
16.08.2023

CHIEF JUSTICE

JUDGE