

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

Civil Appeal No.121 of 2023

(PLA filed on 04.03.2023)

Mohattar Bashir Mughal D/O Ghulam Bashir Mughal R/O
Village Balgran Presently Gojra/Shoukat Lines Muzaffarabad.

... APPELLANT

VERSUS

1. Azad Government of the State of AJ&K through Secretary Higher Education Department Nomination Board, having office at New Secretariat Lower Chatter Muzaffarabad.
2. Nomination Board/Higher Education of AJ&K through its Secretary having office at New Secretariat Lower Chatter Muzaffarabad.
3. Chairman Nomination Board (Higher Education) AJ&K having office having office at New Secretariat Lower Chatter Muzaffarabad.
4. Secretary Higher Education (Nomination Board) of the State of AJ&K at New secretariat Lower Chatter Muzaffarabad.
5. Eiman Abbas Dar D/O Khalid Mehmood Dar R/O Ghari Dupatta Tehsil & District Muzaffarabad. (Real Respondents).

... RESPONDENTS

6. GC University Lahore through its Registrar having office at GC University Lahore.

.... PROFORMA RESPONDENT

[On appeal from the judgment of the High Court
dated 02.03.2023 in writ petition No.4002/2022]

FOR THE APPELLANT: Mr. Tahir Aziz Khan,
Advocate.

FOR THE RESPONDENTS: Sardar Karam Dad Khan and
Syed Atif Mushtaq Gillani,
Advocates.

Date of hearing: 19.09.2023

JUDGMENT

Kh. Muhammad Nasim, J.— The captioned appeal by leave of the Court has been directed against the judgment of the High Court dated 02.03.2023, whereby the writ petition filed by the appellant, herein, has been dismissed.

2. The brief facts of the case are that both the appellant and the private respondent possess HSSC-level qualifications. The Nomination Board of Azad Jammu and Kashmir issued an admission notice on 04.08.2022, inviting applications for admission to various Universities. The dispute at hand pertains to a seat of BS English Literature (Regular) in Government College University, Lahore (**GCUL**) which is reserved for candidates from Azad Jammu and Kashmir. Condition No. 5 of the admission notice stipulates that all students applying through the Nomination Board must also apply directly online to Universities in Pakistan and admission cannot be obtained solely by filing

application before the Nomination Board. It is alleged that the appellant applied through the Nomination Board, participated in the entry test at GCUL and secured 21 out of 30 marks. Furthermore, it is claimed that the appellant is the sole successful candidate for the contested seat. However, the respondents are allegedly causing unwarranted delay in nominating the appellant due to political pressure and personal motives, with the intent to favour the private respondent. In these circumstances, the appellant filed a writ petition before the High Court for a direction to the official respondents to nominate the appellant against the disputed seat. During the pendency of the writ petition, the interim relief was granted to the appellant in consequence whereof she obtained admission in the GCUL and currently studying in 3rd semester. Subsequently, the learned High Court through the impugned judgment dated 02.03.2023 dismissed the writ petition.

3. Mr. Tahir Aziz Khan, Advocate, the learned counsel for the appellant argued that according to condition No.5 of the admission notice, it was mandatory for all the students, who applied before the Nomination Board, to also apply online directly to the concerned University and the admission cannot be obtained merely on the ground that the candidate has applied before the Nomination Board. The appellant in compliance of the

admission notice applied and participated in the entry test and succeeded, hence, now the Nomination Board, after incorporating condition No.5 in the admission notice, cannot turn around and claim that the entry test was not the compulsory requirement to get admission. The claim of the department is even against the nomination policy issued vide notification dated 05.11.2009, which states that the aspiring candidates are bound to provide proof of passing of the provincial entry test to the Nomination Board which shows that participation in the entry test is mandatory. The appellant was the sole candidate who fulfilled this criteria, hence, she was entitled to get admission in the University but the department just to accommodate the private respondent procrastinated the matter. The appellant, feeling aggrieved, filed a writ petition before the High Court and got admission in the University on the basis of interim relief granted by the High Court and presently, she is studying in the third semester. He further argued that the private respondent in furtherance of the admission notice dated 04.08.2022 applied before the Nomination Board but she violated the mandatory condition No.5 read with the nomination policy by not appearing in the entry test, hence, she is legally disqualified and disentitled to get the admission on the reserved seat. He further argued that the learned High Court erred in holding that the pre-condition

entrance test is exempted for the categories of disability, sports and co-curricular activities, Ex-FATA & reserved seats for Provinces other than the Punjab, whereas, it has no relevance with the case in hand because the admission notice and the nomination policy is very much clear which requires that passing of the entry test is mandatory. He further argued that even the impugned judgment of the High Court is not sustainable from another angle that the appellant has got admission in GCUL in the light of interim relief granted by the High Court and studying in third semester, hence, at this stage dismissal of the writ petition was not warranted under law.

4. Conversely, Sardar Karam Dad Khan and Syed Atif Mushtaq Gillani, Advocates, the learned counsel for the respondents argued that according to the merit list prepared by the Nomination Board in the light of marks of HSSC the private respondent is legally entitled for admission against the disputed seat. The appellant has not challenged the merit list in the writ petition; hence, she is not entitled for any relief. It was further argued that as per the admission criteria published by GCUL pre-admission test is exempted for the seats reserved for the candidates of Azad Jammu and Kashmir, thus, the merit list was prepared by the department wherein the private respondent falls at serial No.3 and the appellant figures at serial No.4. To

nominate the candidates in various institutions of Pakistan is a sole and exclusive prerogative of the Nomination Board which has allocated the impugned seat to the private respondent, hence, the learned High Court has not committed any illegality while passing the impugned judgment. They further submitted that the appellant has appeared in the test and interview on open merit and not against the seat reserved for the candidates of Azad Jammu and Kashmir, hence, her claim of passing the entry test, which was not required at all, is based upon mala fide. So far as the claim of the appellant regarding admission on the basis of interim relief granted by the High Court, is concerned, she was provisionally nominated subject to the outcome of the writ petition. In this scenario, the learned High Court has not committed any illegality while passing the impugned judgment, which is well-reasoned and speaking one and calls for no interference by this Court.

5. We have heard the learned counsel for the parties and gone through the record. A seat for BS English Literate in GCUL is reserved for the candidates hailing from the Azad Jammu and Kashmir. The Nomination Board issued an admission notice on 04.08.2022, inviting applications for admission in various Universities of Pakistan including GCUL. Both the appellant and the private respondent filed applications before the Nomination

Board. As the matter of admission was being procrastinated, the appellant filed a writ petition before the High Court for a direction to the Nomination Board to nominate her against the impugned post. During the pendency of the writ petition, the appellant got admission in GCUL on the basis of interim relief, however, subsequently, the learned High Court dismissed the writ petition through the impugned judgment.

6. In the light of respective pleadings of the parties and the arguments orated at bar, the proposition to be resolved by us is whether passing of entry test was the mandatory requirement for admission in GCUL. It may be stated here that it is the Nomination Board who recommends the candidates for admission against the seats reserved for the candidates of AJ&K in various Universities of Pakistan and no student can get admission by bypassing the Nomination Board. The Nomination Board published an admission notice on 04.08.2022, seeking applications for admission in various Universities of Pakistan including GCUL. Condition No.5 of the admission notice speaks that:-

"-- نامزدگی بورڈ میں درخواست دینے والے طلباء و طالبات کیلئے لازم ہے کہ وہ پاکستان کی یونیورسٹیز میں بھی direct اپلائی کریں اور یونیورسٹیز کے انٹری ٹیسٹ میں اپنے طور پر شامل ہوں صرف نامزدگی بورڈ میں اپلائی کرنے کی بنیاد پر یونیورسٹیز میں داخلہ حاصل نہیں کیا جاسکتا۔ بصورت دیگر دشواری کا سامنا ہو سکتا ہے۔"

The aforesaid condition makes it mandatory for the students to apply directly to the Universities in Pakistan and the admission cannot be granted merely on the ground of filing application before the Nomination Board. This condition appears to be in consonance with the nomination policy dated 05.11.2009 according to which for admission against the reserved seats, one of the required mandatory documents is proof of passing of the provincial entry test as depicted from clause 2(الف)(xii). It suggests that as per the admission notice and the Nomination policy appearance in the entry test was the mandatory requirement. In furtherance, of the aforesaid admission notice, both; the appellant and private respondent, who possess qualification of HSSC, applied to the Nomination Board. The appellant while complying with condition No.5 of the admission notice as well as the nomination policy appeared in entry test conducted by GCUL, whereas, the private respondent did not appear in the entry test on the pretext that as per the admission criteria published by GCUL the pre-entry test is exempted for the seats reserved for the candidates of Azad Jammu and Kashmir. Syed Atif Mushtaq Gillani, Advocate, the learned counsel representing the Nomination Board, is also of the view that as per the admission criteria of GCUL the entry test is exempted, hence, the private respondent is entitled for admission as per the merit

list. It may be stated here that the Nomination Board has itself framed the Nomination Policy and published the admission notice dated 04.08.2022 by specifically incorporating a condition that the candidate shall also apply directly online in the respective University, hence, now it cannot turn around with the claim that appearance in the entry test was not the mandatory requirement. We are fortified in our view from the principle of law laid down by this Court in the case reported as *Inspector General of Police & others vs. Syed Shehzad Ali Shah & others* [2020 SCR 510], wherein, it was held that:-

“We are afraid that such an argument is not available to the appellants as it is celebrated principle of law that the authority who has issued any order or done any act cannot subsequently take the stance that the order issued or action taken by him is against law. In this regard, reliance may be placed on a case reported as Tariq Rashid & 9 others v. University of AJ&K & 7 others [2019 SCR 766], wherein it has been held that:

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‘8. So far as the argument of the learned counsel for the respondents that the framed policy was unlawful, is concerned, it is observed that such argument is not available to the respondents because they themselves have issued the policy. According to the celebrated principle of law, the authority who has issued the order cannot subsequently take stand that the order issued or action taken is against law.’”

If at all the contention of the private respondent is deemed to be correct that according to the admission criteria of GCUL, she was not supposed to appear in the entry test, then she should have challenged condition No.5 of the admission notice but she failed to do so meaning thereby that she admitted the condition to be correct. On one hand, in compliance of the admission notice, she filed application before the Nomination Board and on the other hand she is not willing to fulfill the conditions prescribed by the Board. Thus, in our opinion, as per the admission notice read with the Nomination Policy the appearance of the candidates in the entry test was the mandatory requirement. Sardar Karam Dad Khan, Advocate, the learned counsel for the private respondent during his arguments while reading out the Nomination policy has focused on clause 2(ب) of the policy, however, in our opinion this is an independent clause and cannot be read with clause 2(الف)(xii).

7. So far as the argument of the learned counsel for the respondents that the appellant has not challenged the merit list, is concerned, it appears from the perusal of the alleged merit list that the same was compiled in deviation of the admission notice and the nomination policy, thus, this Court has the power to intervene if any act is done in colorful exercise of jurisdiction, disregard of law or the policy having the force of law as laid

down in the case reported as *Muhammad Manzoor Khan vs. Secretary Education & others* [2004 SCR 305]. Even otherwise, as per the claim of the appellant, the Nomination Board was procrastinating the matter, hence, she filed a writ petition before the High Court on 07.11.2022 for a direction to the Nomination Board to nominate her for admission against the disputed seat. The alleged merit list was prepared on the same day; hence, it may safely be concluded that at the time of filing of the writ petition, the merit list was not existing and as subsequently the appellant got admission in the University in the light of interim relief granted by the High Court, hence, she was not required to challenge the merit list.

8. The main proposition which goes to the roots of the case i.e., whether appearance of candidates in the entry test was the mandatory requirement has been resolved in the preceding paragraph in the manner that appearance in the entry test was mandatory. Since it was only appellant who appeared in the entry test and passed the same, whereas, the private respondent has not appeared in the test, hence, the appellant was rightly granted the provisional admission in the light of interim relief granted by the High Court and subsequent dismissal of the writ petition by the High Court is not in accordance with law.

Consequently, this appeal is accepted, and the impugned judgment of the High Court is set aside. The writ petition filed by the appellant is accepted and it is directed that the admission of the appellant in GCUL shall remain intact. No order as to costs.

Muzaffarabad,

JUDGE

JUDGE