

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

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM,
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEAL NO. 261 OF 2023

Civil PLA No. 660 of 2023

Civil Misc. No. 458 of 2023

(Against the judgment dated 04.09.2023, passed by the High Court in writ petitions No. 143 & 1857 of 2023)

Muhammad Jameel Safdar, Secretary Azad Jammu and Kashmir Transport Authority Muzaffarabad, office situated at Old Secretariat, Muzaffarabad.

...Appellant

VERSUS

Muhammad Iqbal s/o Ghulam Nabi r/o Ambore Tehsil and District Muzaffarabad and 11 others.

...Respondents

Appearances:

For the Appellant: Sardar Karam Dad Khan,
Advocate.

For the Respondents: Kh. Maqbool War, Advocate-
General & Mr. Haroon Riaz
Mughal, Advocate.

Date of hearing: 20.09.2023

JUDGMENT:

Raza Ali Khan, J:- The captioned petition for leave to appeal has been directed against the judgment of the High Court dated 04.09.2023. After hearing the counsel for the parties, as an important question of law of public importance is involved in the case, therefore, this petition is converted into appeal while dispensing with the requirements of filing of depositing security fee and the concise statement.

2. Muhammad Iqbal, respondent No.1, filed writ petition No. 143 of 2023, before the High Court, wherein, it was stated that the Azad Jammu and Kashmir Transport Authority Service Rules, 2020, provide only two methods for appointment to the position of Secretary Transport Authority BPS-18: either through promotion based on seniority and fitness from among Assistant Secretary, BPS-17/Secretary Regional Transport Authority (RTA) BPS-17, and Chief Motor Vehicle Examiner (CMVE) BPS-17, within the Department with 5 years' service and the qualifications specified in Col.7, or through the transfer of a suitable Officer of BPS-18, from any Government Department. It is alleged that the appellant, after reaching the superannuation age, retired from service. However, the official respondents have purportedly extended the appellant's employment on a contract basis through the impugned notification dated 19.08.2022, which is illegal and without lawful justification.

2. Muhammad Jameel Safdar, the appellant, herein, also filed a writ petition before the High Court seeking protection for his appointment made as per the notification dated August 19, 2022. He claimed that he was an employee of the Revenue Department and retired as the Deputy Commissioner on December 19, 2020. It was claimed that the appellant's appointment as the Secretary Transport

Authority was made by the Government on August 19, 2022, in accordance with section 13 of the Azad Jammu and Kashmir Civil Servant Act, 1976, specifically for re-employment. The appellant alleged that the official respondents were going to remove or terminate his service without legal authority, hence he prayed for a writ of prohibition from the Court.

3. Both the writ petitions were consolidated, and the respective parties were directed to submit written statements. Respondent No.1, Muhammad Iqbal, submitted a written statement in writ petition No. 1857/2023. In his written statement, he contended that the appellant lacks the legal standing to invoke the extraordinary constitutional jurisdiction of the High Court. He further contends that, according to the Azad Jammu and Kashmir Transport Authority Services Rules, 2020, there are only two specified methods for appointment to the post of Secretary Transport Authority, BPS-18, either through promotion based on seniority and fitness from within the department or through the transfer of a suitable Officer of BPS-18, from another government department. It is stated that the appellant retired from service upon reaching the superannuation age and that his service was extended illegally through the contested notification dated August 19, 2022. The appellant, herein, also submitted written statements in response to the writ petition filed by respondent No. 1, wherein he refuted the claims made by respondent No.1.

4. The learned High Court after necessary proceedings through the impugned consolidated judgment dated 04.09.2023, dismissed the writ petition No. 1857 of 2023 and while accepting the other writ petition No. 143/2023, set-aside the impugned notification dated 19.08.2022, in the following manner: -

“Thus, in view of above, a retired Civil Servant can be re- employed under the Government unless such re-employment is necessary in the public interest. The impugned notification reveals that it was not issued in the public interest rather it was issued in the personal interest of the petitioner, Muhammad Jameel Safdar. The position against which the petitioner was re- employed is not technical or professional and the petitioner does not hold any special education in the field. In my view re- employment in a routine matter is not warranted by law. The impugned notification does not disclose any reason' for re- employment of the petitioner (Jamil Safdar) in writ petition No.1857/2023 in public interest. No doubt, the word public interest is not defined in Civil Servant Act, 1976, but this word can be used in ordinary dictionary meanings. The learned counsel for the petitioner/respondent No.11, failed to convince the Court on this point. Therefore, I am of the opinion that the Impugned appointment notification dated 19.08.2022 has been made without lawful authority, as such the same is not sustainable”

5. Sardar Karam Dad Khan, the learned counsel for the appellant after narration of the necessary facts submitted that the impugned judgment of the High Court is quite against law, the facts and the record of the case. He submitted that it is evident from the comments filed by respondent No. 8 in the writ petition No. 143/2023, that the appointment order of the appellant was issued in accordance with section 13 of the Civil Servants Act, 1976, but the learned High Court erred in deciding the legal aspect of the case. He argued that the writ petition filed by respondent No1, herein, is lacking the status of *probano publico* as no permission has been obtained from the Court by filing the application under Order 1 Rule 8 of CPC, for filing the writ petition, nor any averment has been made in the memo of writ petition with regard to filing of the writ petition as a *probano publico*. He added that if this door is opened for the proxy litigator then no administrative order can be passed by

any Administrative Officer while performing their official duties.

6. Contrarily, Mr. Haroon Riaz Mughal, the learned counsel appearing for respondent No.1, stated that under section 13 of the Azad Jammu and Kashmir Civil Servants Act, 1976, a retired Civil Servant can be re-employed but the same is subject to the condition that the appointment is made if necessary, in the public interest. He added that the impugned notification shows that the same has not been issued in the public interest rather it seems to have been issued for the personal interest of the appellant. Furthermore, it was enjoined upon the authority to at least record some reasoning for the re-employment of the appellant that in which public interest the appellant was being re-employed. He further argued that the impugned notification has been issued in contravention to the AJ&K Civil Servant Act, 1976 and the rules made thereunder, therefore, the same has rightly been set-aside by the learned High Court. The learned Advocate further emphasized the appellant illegally filed a writ petition before the High Court for protection of his re-employment notification who had no locus-standi to file the same. According to Azad Jammu and Kashmir Transport Authority Service Rules, 2020, for appointment on the post of Secretary Transport Authority BPS-18, only two methods have been provided i.e. firstly by promotion on the basis of seniority-cum-fitness from the Assistant Secretary BPS-17 and Chief Motor Vehicle Examiner (CMVE), BPS-17, within the department with 5 years' service as such as per Column 7; and secondly by transfer of suitable officer of BPS-18, from any Government Department. The appellant after attaining the age of superannuation was retired from service and his service has illegally been extended in the garb of re-employment, just to deprive the employees who were to be promoted, therefore,

he is not entitled for any relief. He finally prayed that the learned High Court has rightly passed the impugned judgment which does not call for interference by this Court and this appeal may kindly be dismissed with cost.

7. Kh. Maqbool War, the learned Advocate-General also appeared on behalf of the official respondents and apprised the Court in this regard. He was directed to produce the entire record of the matter which has been placed on record by him.

8. We have duly heard the learned counsel for the parties and gone through the record of the case with utmost care and caution. It divulges from the record that vide notification dated 19.08.2022, the appellant was re-employed in the service for the period of three years in pursuance of the Azad Jammu and Kashmir Civil Servants Act 1976. In order to arrive at the just equitable conclusion in this matter, it becomes imperative to delve into the historical context, relevant statutory provisions and the subsequent notification. Notably, the Azad Jammu and Kashmir Civil Servants Act, 1976, contains pertinent provision for the re-employment of individuals who retired following the attainment of the age of superannuation. Section 13 of the Act, is relevant, assumes significance in this regard and it is reproduced below for enhanced clarity: -

“13. Employment after retirement: -(1) A retired Civil Servant shall not be re-employed under the Government unless such re-employment is necessary in the public interest and is made, except where the appointing authority is the Government with the prior approval of the Government.

Provided that no retired Civil Servant shall be re-employed or continued to be so employed after he has completed 63 years of his age.

(2) A civil servant may, during leave preparatory to retirement or after retirement from Government service, seek any private employment;

Provided that where employment is sought by a Civil Servant while on leave preparatory to retirement, he shall obtain the prior approval of the prescribed authority.”

9. The supra statutory provision addresses the re-employment of retired civil servants within the government and establishes explicit guidelines and constraints for this practice. Foremost among these is the requirement that a retired civil servant may only be re-employed by the government if there exists a compelling reason that unequivocally serves the public interest. This signifies that the decision to re-employ a civil servant who has retired from civil service must be rooted in a legitimate government purpose devoid of individual or departmental predilections. Furthermore, the provision mandates such a re-employment decision necessitates the prior approval of the government except where the appointing authority itself is the Government. This implies that the government as a collective entity must participate in the decision-making process concerning the re-engagement of retired civil servant. This additional layer of approval ensures that such re-employment determinations are undertaken with comprehensive scrutiny and accountability. In addition to these stipulations, the provision prescribes specific age limit for eligibility in the context re-employment. It expressly provided that no retired civil servant shall be re-employed or allowed to continue working for the Government once they have attained the age of 63. This age threshold operates as a mechanism to prevent as a mechanism to prevent individuals from engaging indefinite post retirement employment and instead encourages the systematic turnover of the workforce.

In this regard, for regularization of re-employment of a retired civil servant against a civil post in connection with the affairs of the Azad Government of the State of Jammu and Kashmir, a notification has been issued under section 23 read with section 13 of the Azad Jammu and Kashmir Civil Servants Act, 1976. For proper appreciation of the controversy agitated in this petition it is necessary to reproduce cabinet decision dated 20-2-2010 and notification dated 3-5-2010. The cabinet decision and notification are reproduced respectively as under:---

"GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR SERVICES AND GENERAL ADMINISTRATION DEPARTMENT

' Block No,2 New Civil Secretariat Complex.

"Muzaffarabad"

' Dated 20th February, 2010

NOTIFICATION:

' No,S&GAD/G-5(22) 2010; Consequent upon the decision taken during the meeting of the Azad Jammu and Kashmir Cabinet held on 18-1-2010, the President Azad Jammu and Kashmir has been pleased to accord approval to constitute the following committee to scrutinize the matters of re-employment/extension in service/contract employment:----

1.	The Chief Secretary/Secretary Cabinet, Government of AJ&K.	Chairman
2.	The Secretary, S&GAD, Government of AJ&K.	Member
3.	The Secretary, Finance, Government of AJ&K.	Member
4.	The Secretary Law, Justice, Parliamentary Affairs and Human Rights, Government of AJ&K.	Member
5.	Secretary of the concerned Department.	Member/Secretary

2. All the cases of re-employment/extension in service/contract employment will be referred to the said committee with the due recommendation of the concerned Minister.

3. The Committee, after due scrutiny and recommendation, will submit the cases to Prime Minister for orders.

Mazhar Farooq Janjua.
Section Officer (General) S&GD
05822-921974"

“AZAD GOVERNAMENT OF THE STATE OF JAMMU
& KASHMIR SERVICES & GENRAL
ADMINSTRATION DEPARTMENT

Notification

"Muzaffarabad"

Dated: 3rd May, 2010

NoS&GAD/G-5(22)/2010. In exercise of the powers conferred by Section 23 read with section 13 of Azad Jammu & Kashmir Civil Servants Act, 1976, the President Azad Jammu & Kashmir has been pleased to approve the following policy for regulating the matters of re-employment of retired civil servants against the civil posts in connection with affairs of the Azad Govt. of the State of Jammu & Kashmir, namely:-

- i. The re-employment beyond 'superannuation shall be an exception and not the rule.
- ii. It shall be recommended only in cases where government considers that the person is highly competent, with distinction in his/her profession/field and no qualified and experienced person is available from the existing cadres.
- iii. The retention of the officer is in the public interest and shall not block the promotion prospects of other officers.
- iv. Re-employment beyond the age of 63 years shall not be allowed
- v. The civil servants who have been, or may be, retired by the competent authority on or after completion of 25 years of service qualifying for pension shall not be considered fit for retention in government service.
- vi. A civil servant on leave preparatory to retirement and is desirous of seeking re-employment, including those seeking such re-employment within first two years of their retirement, shall seek prior permission of the concerned authority.
- vii. A person, whose services have been terminated as a result of disciplinary action against him, shall not be re-employed.,
- viii. No request for grant of ex-post-facto approval to the re-employment/ extension in service, contract employment in any circumstances shall be entertained.
- ix. No officer appointed on contract or serving on re-employment shall be allowed to continue in the

respective post after the expiry of the tenure and in case of overstay the financial liability shall rest upon the head of the department and the officer concerned himself/herself.

- x. All the cases of re-employment, extension in service, contract employment beyond the age of superannuation shall be considered by the committee constituted vide Notification NoS&GAD/G-5(22)/2010 dated 20-02-2010 and issued under the Azad Jammu & Kashmir Cabinet decision taken in the meeting held on 18th January, 2010.

It has further been approved that Administrative Secretary concerned shall refer proposals of such cases to the scrutiny committee, in the form of summary, containing the recommendations of the Minister-in-Charge, duly signed by him and shall be accompanied/supported with the following verifications, Information and documents:

- a) All the proposals for re-employment shall indicate reasons for non-availability of substitute and steps taken to train a substitute and statement of circumstances in which no other officers could be groomed to take up the assignment.
- b) The proposed re-employment/extension in service of employment, contract employment of any retired civil servant shall not create promotion blockade for other officers.
- c) A brief report on the performance of the officer, proposed for re-employment/extension in service or contract employment during his/her last 5 years of service.
- d) The officer proposed for re-employment/extension in service or contract employment is medically fit.
- e) The Administrative Secretary shall forward the proposals to the scrutiny committee at least two months before the date of superannuation or date of expiry of current period of re-employment/extension in service, contract employment as the case may be.

3. This notification shall take immediate effect.”

10. In the policy notification (supra) the detailed and comprehensive procedure for re-employment of retired Civil Servant has been provided. The condition, (ii) underscores the criteria for recommending the re-employment of retired

civil servants. It specifies that re-employment should only be considered in cases where the individual possesses exceptional competence and has achieved distinction in their respective profession or field. This implies that re-employment is reserved for highly skilled and accomplished individuals. Additionally, the condition insists that re-employment should be pursued only when there is a genuine lack of qualified and experienced candidates within the existing pool of civil servants. In essence, re-employment should be a measure of last resort when no suitable candidates are available among the current workforce. The condition (x) is the most important which places significant emphasis on a specific committee in the decision-making process regarding re-employment, service extensions, or contract employment beyond the age of superannuation (retirement). It mandates that all such cases must undergo a thorough review by a scrutiny committee that was established through a government notification dated February 20, 2010, referenced as "Notification No S&GAD/G-5(22)/2010." This committee's formation was based on a decision taken by the Azad Jammu & Kashmir Cabinet during a meeting held on January 18, 2010.

11. In the matter in hand, a direction was issued by the Worthy Prime Minister (Time) to re-employ the appellant on the post of Secretary Transport Authority, wherein, it was directed that in accordance with section 13 of the AJ&K Civil Servants Act, 1976, the appellant may be appointed on contract basis, however, in this regard, in response to the same, the Secretary Transport Authority submitted a summary to the Secretary to Worthy Prime Minister wherein it was desired that the proper procedure for re-employment of the appellant may be adopted as for that a committee under the chair of the Chief Secretary has already been constituted, therefore, the matter needs to be referred to the

Scrutiny Committee for seeking recommendations. The said summary is reproduced hereunder: -

"آزاد حکومت ریاست جموں و کشمیر مظفر آباد"

سیکرٹریٹ ٹرانسپورٹ

خلاصہ برائے جناب وزیراعظم

عنوان: کنٹریکٹ تقرری بطور سیکرٹری آزاد کشمیر ٹرانسپورٹ اتھارٹی

1- مسٹر جمیل صفدر ریٹائرڈ آفیسر آزاد جموں و کشمیر ایڈمنسٹریٹو سروس بی۔18 کی بطور سیکرٹری آزاد جموں و کشمیر ٹرانسپورٹ اتھارٹی کی تقرری کی نسبت جناب وزیراعظم آزاد حکومت ریاست جموں و کشمیر کی جانب سے بروئے نوٹ (ضمیمہ -A) احکامات موصول ہوئے ہیں۔

2- معاملہ کا جائزہ لیا گیا۔ آزاد جموں و کشمیر ٹرانسپورٹ اتھارٹی میں سیکرٹری ٹرانسپورٹ اتھارٹی میں بی۔18 کی آسامی موجود ہے۔ جس کے خلاف اس وقت مسٹر شاہد محمود آفیسر آزاد جموں و کشمیر ایڈمنسٹریٹو سروس تعینات ہیں۔ اس آسامی کے خلاف مطابق مروجہ قواعد ترقیاتی کوٹہ کے علاوہ کسی بھی محکمہ سے سکیل بی۔18 کے کسی آفیسر کو بذریعہ تبادلہ تعینات کیا جاسکتا ہے۔ مسٹر جمیل صفدر آزاد جموں و کشمیر ایڈمنسٹریٹو سروس سکیل بی۔18 کے آفیسر تھے جو کہ ملازمت سے ریٹائرڈ ہو چکے ہیں۔ آزاد جموں و کشمیر سروسز ایکٹ 1976 کے دفعہ 13 کے تحت کسی سرکاری ملازم کی ریٹائرمنٹ کے بعد دوبارہ تقرری کی گنجائش رکھی گئی ہے۔ (ضمیمہ -B)۔ ریٹائرڈ سرکاری ملازمین کی دوبارہ تقرری کنٹریکٹ بنیادوں پر عمل پر لائی جاتی ہے جو کہ آزاد جموں و کشمیر کنٹریکٹ پالیسی مجریہ 2006-07-29 کے تحت ریگولیٹ ہوتی ہے۔ (ضمیمہ -C)۔

3- محکمہ سروس سے جاری شدہ نوٹیفکیشن مجریہ 2010-02-20 (ضمیمہ -D) کے تحت ریٹائرڈ سرکاری ملازمین کی دوبارہ تقرری (Re-Employment) کنٹریکٹ تقرری کے معاملات کی نسبت جائزہ اور سفارشات مرتب کرنے کے سلسلہ میں جناب چیف سیکرٹری، آزاد حکومت ریاست جموں و کشمیر کی سربراہی میں کمیٹی تشکیل شدہ ہے۔ اس نوعیت کے کیسز انچارج وزیر محکمہ کی سفارشات کے بعد متناظرہ کمیٹی میں پیش کیئے جاتے ہیں۔ معاملہ ہذا بھی ریٹائرڈ آفیسر کی ملازمت پر دوبارہ کنٹریکٹ تقرری سے متعلق ہے۔ محکمہ ٹرانسپورٹ کی وزارت کا قلمدان جناب وزیراعظم آزاد حکومت ریاست جموں و کشمیر کے پاس ہے۔ آفیسر موصوف کی دوبارہ تقرری کی صورت میں موجودہ تعینات سیکرٹری ٹرانسپورٹ اتھارٹی کی محکمہ سروسز جنرل ایڈمنسٹریشن کی سطح سے کسی دوسری آسامی پر ایڈجسٹمنٹ کی جانا ہوگی۔

4- بالا صورتحال میں مسٹر جمیل صفدر ریٹائرڈ آفیسر آزاد جموں و کشمیر ایڈمنسٹریٹو سروس کی کنٹریکٹ پالیسی مجریہ 2006 کے تحت تابع شرائط ذیل تقرری (Re-Employment) کے سلسلہ میں تشکیل شدہ کمیٹی کی سفارشات حاصل کرنا ہوں گی:

شرائط:

- I. آفیسر موصوف کا عرصہ کنٹریٹ دو سال ہوگا۔ یہ تقرری کنٹریکٹ پالیسی مجریہ 2006-07-29 کے تحت ریگولیٹ ہوگی۔
- II. آفیسر مذکور ریٹائرمنٹ سے قبل حاصل کردہ تنخواہ مروجہ الاؤنسز کے علاوہ مستقبل میں ملنے والی مراعات حاصل کرنے کے حقدار نہ ہوں گے۔
- III. آفیسر مذکور عرصہ کنٹریکٹ کے دوران تحت مروجہ قواعد رخصت۔ سفر خرچ و طبی سہولیات حاصل کرنے کے حقدار ہوں گے۔

اندریں حالات معاملہ تشکیل شدہ سکروٹی کمیٹی میں پیش کرنے کی منظوری وزیر ٹرانسپورٹ/جناب وزیر اعظم آزاد حکومت ریاست جموں و کشمیر سے حاصل فرمائی جائے۔

سیکرٹری ٹرانسپورٹ

سیکرٹری صاحب، برائے جناب وزیر اعظم۔

نمبر سٹ/2022/323

مورخہ 29.07.2022

12. In response to the supra summary submitted by the Secretary Transport, the worthy Prime Minister did not agree to the proposal and while bypassing the recommendations of the scrutiny committee, granted the approval for appointment of the appellant. The approval order of the Worthy Prime Minister is also available on record which is as follows; -

"کمیٹی ہا حکومت نے اپنی معاونت کے لئے بنائی ہوئی ہیں، جب راقم نے یہ فیصلہ کر لیا کہ سیکرٹری ٹرانسپورٹ اتھارٹی مفادِ سرکار میں کسی کو لگانا ہے تو اس کے بعد معاملہ کمیٹی میں ارسال کرنا غیر ضروری ہے۔

لہذا مسٹر جمیل صفدر آفیسر آزاد جموں و کشمیر ایڈمنسٹریٹو سروس (ریٹائرڈ) کو عرصہ دو سال کے لئے تابع شرائط بالا بطور سیکرٹری ٹرانسپورٹ اتھارٹی بی۔18 تعینات کیئے جانے کی منظوری دی جاتی ہے۔ مسٹر محمود شاہد کی تعیناتی کی علیحدہ تجویز ارسال کی جائے۔

مطابقتاً احکامات جاری ہوں۔"

13. After the aforesaid approval/direction of the worthy Prime Minister, the matter was placed before the Chief Secretary for further proceedings, however, the Chief Secretary again requested for review of the order of the Worthy Prime Minister on the ground that the matter was examined in the light of rules/procedures and it transpired that within existing rules/policy and process, the directives of the Worthy Prime Minister could not be implemented hence, the same was required to be reviewed. The Worthy Prime Minister again declined to approve the requested review sought by the Chief Secretary and instead issued a directive for the issuance of the re-employment notification in favour of the appellant.

14. In our considered opinion, in a scenario where the specific procedure for appointing a retired civil servant on a contract basis is clearly delineated and corresponding rules and policy notifications, have been duly promulgated, any deviation from the said policy notification, made by the Worthy Prime Minister lacks the requisite authorization and contravenes established rules and policy. The whole proceedings have been conducted in violation of the rules/ policy notification which cannot be shielded from scrutiny. The proper course was to present the matter before the scrutiny committee constituted under the Chair of the Chief Secretary and after seeking recommendations from the committee, the proper order was to be passed but the same has not been done in the instant case.

15. The reason assigned by the Chairman Azad Jammu and Kashmir Transport Authority for the re-employment of the appellant was based on the circumstances prevailing at the time of appointment of Secretary Transport Authority in the department as per the rules, there was no departmental or other officer appointed on the post of Secretary Regional Transport Authority who could have been promoted and appointed as Secretary Transport Authority. The same is also evident from para 5 of the written statement filed by Chairman Azad Jammu and Kashmir Transport Authority before the High Court. For ease, the same is reproduced hereunder: -

"یہ کہ ضمنی نمبر 5 رولز کی حد تک درست ہے۔ یہی ضمنی غلط اور عدم تسلیم ہے۔ نان پٹیشنز نمبر 11 جمیل صفدر کی تقرری بمطابق قانون سول سرونٹ ایکٹ اور کنٹریکٹ پالیسی کے تحت عمل میں لائی گئی ہے۔ کیونکہ نان پٹیشنز نمبر 11 انتہائی تجربہ کار، محکمانہ تربیت یافتہ، محنتی، ڈپٹی کمشنر ریٹائرڈ ہیں جو ہر لحاظ سے اس اسامی کے اہل ہیں۔ یہاں اس امر کی وضاحت بھی ضروری ہے کہ بوقت تعیناتی سیکرٹری ٹرانسپورٹ اتھارٹی محکمہ ہذا میں مطابق قواعد سیکرٹری ریجنل ٹرانسپورٹ اتھارٹی کی اسامی پر کوئی محکمانہ یا دیگر آفیسر تعینات نہ تھے جو ترقیاب ہو کر سیکرٹری ٹرانسپورٹ اتھارٹی تعینات ہو سکتے جس کو ترقیاب کیا جاسکے۔"

16. This statement of the Chairman Transport Authority is paradox to the version taken by the Services and General Administration Department before the High Court in their written statement, wherein, it has been stated as follows: -

"علاوہ ازیں سیکرٹری ٹرانسپورٹ اتھارٹی کے محکمانہ قواعد مجریہ 17/11/2020 کے تحت متذکرہ اسامی کے خلاف بذریعہ ترقیاتی ازاں اسسٹنٹ سیکرٹری بی۔17، سیکرٹری ریجنل ٹرانسپورٹ اتھارٹی اور چیف موٹر و ہیل ایگزامینر بی ایس۔17 بذریعہ تبادلہ آفیسر بی ایس۔18 گورنمنٹ ڈیپارٹمنٹ تعیناتی عمل میں لائے جانے کی گنجائش ہے"

17. It has categorically been mentioned in the supra reproduced paragraph that the view taken by the Chairman Transport Authority that there was no alternate officer available at the time of appointment of the appellant, herein, is negated by the Services and General Administration Department stating the names of the alternate Officers available at the time of re-appointment of the appellant, herein. Upon exhaustive examination of the complete record and conflicting accounts presented by the Services Department and Chairman Transport Authority, it becomes evident that the entirety of the proceedings was undertaken with the primary aim of serving the interest of the appellant and pursuing personal interest rather than advancing the cause of public interest.

18. According to Section 13 of the Civil Servants Act, 1976, a retired Civil Servant shall not be re-employed under the Government unless such re-employment is deemed necessary in the 'public interest'. Regrettably, in the present case, the true intent and application of section 13 appears to have been misconstrued and misapplied resulting in an unwarranted advantage conferred upon the appellant. Although, Section 13 does not outrightly prohibit re-employment following retirement, it does emphasize the discouragement of such practice to ensure the unimpeded advancement of serving officials. Moreover, in the event of re-

hiring Civil Servant, the re-employment must unequivocally serve the public interest. This stands as the sole valid rationale for re-employment with no other justifiable grounds. Thirdly, the specific use of term 'necessary' in section 13 implies that re-employment to a particular post must withstand the necessity test. This necessitates that the public interest can only be adequately served through the appointment of a particular retired civil servant to specific position. In other words, the qualification, experience, credentials or skills of that individual must be of such a nature that no other candidate is more suitable for the appointment to the position, or alternatively, that the individual is indispensable to fulfilling the responsibilities of that role.

19. The expression "public interest" implies a matter relating to the people at large, nation or a community as a whole and if the interest of general public or community is not involved in a matter, it cannot be brought within the purview of "public interest". The object of the provisions of Section 13 is based on subject consideration and the requirement of 'public interest' may vary from case to case, therefore, an action taken, or an order passed by the competent authority must have reasonable nexus with the 'public interest'. In the Oxford English Dictionary, Volume VIII, Roy-Ry, Reprint 1961, at page No. 1558, the word 'Public', has been defined as under: -

"I. Pertaining to the people of a country or locality.

1. Of or pertaining to the people as a whole; that belongs to, affects, or concerns the community or nation; common, national, popular."

In, The New International Webster's Comprehensive Dictionary of the English Language, 2004

Edition, the word 'Public' has been defined at page 1019, as: -

“1. Of, pertaining to, or affecting the people at large or the community: distinguished from *Private* or *personal*.”

In Black's Law Dictionary, Tenth Edition, by Brayan A. Garner, the word 'Public Interest', has been defined as under: -

Public interest. (16c) 1. The general welfare of a populace considered as warranting recognition and protection.
2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.

Term “Public interest” has received comprehensive clarification through legal pronouncements, a few of which we deem pertinent to highlight. In the case reported as *Messrs Rabbiya Associates through Proprietor vs. Messrs Zong (CHINA MOBILE) through Director and 3 others*¹, concept of 'public interest' has been expounded upon as follows: -

“Expression Public Interest is common parlance means an act beneficial to general public and action taken in public interest necessarily means an action taken for public purpose. It further leads general social welfare or regard for social good and predicating interest of the general public in matter where regard was social good is of the first moment.”

Similarly, in the case reported as “*Atta Rabani vs. Secretary Education, Government of the Punjab, Lahore and others*”², it has been defined as under: -

¹ [PLD 2011 Karachi 132]

² [2006 SCMR 978]

“7. The expression "public interest" implies a matter relating to the people at large, nation or a community as a whole and if the interest of general public or community is not involved in a matter, it cannot be brought within the purview of "public interest". The object of the provisions of section 12(i) of Punjab Civil Servants Act, 1974 is based on subject consideration and requirement of "public interest" may vary from case to case, therefore, an action taken or an order passed by the competent authority must have reasonable nexus with the "public interest". However, ordinarily the Tribunal or Court is not supposed to substitute reasons for public interest and interference in the matter but this rule is subject to certain exceptions and in the service cases, the exception is that assessment of the performance of a person to judge his suitability, must not be based on the personal reason or the consideration not related to the public interest”.

Ordinarily the Tribunal or Court is not supposed to substitute reasons for public interest given by the executive authority and interference in the matter but this rule is subject to certain exceptions and in the service cases, the suitability is that assessment of the performance of a person to judge his suitability must not be based on the personal reason or the consideration unrelated to the public interest.

20. Since re-employment is contingent upon serving the public interest, it is imperative to uphold the principles of open merit transparency and equality of opportunity in the selection process, ensuring the appointment of the most qualified candidate. If these criteria are strictly adhered to, re-employment of civil servants will be the exception rather than the rule. A civil servant possesses a legitimate exception of advancement to a higher grade or position provided they meet the criteria set forth by law, however, the legitimate exception is undermined when another civil servant is re-inducted into the senior role after reaching the age of superannuation. Moreover, rehiring retired civil servants

injects political interference into the working of the civil service in many instances these officials are offered re-employments on their political affiliations as appears to be the case here. Such officials often find it challenging to resist political pressure, primarily because their employment owes entirely to political authorities.

21. The Government has regulated the service in Azad Jammu and Kashmir by enacting the Azad Jammu and Kashmir Civil Servants Act, 1976 and making rules thereunder, for carrying out the purpose of the Act. The Government has also regulated the policy for appointment on contract basis as well as re-employment. The powers generally exercised by the Government or a public functionary must be backed and strictly in line with the statutory law of the land. The travel beyond the rules and regulations has ruined the structure of the bureaucracy which practice causes heart burning among the civil servants who otherwise are qualified and eligible for promotion but have been deprived of by exercising arbitrary powers or on political intervention or accommodation of the highly influential persons who stood retired after attaining the age of superannuation. For the establishment of good governance it is imperative that both rules and ruled adhere strictly and faithfully, to the dictates of law and the Constitution. Any deviation from these principles not only trashes the reputation of the institution but also undermines the credibility of a Government as a whole. It is established legal principle that where an Act or rules prescribe a specific mode for performance of an act then such act should be performed according to that matter otherwise it should not be performed at all in contravention of that method and any deviation from it is impermissible. This principle is well exemplified in the

case reported as *M. Munir Raja vs. Chairman AJ&K Council & others*,³, wherein, it has been held as under: -

“It is now almost settled principle of law that when a particular method of performance of an act is prescribed under an Act or Rule then such act must be performed according to the prescribed method alone or not at all.”

In *Muhammad Younis Tahir's* case,⁴ this view has been reiterated by the apex Court of Azad Jammu and Kashmir. At page 241 of the report this Court observed as under:-

"It is celebrated principle of law that when a particular method for performance of an act is prescribed under an Act or Rules, then such act must be performed according to that particular method or not at all”.

In case titled *Muhammad Idrees v. Collector of Customs and others*⁵ it was observed as under:-

"A perusal of the provisions contained in section 201 of the Customs Act and in the rules shows that everything has been clearly and meticulously prescribed under the statute law and the rules framed thereunder. There is no indication of any procedure of post-auction private offers or receiving of any higher bid as provided in the two Standing Orders. It is thus abundantly clear that the Collector of Customs has exceeded his jurisdiction in making provision for post auction bids, thereby contravening the provisions contained in section 201 of the Customs Act and in the rules framed by the C.B.R. It is established principle of law that the things should be done as they are required to be done or not at all. Nobody can be allowed to contravene, flout or violate the statutes or the rules framed thereunder in the name of national interest or any other so-called high or sublime idea or ideal. The rule of law requires that every person in execution of law should follow strictly the law as lay down and

³ [2018 SCR 48]

⁴ 2012 SCR 213

⁵ PLD 2002 Karachi 60

should not exceed the limit of law for any reasons whatsoever."

22. Before concluding, it is paramount to observe here that the Prime Minister being one of the high office of the State carries the immense dignity respect and credibility. In our view, every action taken by Government functionaries regardless of their position in a State hierarchy must adhere to established procedure, rules and the law. The rules and regulations do not grant any authority latitude to make any appointment without following the prescribed legal procedure, even the Prime Minister or President lacks the authority to waive or bend any rule or regulation just to accommodate a person of his own choice. Numerous legal precedents support the notion that any appointment which has been made without following the prescribed procedure of law shall be illegal and the same cannot be protected.⁶ Reliance may be placed to the case titled *Prof. Dr. Rehmat Ali Khan vs. Dr. Syed Dilnawaz Ahmed Gardezi and others*⁷, wherein, it has been held as under: -

"The Chancellor in the instant case happens to be the Worthy President of the State which being the highest office of the State is the most dignified, the most respectable and the most credible office in a State. Therefore, it is necessary that detailed reasons for declining to accept any recommendations of the Senate be recorded especially when no recommendations for fresh panel has been sought. To my estimation each and every authority exercised by any institution, office or public office holder in a State has to record reasons and grounds for the same with no exception regardless of how high the said institution, office or public office holder is in the hierarchy of a State. The concept of modern constitutional State emerged on negation and denial of old concept of "the King can do no wrong". It is utmost important for us being Muslims and Islam being the State religion as per

⁶ [2014 SCR 418]

⁷ [2023 SCR 39]

AJ&K Interim Constitution 1974, that Islam much before the emergence of modern constitutional State negated any unstructured, unregulated and unaccountable authority to vest in any institution, office or person. Therefore, it goes without saying that due process is a requirement that matters be resolved in accordance with established procedure, rules and principles in a fair and transparent manner. So it is held that even there being no statutory provision requiring the Chancellor to record reasons for ignoring respondent No. 1 and another being first and second in order of priority and choosing the appellant being the third (far behind as per 60 marks granted by the Search Committee) the principle of natural justice required to record valid and justiciable reasons for doing so to bring the same in conformity with reasonableness, justness, fairness, openness, good conscience, equity, equality and injunctions of Islam being the Supreme Law of the land.”

In a contemporary Constitutional State, all administrative actions are inherently subject to Judicial review, in the absence of a clear statement of reasons for an act, wherein no explanation or justification has been provided as to why the decision to re-employ the appellant was in public interest, such an explanation is fundamental pre-requisite when making such a determination. This principle finds a notable illustration in the case of *Azad Govt. & others vs. Kh. Muhammad Saleem Bismal & 17 others*⁸, where it was decisively held as under: -

14. In a modern constitutional State all administrative acts are subject to judicial review and in absence of any statement of reasons for an act such as appointment notification dated 12.09.2022, in violation of the order of priority (merit) cannot be judged in accordance with the Constitution and Law. The process of writing reasons materially assists decision-makers during the process facilitating the detailed consideration of all necessary issues and enhances the public confidence in the authority.”

⁸ [2022 SCR 430]

23. To conclude, we are of the view that the impugned judgment of the High Court does not suffer from any illegality which is hereby upheld. Consequently, this appeal, having no force, is hereby dismissed. No order as to costs.

JUDGE

JUDGE

Muzaffarabad,
03.10.2023
Approved for Reporting.