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. 67 OF 2024

(Against the judgment dated 31.10.2023, passed by the High Court in writ petition No. 1999 of 2022)

Azad Government of the State of Jammu and Kashmir, through Secretary Zakat & Ushr, having his office at New Secretariat Muzaffarabad and others.

…Appellants

VERSUS

Abdul Qayyum Mughal Senior Clerk BS-14, Zakat and Ushar Department and others.

…Respondents

Appearances:

For the Appellants:	Raja Mazhar Waheed Khan, Addl. Advocate-General.
For the Respondents:	Syed Mehar Ali Bukhari & Mr. Amir Ali Awan, Advocates.
Date of hearing:	11.09.2024

JUDGMENT:

***Raza Ali Khan, J*:-** We tend to address the significant legal proposition raised in the present appeal, which challenges the judgment rendered by the High Court

on October 31, 2023, the writ petition filed by respondent No. 1 was disposed of based on the erroneous assumption that the principles of equity may be invoked even in circumstances where explicit statutory provisions or rules are already holding the field. However, this approach is fundamentally flawed and stands in stark contravention of the established legal maxim, "***Equity always follows the law***." This maxim embodies the principle that courts of equity, while administering justice according to conscience, must do so in accordance with the established rule of law. As articulated by Jekyll, M.R., the role of equity is not to contradict or invalidate the law, but rather to elucidate and fulfill it. Therefore, we find it imperative to adjudicate upon this appeal in strict conformity with the aforementioned legal doctrine. The learned High Court, in its impugned judgment, pronounced the following verdict:

> "Be that as it may, as the matter is to be decided by the Selection Committee constituted for the purpose, thus, it is not appropriate to step in the shoes of selection authority at this stage, however, in the interest of justice and keeping in view the overall circumstances, particularly the fact that appellant is at the verge of retirement, therefore, the respondents are directed to consider the case of the appellant under 30% quota (despite fact it has exceeded) and afterwards calculate the same in the said 30% quota in future and accordingly prepare working paper in this regard including the other employees of Zakat fund and zakat profit fund (in any are in line in this regard under 30% quota) and ultimately the competent authority after considering the case of the appellant under 30%, quota shall pass a judicious order in this regard, within 02 months."

2. A careful examination of the language employed in concluding paragraph reveals that the learned High Court initially acknowledged that the 30% quota had already

been exceeded. Notwithstanding this admission, the Court nonetheless directed the official respondents to consider the respondent's case under the said quota and prepare a corresponding working paper, relying solely on the observation that the respondent was on the edge of retirement. It appears that the High Court's impugned judgment was rendered on humanitarian grounds or by invoking principles of equity, despite there being no legal basis for considering proximity to retirement as a determinative factor in such matters. The learned High Court has manifestly failed to correctly apply the doctrine of equity, which mandates that equity must always follow the law and cannot be employed to subvert or circumvent the statutory framework.

3. The *rule of law* is a foundational principle asserting that all individuals, institutions, and authorities are bound by and accountable to laws that are applied and enforced impartially. This principle affirms the supremacy of law over arbitrary power, ensuring that all decisions are grounded in established legal rules and procedures. At its core, the rule of law mandates that no person or entity is above the law and that laws must be applied equally and fairly, without discretion or favoritism. Conversely, *equitable relief* constitutes a judicial remedy grounded in principles of fairness, typically employed in circumstances where the rigid application of law would lead to an unjust or inequitable result. However, while equitable relief aims to promote fairness, it cannot be dispensed with in contravention of established legal provisions. The doctrine of equity operates within the confines of law; it may fill gaps or address situations where the law is inadequate, but it is not empowered to contravene clear legal rules. Courts

of equity are inherently bound by law and are precluded from granting relief that would undermine or violate statutory or legal principles.

4. The maxim "***Equity follows the law***" encapsulates the principle that courts of equity administer justice in accordance with conscience, while simultaneously adhering to the established rules of law. As articulated by Jekyll, M.R., the objective of equity is not to contradict or dismantle law but rather to elucidate and fulfill its intent. While both equity and law strive to achieve justice, they have evolved along different trajectories due to their distinct nature and historical development. Equity consistently upholds law and the legal rights it enshrines. However, in instances where the law is silent, deficient, or fails to deliver justice, equity intervenes to rectify or modify these legal rights by acknowledging additional equitable rights. As Snell famously stated, ***"Equity follows the law, but not slavishly."*** This signifies that while equity respects law, it does not adhere to it rigidly when justice necessitates a different course of action. Equity is intended to supplement and enhance the law, ensuring fairness in situations where law alone may prove inadequate.

5. Upon a meticulous examination of the impugned judgment, it is discernible that the learned High Court directed the respondents to consider the appellant's case for permanent appointment under 30% quota, despite an express acknowledgment that this quota has already been exceeded. This directive appears to be grounded in humanitarian considerations, particularly the appellant’s proximity to retirement. However, such considerations, though seemingly equitable, cannot form a legitimate basis for judicial intervention when they are contrary to statutory

provisions. The principle that "Courts of law are not Courts of equity" has been unequivocally established in numerous precedents, including ***Muhammad Ilyas Khan and 6 others vs. Sardar M. Hafeez Khan and 3 others***, wherein it was observed that *justice is administered according to law. The invocation of inherent powers by the courts is permissible only to supplement the law where statutory provisions are silent, but not to decide cases in disregard of clear statutory requirements. Acceptance of a contrary interpretation would render the law on the statute book redundant and would lead to an undesirable situation where every litigant could claim relief solely on the basis of equity, even in the absence of a legal right.* [1]

In the case of ***Director General National Savings Islamabad vs. Bilqees Begum and others***, it was similarly affirmed that *the principles of equity can only be invoked where law is silent or inadequate to address a particular issue. Equity, therefore, functions to fill the gaps where the law does not provide an answer, but it cannot be utilized to contravene or defeat established legal principles. Equitable considerations must always give way to statutory mandates.* [2] *Furthermore, as reiterated in M. Ilyas Khan and others vs. Sardar M. Hafeez Khan and others, courts are bound to administer justice according to law. The exercise of inherent powers by the courts must remain circumscribed within the boundaries of statutory provisions. To do otherwise would be to usurp legislative functions, thereby undermining the rule of law and the legal certainty that statutory enactments are intended to ensure.*

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[1] [2001 PLC (CS) 445]
[2] [PLD 2013 SC 174]

6. Turning to the substantive merits of the instant case, the respondent No. 1 contends that he was initially appointed as a Junior Clerk (B-07) in the Zakat & Ushr Department in the year 1997, against Zakat Fund and Zakat Profit Fund. Subsequently, he was promoted to the position of Senior Clerk (B-14) on September 2, 2009. The respondent filed a writ petition before the High Court, asserting therein that, under the Azad Jammu & Kashmir Zakat & Ushr (Departmental Service) Rules, 2018, as amended by notification dated October 31, 2010, 70% of the posts of Senior Clerks (B-14) are to be filled by promotion from amongst Junior Clerks/Typists, while 30% are to be filled by transfer from amongst the Senior Clerks (B-14) of the Zakat Fund and Zakat Profit Fund. He further asserted that, having rendered 25 years of service, he is now eligible to be transferred or adjusted as a Senior Clerk (B-14) on permanent basis under the 30% quota reserved for transfer. He also stated that several Senior Clerk positions remained vacant due to the retirement of incumbents, hence, a direction should be issued to transfer or adjust the appellant (respondent No. 1 herein) against a position of permanent Senior Clerk (B-14).

7. Raja Mazhar Waheed Khan, the learned Additional Advocate-General, largely concurred with our observation that the 30% quota, prescribed in the departmental service rules to be filled by transfer from amongst Senior Clerks (B-14) serving against the Zakat Fund and Zakat Profit Fund, has already been exceeded. This fact was acknowledged by the learned High Court in its impugned judgment; yet, despite this acknowledgment, the Court directed the transfer or adjustment of the appellant as Senior Clerk (B-14) on

permanent basis against the said quota. It is thus contended that the respondent's proximity to retirement cannot serve as a basis for the grant of equitable relief. However, Syed Meher Ali Shah Bukhari, the learned counsel for Respondent No. 1, vigorously defended the impugned judgment and reiterated the position upheld by the High Court — that equitable relief should be granted to his client in the light of his impending retirement. He argued that the High Court acted properly in rendering the impugned judgment. He further contended that during the pendency of the case before the High Court, the department promoted proforma respondents to the position of Senior Clerk, who are junior to respondent No. 1, which amounts to clear discrimination. He also argued that there are still 10 vacant positions of Senior Clerk within the department; however, his client, lacking political influence, has been unjustly deprived of his lawful entitlement. For these reasons, he asserted that the learned High Court judiciously issued the impugned judgment, directing for consideration of his client's case.

4. We do not concur with the arguments advanced by the learned counsel for Respondent No. 1, nor do we uphold the judgment rendered by the High Court. The High Court's direction, which overlooks the statutory quota limitations, represents a failure to adhere to fundamental legal principles. Equitable relief, as sought by the appellant, cannot be granted in violation of established statutory provisions. The essence of equity is not to contravene the law but to advance its objectives by addressing its deficiencies, provided such intervention does not subvert the statutory framework. In light of the aforementioned observations and the principles established by the cited precedents, it is evident that the impugned judgment lacks

legal viability. The directive to entertain the respondent's case under the 30% quota - an allocation that has already been exceeded - contradicts established legal norms. Consequently, the judgment of the learned High Court is hereby set aside. However, the respondent's assertion regarding the existence of 10 additional vacant posts in the department does not pertain to the current matter, as the respondent has not contested the High Court's judgment, which confirmed the availability of only 7 posts. Should there indeed be 10 additional vacancies, the decision to consider the respondent for such positions falls within the jurisdiction of the competent authority, as this issue is not before this Court.

In view of the above, the impugned judgment of the High Court is set-aside and the appeal is accepted in the manner outlined hereinabove. No order is made as to costs.

JUDGE **JUDGE**

Muzaffarabad,
16.09.2024
Approved for reporting.