IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

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

CIVIL REVIEW NO. 46 OF 2023

(Against the judgment of this Court dated 05.06.2024, passed in Civil PLA No. 135 of 2024)

Iqra Gul d/o Gul Hassan r/o Village Ghattian Chatter, Tehsil Hattian Bala, District Jehlum Valley.

…Petitioner

VERSUS

Azad Government of the State of Jammu and Kashmir through Secretary Education Elementary and Secondary Education having his office at Lower Chatter Muzaffarabad and others.

…Respondents

Appearances:

For the Petitioner:	Syed Zulqarnain Raza Naqvi, Advocate.
For the Respondents:	Nemo.

Date of hearing: 10.09.2024

JUDGMENT:

***Raza Ali Khan, J*:-** Through the aforesaid petition filed under Article 42-D of the AJK Interim Constitution 1974, read with Order XLVI, of the Supreme Court Rules, 1978, review has been sought of the judgment dated 05.06.2024, passed by this Court in Civil Petition for Leave to Appeal No. 135/2024.

2. The essential facts underlying the present review petition are that the petitioner filed a writ petition before the High Court, asserting that the Education Department, through advertisement No. 21.02.2018, had announced a vacancy for the position of Primary Teacher (Female) in Union Council Hattian Bala, District Jhelum Valley, along with other posts. In response to the said advertisement, the petitioner, being duly qualified, submitted her application and participated in the written examination conducted by the National Testing Service (NTS). Upon successfully passing the written examination, she was subsequently called for an interview. It was contended that following the conduct of the examination and interview, a merit list was prepared, in which the petitioner was placed at serial No. 7 on the waiting list for Primary Teachers (Female) in Union Council Hattian Bala, District Jhelum Valley. The petitioner further asserted that, after the appointment of the first six candidates, a position for a Primary Teacher (Female) remained vacant at the Government Girls Primary School in Flati Qazian. However, this position was filled through a transfer, as per the order dated 07.09.2018. The petitioner approached the relevant

authorities for redress, but no action was taken, prompting her to file a writ petition in the High Court, seeking directives for her appointment in accordance with the waiting list.The respondents, in their separate written replies, completely refuted the petitioner’s claim, maintaining that she was indeed placed at serial No. 7 on the waiting list, which had expired on 15.11.2019. They further contended that, until the expiration of the waiting list, no vacancy for the position of Primary Teacher (Female) in Union Council Hattian Bala was available; therefore, the petitioner's appointment could not be processed. After conducting the necessary proceedings, the High Court dismissed the writ petition through the impugned judgment dated 28.12.2023, prompting the petitioner to file petition for leave to appeal before this Court, which has also been dismissed through the judgment currently under review.

3. The learned counsel for the petitioner argued that the impugned transfer order dated 07.09.2018 was already under scrutiny by the DPI, Muzaffarabad, for potential cancellation on the grounds that it had been issued contrary to the law, established facts, and applicable rules. The DPI, Muzaffarabad, had also instructed respondent No. 2 to annul the transfer order and to proceed with appointments in accordance with the merit list. He added that this fact was duly brought to the attention of both the High Court and this Court, yet it was not given due consideration in the proceedings. He maintained that the impugned order dated 06.06.2024 warrants review, as the Court based its decision on the premise that the waiting list had expired and was no longer valid. However, if the order challenged before the High Court is declared null and void,

the petitioner would be the sole candidate eligible for appointment to the disputed post. He concluded by asserting that these arguments present a legitimate basis for reviewing the impugned judgment.

4. We have heard the learned counsel for the parties and gone through the record of the case made available. Article 42(12) of the AJK Interim Constitution deals with the power of the Supreme Court to grant leave to appeal against judgment or order of the High Court. Article 42-D of AJK Interim Constitution, 1974, provides that the Supreme Court shall have the power to review any judgment pronounced or order made by it, subject to the provisions of the Constitution and any other law. This power of review is an important safeguard against any errors or omissions that may have occurred in the course of the proceedings. Order XLVII of AJK Supreme Court Rules, 1978, sets out the procedure for seeking review of a judgment or order of the Supreme Court. However, the question arises as to whether the power of review under article 42-D, extends to an order refusing grant of leave to appeal under article 42(12). If impugned judgement or order does not fall into eventualities provided under Article 42(11), the leave to appeal must first be obtained from the Supreme Court.

5. Before discussing the scope of review of an order of refusal to grant leave to appeal, it is important to understand the meaning of leave to appeal. Leave to appeal is a permission granted by this Court to a party who wishes to appeal against a judgment or order. It is not an automatic right but is granted at the discretion of this Court. The purpose of granting leave is to filter out unsubstantiated or unmeritorious appeals and to ensure

that only those appeals which have a reasonable chance of success are allowed to proceed. The petitioner has sought the review of the judgment of this Court in a Civil Petition for Leave to Appeal, but has challenged the same and attacked its legality as if the same was passed and findings were given while deciding an appeal, or the Court was supposed to bring forth, discuss, examine, and analyze all factual and legal points (if any) in light of the record and evidence of the respective contesting parties. The Supreme Court has been conferred appellate jurisdiction and powers under Article 42(11) of the AJ&K Interim Constitution, 1974, and enabling provisions of other laws. While hearing and adjudicating an appeal, this Court is required to discuss and consider all factual and legal aspects of the case; however, under Article 42(12), the Supreme Court is not bound to examine and discuss in detail the factual and legal controversies between the parties or the findings of the subordinate Courts. While exercising its jurisdiction under Article 42(12), supra, the Supreme Court has the discretionary power to grant or refuse permission to appeal before it. When the Supreme Court refuses a petition for leave to appeal, it means that the petitioner has failed to substantiate his case enough to grant him leave to appeal, and the Court has chosen not to exercise its discretion to grant permission to appeal. It would be advisable to reproduce Article 42(12), supra, which is as follows:

> "(12) An appeal to the Supreme Court of Azad Jammu and Kashmir from a judgment, decree, order, or sentence of the High Court in a case to which sub-Article (11) does not apply shall lie only if the Supreme Court of Azad Jammu and Kashmir grants leave to appeal."

6. The above-reproduced provision of the Constitution postulates that in matters that do not fall under Article 42(11) of the Constitution, the Supreme Court shall hear an appeal only if it 'grants permission or leave to convert the same into an appeal. Now the question arises: what is the nature of the jurisdiction of the Supreme Court for the purpose of granting leave? Is it mandatory or discretionary? As no other Constitutional or statutory provision regulates or limits the powers of the Supreme Court to grant or refuse leave to appeal, the Court itself, through its Rules and jurisprudence, has determined the nature and scope of the jurisdiction of leave to appeal under Article 42(12), supra. This Court has time and again clarified the Constitutional and legal position regarding the nature of the power to grant or refuse leave to appeal: the same is a discretionary power, and a petitioner cannot claim grant of leave as a right, as an appellant may seek relief as in appeal. There is a plethora of judgments of this Court as well as of the Supreme Court of Pakistan, wherein an extensive jurisprudence on matters of grant and refusal of petitions for leave to appeal has been developed. Some of the judgements from the above jurisdictions are as follows:

- The Supreme Court has long ago has laid down that a petition for leave to appeal is not an appeal nor is it heard and disposed of in ordinary course, like an appeal[1] and leave cannot be allowed in routine[2]**;**

- Very strong grounds are required to grant leave, particularly when there is concurrent finding of facts[3]; or

[1] Walayat v. ~~Feroze~~, PLD 1977 SC AJK 11
[2] Muhammad Kabir Khan v. Mst. Anees Begum, 2005 SCR 23 (B); Mirpur Development Authority and 3 others v. Ch. Aarif Najeeb and 13 others, 2007 SCR 545 (D)
[3] M. Mehrban v. M. Siddique, 2005 SCR 418 (B)

- The petition for leave to appeal cannot be accepted on flimsy grounds; rather, very strong reasons are required to indulge in concurrently recorded findings by the lower Courts[4]; or

- Leave to appeal cannot be granted unless a flagrant disregard of the substantive law or procedure has been committed[5]; or

- Very strong grounds are required for indulgence of the Supreme Court[6]; or

- A petition for leave to appeal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal. In no other case a petition for leave to appeal is competent [7]; or
- An appeal lies to Supreme Court if the Court grants leave to appeal on substantial question of law of public importance on a legal question[8];

- Leave cannot be granted in every case only to create a false hope for a litigant[9];

- Leave is generally granted where the question of interpretation of Constitutional or legal provision having general effect is pointed out[10]; or

- Where the matter relates to interpretation of Constitution;[11] or

- Where some serious questions of law are prima facie made out[12];

- Leave is refused where concurrent findings of Courts have been recorded and no error of procedure or law, nor misreading or non-reading of evidence, is pointed out;[13]

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[4] Muhammad Din v. Abdul Hameed and another 2008 SCR 292 (C)
[5] Azmat Bi and another v. Muhammad Laal, 2008 SCR 300 (B)
[6] Ch. Muhammad Sadiq v. Mujahid Hussain Naqvi, 2008 SCR 313 (B)
[7] Sardar Muhammad Hussain v. Dr. Najeeb Naqi and 12 others (2014) SCR 140 (B)
[8] WAPDA & others v. Taj Begum and others 2014 SCR 588 (F)
[9] Rafaqat Hussain & 7 others v. Azad Govt. & 11 others (2016) SCR 1302 (B)
[10] Government of Punjab v. Ziaullah Khan, 1990 SCMR 824
[11] Habib-ul-Wahab Khari v. Commissioner Rawalpindi Division, 1989 SCMR 837
[12] Fazal Elahi v. Abdul Latif, PLD 1981 SC AJK 75
[13] Ashiq Hussain Shah v. Fazal Begum, 1994 CLC 2037

7. Among the grounds mentioned herein, there is a long line of authorities wherein various grounds for grant and refusal of leave to appeal have been mentioned or concurred with. The reference may be made to the cases titled *Farooq Ahmed v. Capt. (Rtd.) Munshi Khan*,[14]; *Mst. Bibi Jan v. Qutab Din*,[15]; *Registrar Co-operative Societies Mirpur v. Muhammad Ishaque,*[16] *Raja Abdull Qayyum v. Ch. Latif Akbar Advocate*[17]*.*

8. After a juxtaposed examination of the above case law, we may sum up the discussion by saying that grant of leave is a discretionary power of the Supreme Court, which is not allowed in routine cases, and very strong grounds are required to grant leave to appeal. Further, it is the responsibility of the petitioner to point out and prima facie establish his case to grant leave to appeal. As opposed to appeal, which is conferred as a right, leave is not conferred as a right; rather, it requires the petitioner to prima facie establish his case to convert the same into an appeal. The object of leave to appeal is to judge the prima facie merits of the case to determine whether there is sufficient material to mandate complete deliberations of the Supreme Court for making a final decision after converting the same into an appeal. The petitioner was not able to establish his case, which could have entitled him to grant of leave to appeal. Despite having failed to establish his case, the petitioner seeks review of the judgment of this Court, which was passed in a petition for leave to appeal.

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[14] 2004 SCR 510
[15] 2003 SCR 28`
[16] PLD, 1985 SC AJK 56
[17] 1994 CLC 2041

9. We have discussed earlier that the grant of leave is a discretion of this Court, same cannot be sought as a right and this Court is not obliged to discuss and examine all legal and factual points in leave refusing order, if case is not made out by petitioner and review of the order refusing grant of leave is further narrowed as compared to the review of judgement passed in appeal. In the instant matter, the Hon'ble Chief Justice, considering the matter 'a fit case' instead of referring the matter to a single judge, constituted bench consisting upon two judges i.e., both of us. The division bench consisting upon both of us after considering all legal and factual controversies reached on unanimous and conscious conclusion and refused grant of leave. Further, taking inference from our previous statement and augmenting our view that when generally the petition for leave to appeal is heard and disposed of by the single judge of the Court and scope of review of his order refusing grant of leave is exceptional then order of refusal of grant of leave by division bench of this Court becomes more credible, sacrosanct and more unexceptional and seeking review of the order of the Court refusing grant of leave passed by the division or larger bench of this Court is not justified and warranted under law except that the Court has not overlooked or has failed to consider some important aspect of the matter. The Supreme Court of Pakistan in the report titled *Abdul Ghaffar-Abdul Rehman and others v. Asghar Ali and others*[18] while elaborating the scope of review jurisdiction held:

> "17. From the above case law, the following principles of law are deducable: (i) That every._

[18] (PLD 1998 SC 363)

judgment pronounced by the Supreme Court is presumed to be a considered, solemn and final decision on all points arising out of the case; (ii) that if the Court has taken a conscious and a deliberate decision on point of fact or law, a review petition will not lie; (iii) the fact the view canvassed in the review petition more reasonable than the view found favour with the Court in the judgment/order of which the review is sought, is not sufficient to sustain the review petition; (iv) that simpliciter the factum that material irregularity was committed would not be sufficient to review a judgment/order but if the material irregularity of such a nature, as to convert the process from being one in aid of justice to a process of injustice, a review petition would lie; (v) that simpliciter the fact that the conclusion recorded in the judgment/order is wrong does not warrant the review of the same but if the conclusion is wrong because something obvious has been overlooked by the Court or it has failed to consider some important aspect of the matter, a review petition would lie; (vi) that if the error in the judgment/order is so manifest and is floating on the surface, which is so material that had the same been noticed prior to the rendering of the judgment the conclusion would have been different, in such a case a review petition would lie; (vii) that the power of review cannot be invoked as a routine matter to rehear a case which has already been decided nor change of a counsel would warrant sustaining a review petition, but the same can be pressed into service where a glaring omission or patent mistake has crept in earlier by judicial fallibility; (viii) that the Constitution does not place any restriction on the powers of the Supreme Court to review its earlier decisions or even to depart from them nor the doctrine stare decisis come its way so long review is warranted in view of the significant impact on the fundamental rights of citizens or in the interest of public good; (ix) that the Court is competent to review its judgment/order suo motu without any formal application; (x) that the under the Supreme Court Rules, its sits in divisions and not as a whole, Each Bench whether small or large exercises the same powers vested in the

Supreme Court and decisions rendered by the Benches irrespective of their size are decisions of the Court having the same binding nature."

This Court in a judgment *titled Kamran Ali vs. Abdul Qudoos*[19], has held as under: -

"The Supreme Court of AJ&K has been conferred jurisdiction to review any judgement or order as passed by it under Article 42-D of the AJ&K Interim Constitution, 1974. It would be advantageous for us to reproduce here the said article, which is as under:

"42-D. The Supreme Court shall have powers, subject to the provisions of an Act of the Assembly and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it."

A cursory perusal of the above provision of the AJ&K Constitution, 1974, reflects that the Supreme Court has got powers to review any judgment or order passed or made by it, subject to the provision of an Act of Assembly and of any rules made by the Supreme Court. Article 42-A (4) of the AJK Interim Constitution, 1974, postulates that the Supreme Court may make rules for regulating the practice and procedure of the Court after making consultation with the Government. Article 42-A, which is as under:

"(4) Subject to the Constitution and Law, the Supreme Court may, in consultation with the Government, make rules regulating the practice and procedure of the Court."

The Supreme Court of AJK, while exercising the powers so conferred to it under Article 42-A (4) of the Constitution has framed the rules for regulating its practice and procedure, namely, AJ&K Supreme Court Rules, 1978. Resorting back to Article 42-D of the Constitution whereby the Supreme Court has been given powers to review its any judgment or order, subject to the provisions of an Act of the Assembly and the Rules made by the Supreme Court, the AJ&K Legislative Assembly has enacted an Act, namely AJK Supreme Court (power of Review) Act, 1980, the relevant provision is reproduced as under:

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[19] [2021 SCR 501

"Section 2. Supreme Court to have power to review Judgements and orders: The Supreme Court of Azad Jammu and Kashmir shall have power, subject to the provisions of any law and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it."

Moreover, besides supra section 2 of the AJK Supreme Court (Powers of Review) Act, 1980, the powers of the Supreme Court to regulate and exercise the practice and procedure in context of its review jurisdiction, Order XLVI, has been framed in the Supreme Court Rules, 1978. For brevity, only rule 1 of Order XLVI, which is relevant in the instant matter is reproduced herein:

"1. Subject to the law and the practice of the Court, the Court may review its judgment or order in a civil proceeding on grounds similar to those mentioned in Order XLVII, rule 1 of the Code, and in a criminal proceeding on the ground of an error apparent on the face of the record."

The aforementioned rule postulates that this Court may review its judgment or order in a civil review petition on grounds akin to the grounds as mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908, and in a criminal review petition on the ground of an error apparent on the face of the record. The relevant provisions of Code of Civil Procedure, 1908, are as follows:-

"1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) …….

(b) …….

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment

to the Court which passed the decree or made the order.
(2) ……..”

6. It appears that the learned counsel for the petitioner wants decision of the case according to his wishes, which is not permissible under law. It has been held by this Court a number of times that a view formed by interpretation of law and elucidation of facts would not be deemed to be wrong simply for the reason that a view contrary to it could also be taken or it was possible to be taken.”

10. Coming to the case in hand, the learned counsel for the petitioner again, reiterated the same grounds as were made at the time of hearing of PLA and the same have been dealt with in detail in para 4 and 5 of the judgment/order under review. For further clarity, the same are reproduced hereunder: -

4. we have considered the arguments of the learned Advocate representing the petitioner and perused the record made available along with the impugned judgment. A perusal of the record reveals that vide advertisement No.21.02.2018, one post of Primary Teacher (Female), Union Council Hattian Bala was advertised. After conducting the test and interview, the merit list of Union Council Hattian Bala was compiled, wherein the name of the petitioner was placed at serial No.7 of the waiting list. Vide notification dated 11.10.2019, the extension was granted in the waiting list of Primary and Junior Teachers, compiled on the basis of test and interview till 15.11.2019, meaning thereby that the waiting list was valid up to 15.11.2019, whereas, the petitioner herein, filed a writ petition on 16.11.2019, for seeking direction regarding his appointment as primary Teacher on the basis of the said waiting list, thus, at the time of filing of the writ petition, the waiting list had been dead and no more valid, hence, on the basis of said waiting list, no direction for appointment of the petitioner could have been issued. In this state

of affairs, the impugned judgment passed by the learned High Court is perfectly legal, hence, calling for no interference.

5. So far as the contention of the learned Advocate representing the petitioner that a post of Primary Teacher (Female), was lying vacant in Government Girls Primary School Flati Qazian, but the same was filled in by transfer, whereas, it was enjoined upon the official respondents to appoint the petitioner against the said post in the light of the waiting list, is concerned, it is revealed from the record that the transfer order was issued on 07.09.2018, whereas, the waiting list was compiled on 15.11.2018, therefore, the said transfer order was issued before the compilation of the waiting list, hence, the petitioner has got no locus standi to challenge the said transfer order, therefore, this argument of the learned counsel has no substance which is hereby repelled.

Hence, the petitioner wants the decision from this Court of her own choice which is not permissible under law. The learned counsel could not point that the Court has overlooked or failed to consider the important aspect of the matter while handing down the impugned order.

In view of the above, this review petition stands dismissed.

JUDGE **ACTING CHIEF JUSTICE**

Muzaffarabad,
10.09.2024
Approved for reporting.