High court of azad jammu & Kashmir

[Circuit Mirpur]

Writ Petition No. 126/2017;

Date of Institution.10.04.2017;

Date of Decision. 03.07.2018.

1. Hina Afzaal D/o Afzaal Mehmood R/o House No. 342/1 Sector C/3 Mirpur, Junior Science Teacher, Govt. Girls Middle School Kotli Sarsawa,
2. Sonia Kosar D/o Abdul Ghani R/o Rarra Tehsil and District Mirpur Junior Science Teacher Middle School Mai Jan Kotli Sarsawa.

…… Petitioners

Versus

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary Azad Jammu & Kashmir Muzaffarabad,
2. Secretary Education Schools Muzaffarabad, AJK,
3. Director Public Instructions Education Schools Female Elementary and Secondary Muzaffarabad,
4. District Education Officer Elementary Female Mirpur,
5. District Education Officer Elementary Kotli,
6. Divisional Director Schools Female Mirpur Division Mirpur,
7. District Education Officer Female Mirpur, AJK,
8. District Accounts Officer District Kotli, AJK,
9. Headmistress Govt. Girls Middle School Kotli Sarsawa,
10. Headmistress Govt. Girls Middles School Mai Jan Kotli,
11. Education Department Sarsawa through its Secretary Schools AJK, Muzaffarabad.

….. Respondents

writ petition

Before: - Justice Chaudhary Muhammad Munir, J.

Present:

Sh. Masood Iqbal, Advocate for the petitioners.

Mr. Mahmood Hussain Chaudhry, Additional Advocate General for official respondents.

O r d e r:

The captioned writ petition has been filed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974.

2. Precise facts of the case are that petitioner No.1 was appointed as Junior Teacher B-9, in Girls Middle School Chapran Maraa Tehsil Dadyal, vide order dated 18.02.2011, and was posted in Girls High School Plak and later on adjusted as Junior Science Teacher Girls Middle School Kotli Sarsawa, vide order dated 24.02.2012. Services of the petitioner No.1 was extended time and again vide different orders mentioned in paragraph 1 of the writ petition and lastly service of the petitioner was extended, vide order dated 16.02.2017. It has been stated that father of petitioner No.1 was also Senior Teacher who retired from service after completion of superannuation age, vide notification dated 07.05.2015, so, petitioner No.1 claimed to be appointed against the teachers’ son/daughter quota. It has further been stated that petitioner No.2 is qualified as B.A, B.Ed. who was appointed as Junior Teacher in Girls Middle School Mai Jaan Kotli, Sarsawa, vide order dated 07.12.2010, which was extended time and again vide different orders and lastly her order was extended, vide order dated 12.11.2016 for a period of six months. It has been emphasized that service of petitioner No.1 is more than 6 years and petitioner No.2 is more than 7 years without any break. It has further been emphasized that the respondents advertised posts for NTS, vide advertisement dated 15.03.2017, followed by a corrigendum. It has been contended that the respondents confirmed some contract and ad-hoc appointed Junior Teachers, vide different orders, so, it was claimed that the petitioners due to equal protection of law and fundamental rights were liable to be confirmed. It has also been contended that the petitioners have no alternate efficacious remedy but invoke extra ordinary jurisdiction of this Court, hence, the instant writ petition.

3. The writ petition was contested by respondent No.6 by filing parawise comments, wherein it has been contended that the impugned advertisement has been issued by NTS, which was not arrayed as party in the line of respondents, so, the writ petition is liable to be dismissed being not arraying necessary party. It has further been contended that no ad-hoc or contract employee has been confirmed by respondent No.6.

4. Learned counsel for the petitioners argued that the respondents confirmed the services of some ad-hoc appointees, vide orders dated 07.10.2008, 26.11.2008, 30.08.2008. 03.11.2008 and notification dated 17.05.2012, therefore the petitioners have been discriminated. Learned counsel maintained that services of the petitioners on ad-hoc/ contract basis is more than six years, so, they are entitled to be regularized. While placing reliance on different notifications issued by the Punjab Government, learned counsel argued that the petitioners are entitled to be confirmed on the basis of parity with Punjab. He further argued that under fundamental right No.15 & 17 no person and class of persons would be denied same protection of law which is enjoyed by other person. Learned counsel prayed for acceptance of the writ petition.

5. On the other hand, learned Additional Advocate General argued that the petitioners have been appointed on ad-hoc/ contract basis, who cannot be regularized without test/ interview through the process of law. He prayed for dismissal of the writ petition in limine.

6. I have heard learned counsel for the petitioner and learned Additional Advocate General appearing on behalf of the official respondents.

7. A perusal of prayer clause of the writ petition reveals that it has been consists of 5 parts. For proper appreciation, prayer clause is reproduced herein below:

*“It is, therefore, humbly prayed that an appropriate writ petition in favour of the petitioners against the respondents may kindly e issued.*

1. *To direct the respondents to regularize the appointment of petitioners permanently on the regularized the others contract employees of education department as Junior Teacher in accordance with law from the date of appointment of petitioner No.1 from 24-02-2012 and petitioner No.2 from 27-12-2010.*
2. *To restrain the respondents for cancellation of appointment extended order dated 16-02-2017 No.283/2017 dated 16-02-2017 and petitioner No.2 order No. 1653 dated 12-11-2016 from the post held by the petitioners.*
3. *To declare the advertisement of NTS dated 15-03-2017 along with corrigendum to the post extent of two posts held by petitioners against the law and may kindly be quashed.*
4. *To direct the respondents to act upon the notification for teachers sons/daughters 12-01-2016 accordance with spirit.*
5. *To direct the respondents to do what the law permitted to do and not to do what the law not permitted to do.*
6. *Any other relief which the petitioner is entitled may kindly be granted in the interest of justice.”*

8. In 1st part of the prayer clause, the petitioners claimed their permanent appointment on the ground that the Education Department confirmed the services of some ad-hoc and contract Junior Teachers of the Education Department. In this regard, the petitioners relied on confirmation orders of Kh. Altaf Hussain, contract Junior Science Teacher, annexure “TA”, Khalid Mehmood as Junior Science Teacher, annexure “TA-1”, Zaffar Iqbal Awan as Junior Science Teacher, annexure “TA-2”, Fatima Bibi as Primary Teacher, annexure “TA-3” and Shazia Habib as OT Teacher, annexure “TA-4”. Validity of these orders have not been denied by the respondents by filing comments but the same looks to have been issued in violation of the Azad Jammu & Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977, hence, cannot be relied upon. Initial appointment orders of the petitioners do not reveal that the petitioners were appointed after advertisement of the posts and after test/ interviews by the concerned selection authority nor did the petitioners place on record any document which could ascertain that the petitioners were appointed after advertisement of the posts and after test/ interviews. For proper appreciation appointment order of Hina Iqbal dated 18.02.2011 annexure “D” is reproduced as under:-



9. A perusal of above reproduced order clearly reveals that the appointment of Hina Afzaal, petitioner No.1 was not made in accordance with the provision of Civil Servants Act or the Rules made thereunder. It does not reflect from the order that it was issued after advertising the post. Appointment order of petitioner No.1 has been issued on conditional (مشروط) basis. The term “مشروط” is stranger to the Civil Servants Act, 1976. Conditions imposed to the aforesaid order show that the order was issued on temporary basis, without advertising the post and without any test/ interview. For the sake of argument, if it is presumed that the said order has been issued on ad-hoc basis, even then it is not valid one, because under Rule 23 of the Azad Jammu & Kashmir Civil Servants (Appointment and Conditions of Service) Rules, 1977, an appointment on ad-hoc basis has to be made on open merit after taking test/ interview and after sending the requisition of post to the concerned selection authority. Likewise appointment order of Sonia Kosar, petitioner No.2 dated 07.12.2010, annexure “RA”, also issued on conditional (مشروط) basis, with similar conditions as that were imposed to the appointment order of petitioner No.1. In these circumstance, it can be safely held that the initial appointment orders of the petitioners were not issued in accordance with law, therefore, on the basis of these orders, the petitioners cannot claim permanent induction in service. The petitioners will have to participate in open competition and after getting merit position, they would be appointed on permanent basis. This view finds support from PLJ 2013 SC (AJ&K) 140, wherein Hon’ble apex Court of the State has held as under:-

*“8. It is now settled that except the method of appointment on merit determine through a transparent open competition, no other method, tactics, policy or practices can be approved, therefore, it can be safely held that condition No.1 imposed in this notification is quite in accordance with the spirit of law and principle of law enunciated by this court in several cases.”*

It has further been held by the apex Court in the supra titled case, at paragraph 11, as under:-

*“11. As the question of the rights of persons, already inducted in service is concerned, they have themselves opted for temporary services while accepting the terms and conditions imposed in their induction orders. They have been paid for they served and even they have gained experience on the public exchequer’s costs. Moreover, their rights are also equally protected. They have equal chance to compete in open transparent selection process and prove their merit. If they succeed in proving their merit, there will be no discrimination on the basis of their temporary appointments. Therefore, this cannot be said that their rights in any way are adversely affected.”*

10. In 2nd part of their prayer clause, the petitioners prayed that the respondents be restrained from cancelling their appointments orders. The petitioners have been appointed on temporary basis for a period of six months and there is a condition imposed to their order that their appointment orders will be deemed cancelled if they would not succeed in test/interview. The petitioners could not place on record any document whereby it can be ascertained that they have passed the test/ interview. Even otherwise, their appointment orders were issued for a period of six months only and after that extended period has been expired.

11. 3rd part of the prayer clause relates to quashment of advertisement issued by NTS. In view of the afore-discussed situation, the petitioners could not prove that they should be appointed on permanent basis on the basis of their temporary appointment orders, therefore, the impugned advertisement cannot be quashed. The petitioners can participate in the selection process for their permanent induction in service. Another aspect of the matter is that the impugned advertisement was published by NTS, which was a necessary party but the petitioners did not array NTS as party in the line of respondents, therefore, without impleading NTS being necessary party, in the line of respondents, the writ petition is not maintainable.

12. The petitioners also sought for a direction to the respondents to act upon the notification for teachers sons/ daughters 12-01-2016 accordance with its spirit. During the course of arguments, learned counsel for the petitioners could not establish that in what manner the respondents violated the aforesaid notification.

In view of above, the writ petition being meritless is dismissed in limine.

Circuit Mirpur

03.07.2018 (M) **Judge**