

HIGH COURT OF AZAD JAMMU & KASHMIR
(SUBORDINATE JUDICIARY SERVICE TRIBUNAL)

Service Appeal No.02/2013;
Date of Institution 19.02.2013;
Date of hearing. 01.04.2024;
Date of Decision 03.04.2024.

Ikram Malik, Civil Judge, Presently Posted as Civil Judge Sehnsa
District Kotli, Azad Jammu & Kashmir.

....Appellant

VERSUS

1. Competent Authority, (Honourable Chief Justice, High Court of Azad Jammu & Kashmir) through Registrar High Court Muzaffarabad;
2. High Court of Azad Jammu & Kashmir through its Registrar, Muzaffarabad;
3. Azad Government through its Chief Secretary, Muzaffarabad;
4. Department of Law, Justice & Parliamentary Affairs Government of Azad Jammu & Kashmir through its Secretary, Muzaffarabad;
5. Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
6. Public Service Commission of Azad Jammu & Kashmir through its Secretary, Muzaffarabad;
7. Rashid Iftikhar Hashmi, presently posted as Senior Civil Judge Muzaffarabad on Acting Charge Basis;
8. Arbab Azam Khan, presently posted as Senior Civil Judge Haveli/Kahutta on Acting Charge Basis;
9. Syed Wasim Gillani, presently posted as Senior Civil Judge Rawalakot, on Acting Charge Basis;
10. Muhammad Idrees, Civil Judge Kotli Azad Jammu & Kashmir;
11. Jahangir Ahmed, Civil Judge Samahni, Azad Jammu & Kashmir;
12. Muhammad Ghazanfar Khan, Civil Judge Dadyal, Azad Jammu & Kashmir;
13. Riaz Shafi, Civil Judge Rawalakot;
14. Nazia Ashraf, Civil Judge Muzaffarabad;
15. Shah Zaman, Civil Judge Mirpur;
16. Ayaz Bashir, Civil Judge Pattikha/Naseerabad;
17. Nabila Nazir, Civil Judge Muzaffarabad;

18. Zaffar Mehmood, Civil Judge Muzaffarabad;
19. Muhammad Shabbir, Civil Judge Bagh, Azad Jammu & Kashmir;
20. Muhammad Shahzad, Civil Judge Pallandri, Azad Jammu & Kashmir.

....Real Respondents

21. Muhammad Sagheer Khan, Ad-hoc Civil Judge Leepa, Azad Jammu & Kashmir;
22. Zahid Hussain, Ad-hoc Civil Judge, Tararkhal, District Rawalakot;
23. Muhammad Nazim Khan, Ad-hoc Civil Judge Haveli, Azad Jammu & Kashmir.

.... Proforma Respondents

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Service Appeal No.03/2013;
Date of Institution 19.02.2013;

Ikram Malik, Civil Judge, Presently posted as Civil Judge Sehnsa District Kotli, Azad Jammu & Kashmir.

....Appellant

VERSUS

1. Competent Authority, (Honourable Chief Justice, High Court of Azad Jammu & Kashmir) through Registrar High Court, Muzaffarabad;
2. Selection Board of Azad Jammu & Kashmir High Court through Registrar High Court, Muzaffarabad;
3. High Court of Azad Jammu & Kashmir through its Registrar, Muzaffarabad;
4. Azad Government through its Chief Secretary, Muzaffarabad;
5. Department of Law, Justice & Parliamentary Affairs Government of Azad Jammu & Kashmir through its Secretary, Muzaffarabad;
6. Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
7. Rashid Iftikhar Hashmi, presently posted as Senior Civil Judge Muzaffarabad, on Acting Charge Basis;
8. Arbab Azam Khan, presently posted as Senior Civil Judge Haveli Kahutta, on Acting charge Basis;

9. Syed Wasim Gillani, presently posted as Senior Civil Judge Rawalakot, on Acting Charge Basis.

....Real Respondents

10. Muhammad Sagheer Khan, Ad-hoc Civil Judge Leepa;
11. Zahid Hussain, Ad-hoc Civil Judge Tararkhal, Rawalakot;
12. Muhammad Nazim Khan, Ad-hoc Civil Judge Haveli.

.... Proforma Respondent

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Service Appeal No.06/2013;
Date of Institution 19.02.2013;

Khawaja Habib-ur-Rehman, Civil Judge Rawalakot, Azad Kashmir.

....Appellant

VERSUS

1. Competent Authority (Honourable Chief Justice of High Court Azad Jammu & Kashmir), Muzaffarabad;
2. Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
3. Judicial Selection Board through its Chairman, High Court of Azad Jammu & Kashmir, Muzaffarabad;
4. Department of Law, Justice & Parliamentary Affairs Government of Azad Jammu & Kashmir Muzaffarabad through its Secretary;
5. Government of Azad Jammu & Kashmir through its Chief Secretary, Muzaffarabad;
6. Rashid Iftikhar Hashmi, Civil Judge Muzaffarabad, Azad Kashmir;
7. Arbab Azam Khan, Civil Judge Haveli/Kahutta, Azad Kashmir;
8. Syed Wasim Gillani, Civil Judge Rawalakot, Azad Kashmir.

.... Respondents

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Service Appeal No.43/2013;
Date of Institution 14.01.2013;

Khawaja Habib-ur-Rehman, Civil Judge Rawalakot, Azad Kashmir.

....Appellant

VERSUS

1. Competent Authority (Honourable Chief Justice of High Court Azad Jammu & Kashmir), Muzaffarabad;
2. High Court of Azad Jammu & Kashmir through its Registrar;
3. Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad
4. Department of Law, Justice & Parliamentary Affairs Government of Azad Jammu & Kashmir Muzaffarabad through its Secretary;
5. Government of Azad Jammu & Kashmir through its Chief Secretary, Muzaffarabad;
6. Rashid Iftikhar Hashmi, Civil Judge Pallandri, Azad Kashmir;
7. Arbab Azam Khan, Civil Judge Haveli/Kahutta Azad Kashmir;
8. Syed Wasim Gillani, Civil Judge Rawalakot, Azad Kashmir;
9. Muhammad Idrees, Civil Judge Kotli Azad Kashmir;
10. Jahangir Ahmed, Civil Judge Samahni, Azad Kashmir;
11. Muhammad Ghazanfar Khan, Civil Judge Dadyal, Azad Kashmir;
12. Riaz Shafi, Civil Judge Rawalakot, Azad Kashmir;
13. Nazia Ashraf, Civil Judge Muzaffarabad, Azad Kashmir;
14. Shahzaman, Civil Judge Mirpur, Azad Kashmir;
15. Ayaz Bashir, Civil Judge Pattika;
16. Nabila Nazir, Civil Judge Muzaffarabad;
17. Zaffar Mehmood, Civil Judge Muzaffarabad;
18. Muhammad Shabbir, Civil Judge Bagh, Azad Kashmir;
19. Muhammad Shahzad, Civil Judge Pallandri, Azad Kashmir.

.... Respondents

SERVICE APPEALS

**BEFORE:- Justice Sardar Muhammad Ejaz Khan, J/Chairman.
Justice Chaudhary Khalid Rasheed, J/Member**

PRESENT:

Barrister Hamayun Nawaz Khan, Advocate for the appellant in appeal No.43/2013 & 06/2013.

Mr. Muhammad Hafeez Bhatti, Advocate for the appellant in appeal No.02/2013 & 03/20113.

M/s Nasir Masood Mughal, Atif Mushtaq Gillani and Saqib Javaid, Advocates for the respondents.

JUDGMENT:-

(Chaudhary Khalid Rasheed, J/M.) The captioned appeals raise common questions of facts and law, hence were heard together and are decided through this single judgment.

Precise facts forming background of the instant appeals are, appellants Khawaja Habib-ur-Rehman and Ikram Malik were serving as Private Secretary BPS-18 in the High Court of Azad Jammu & Kashmir who were transferred/appointed as Civil Judge BPS-18 against 10% quota reserved for employees of department under the Azad Jammu & Kashmir Judicial Service Rules, 1999 vide notification dated 27.08.2010, whereas, private respondents were appointed against the quota reserved for direct recruitment vide notification dated 27.08.2010. Department issued temporary seniority list on 05.05.2011 and sought objections wherein appellants were listed at serial No.1 & 2. Private respondents herein filed objections. The competent authority after hearing parties, vide impugned order dated 20.11.2012 resolved objections and issued final seniority list, wherein appellants herein have been listed at serial No.15 & 16 of the seniority list. The appellants feeling aggrieved from the final seniority list have assailed the same through appeals

No.43/2016 and 02/2013 whereas, subsequently private respondents have been promoted on the basis of impugned seniority list and their promotion orders have been assailed through appeals No.06/2013 & 03/2013.

Barrister Hamayun Nawaz Khan, learned counsel for the appellant Khawaja Habib-ur-Rehman vehemently argued that impugned order is not sustainable as being bad in law because it is an admitted position that appellants were appointed as Civil Judge BPS-18 by transfer whereas, private respondents were appointed as Civil Judge BPS-18 through initial recruitment on the same date i.e. 27.08.2010, hence under proviso 1 of sub-section (2) of section 8 of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, the appellants appointed otherwise were liable to rank senior to the private respondents appointed by initial recruitment. The learned advocate further argued that authority has erroneously exercised its discretion while observing that the appointments of private respondents should have been made on the date of receipts of recommendations in the High Court on 16.05.2010 and that respondents cannot be penalized for the fault of the authority, had this verdict deemed correct then the appellants should be given effect from the date of availability of posts of Civil Judge but the authority met the appellants in

discriminatory manner. The learned advocate further argued that for determining seniority of civil servants the date of regular appointment has to be considered as in the instant case, appellants and respondents were appointed on regular basis on the same day, hence the appellants should be ranked senior under proviso 1 of rule 8(2) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977. The learned advocate also vehemently contended that the appointing authority was not bound to issue appointment orders in the light of recommendations on the same day rather the appointing authority even may reject recommendations after recording its reasons, thus it was prayed that by setting aside the impugned order, appellants be listed at the top of seniority list and the promotion orders of private respondents based on the anomalous impugned seniority list be set at naught. Reliance has been placed on the following case laws:

1. 1995 PLC 294;
2. 2000 SCR 630;
3. 1996 SCMR 1017;
4. 2006 SCMR 832;
5. 2003 PLC 743;
6. 2000 PLC 1289;
7. 2013 SCR 889;
8. 2000 SCR 613.

Mr. Muhammad Hafeez Bhatti, the learned advocate for appellant Ikram Malik adopted the arguments advanced by

Barrister Hamayun Nawaz Khan advocate and prayed for the acceptance of the instant appeal.

The learned counsel for the respondents supported the impugned order on all counts and mainly pressed into service that Public Service Commission issued handout on 11.08.2010 and recommendations were received in the High Court on 16.08.2010, hence it was enjoined upon the appointing authority to issue appointment order on the same date but authority kept the matter pending and issued appointment orders of private respondents on 27.08.2010, thus, the appointing authority vide impugned order dated 20.11.2012 accurately gave effect of appointments of private respondents from 16.08.2010. The learned advocates further argued that private respondents were selected through Public Service Commission whereas appellants have been selected by selection board on 27.08.2010, hence the respondents who were selected prior to appellants were rightly listed ahead to the appellants in the seniority list vide impugned order dated 20.11.2012 in view of section 8(1)(a) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, thus the impugned order is liable to be maintained. The learned advocate placed his reliance on the following case laws:

1. 2017 SCR 718;
2. 2017 SCR 514;

3. 2019 SCR 101;
4. 2022 SCR 672.

We have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

The dispute between the parties which required resolution by this Court is regarding seniority of the appellants and private respondents as Civil Judge BPS-18. Section 8 of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977 deals with the seniority of persons appointed to post in the same grade in a functional unit. For proper appreciation of the matter, section 8 of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977 is reproduced as under:

“8. The seniority inter se of persons appointed to post in the same grade in a Functional Unit shall be determined:-

“(1) (a) In the case of persons appointed by initial recruitment, in accordance with the order of merit, assigned by the selection authority;

Provided that persons, selected for appointment to the grade in an earlier selection shall rank senior to the persons selected in a later selection; and

(b) In the case of persons appointed otherwise, with reference to the dates of their continuous appointment in the grade;

Provided that if the date of continuous appointment in the case of two or more persons appointed to the grade is the same, the older if not junior to the younger in the next below grade, shall rank senior to the younger person.

Explanation I: If a person junior in a lower grade is promoted to a higher grade on adhoc basis, in the public interest, even though continuing later

permanently in the higher grade, it would not adversely affect the interest of his seniors in the fixation of his seniority in the higher grade.

Explanation II: If a person junior in a lower grade is promoted to higher grade by superseding his senior and subsequently the later is also promoted, the promoted first shall rank senior to the one promoted subsequently.

Explanation III: Subject to the provision of rule 14 of these rules, a junior appointed to a higher grade shall be deemed to have superseded his senior only if both the junior and the senior were considered for the higher grade and the junior was appointed in preference to the senior.

(2) The seniority of the persons appointed by initial recruitment to the grade viz-a-viz those appointed otherwise shall be determined with reference to the date of continuous appointment to the grade;

Provided that if two dates are the same, the persons appointed otherwise shall rank senior to the person appointed by initial recruitment;

Provided further that inter se seniority of persons belonging to same category will not be altered.

Explanation: In case a group of persons is selected for initial appointment at one time, the earliest date on which any one out of the group joined the service will be deemed to be the date of appointment of all persons in the group. Similarly in case a group of persons is appointed otherwise at one time in the same office order the earliest date on which any one out of the group joined the service will be deemed to be date of appointment of all persons in the group. And the persons in each group will be placed with reference to the continuous date of appointment as a group in order of their inter se seniority.

(3) Notwithstanding the provisions of this rule, the seniority lists already prepared in accordance with the rules applicable immediately before the commencement of these rules shall be constructed as seniority lists for the respective new grades in respect of persons already in service and amendments therein shall continue to be made in accordance with those rules, to settle inter se seniority disputes among them."

It is an admitted position that appellants herein who were serving as private secretary BPS-18 in the High Court Establishment have been appointed as Civil Judge BPS-18 by

transfer against 10% quota reserved for departmental promotion on 27.08.2010 whereas, private respondents were appointed on the same date i.e. 27.08.2010 through initial recruitment on the recommendations of Public Service Commission, hence the seniority amongst them was liable to be determined under proviso 1 of section 8(2) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, which provides that the persons appointed otherwise shall rank senior to the person appointed by initial recruitment if the date of appointment is the same, however, through the impugned order the authority wrongly held that section 8(1)(a) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, is attracted in the instant case.

The main argument advanced by the learned counsel for the private respondents that private respondents were selected earlier through Public Service Commission whereas, appellants herein were selected through Selection Board in a later selection on 27.08.2010, hence, have rightly been ranked junior to the private respondents in the light of proviso of section 8(1)(a) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, has got no valid or plausible substance because section 8(1)(a) deals

with the seniority of persons appointed by an initial recruitment, whereas sub section (2) of section 8 deals with the seniority of persons appointed by initial recruitment viz a viz to the persons appointed otherwise i.e. by transfer/promotion, hence the dispute between the parties regarding seniority should have been decided in the light of provisions contained in section 8(2) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, whereas, the appointing authority erroneously applied provisions of section 8(1) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, hence the impugned order is not sustainable.

It is also relevant to mark that even if the stance taken by the private respondents that the appointing authority was duty bound to issue appointment orders of the private respondents on the same date when the recommendations were received is accepted even then private respondents could not be preferred over appellants herein because appellants were already serving in BPS-18 whereas, private respondents were recommended for appointment as Civil Judge in BPS-17 by the Public Service Commission and had the recommendations of Public Service Commission been implemented on the same day the private respondents would be appointed in BPS-17 but the

authority on the recommendations forwarded for BPS-17 appointed private respondents in BPS-18 on the ground that post of Civil Judge had been upgraded to BPS-18, hence on this ground too, the impugned order is not sustainable. A plain reading of section 8 of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977 makes it crystal clear that section 8(1)(a) deals with persons appointed by initial recruitment, sub-section 8(1)(b) relates persons appointed otherwise meaning thereby that when both the persons are appointed otherwise to the initial recruitment section 8(1)(b) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977 will come into force and seniority of persons appointed through initial recruitment and otherwise on the same date shall be determined in the light of the provisions contained in section 8(2) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977.

Another important aspect which is necessary to be considered is that word “appointed” has been used in section 8(2) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977 which makes it clear that the seniority shall be determined from the date of appointment and not from the date of recommendations by selection

authority, hence, seniority of civil judges appointed through initial recruitment and otherwise should be determined from the date of their appointment and not from date of recommendations.

While passing impugned order the authority also fell in error by giving retrospective effect to the appointment of private respondents from the date of recommendations because while deciding issue of seniority the authority was not competent to give retrospective effect to the appointments of private respondents which tantamount to snatch the accrued right of appellants to be placed ahead to the private respondents in the seniority list that too, sine extending the right of hearing to the appellants and for the reason that no such relief was claimed. No doubt, under section 21 of General Clauses Act, authority who issues an order is competent to rescind, amend or revoke the same but such powers cannot be exercised in an arbitrary manner in order to snatch an accrued right. As mere selection of private respondents by selection authority/Public Service Commission does not create any affirm right in favour of private respondents rather their right of service was accrued when their appointment orders were issued by appointing authority as the appointing authority was not bound to issue appointment orders of private respondents in

the light of recommendations of Public Service Commission, hence, in any stretch of imagination it cannot be held that due to any fault of authority appointment orders of private respondents could not be issued timely rather it reveals that Public Service Commission issued handout on 11.08.2010, recommendations were received in the High Court on 16.08.2010 and merit list was issued on 25.08.2010 and just after two days of issuance of merit list appointment orders of private respondents were issued while on the other hand, posts against departmental quota were falling vacant for many months even before requisitions of posts to the Public Service Commission for direct recruitment as it cannot be presumed that posts became available against departmental quota on the day of selection board.

As we have reached to the conclusion that seniority list dated 20.11.2012 lacks valid legal sanctity and the appellants should be listed at serial No.1 & 2 of seniority list as were listed in tentative seniority list, hence, promotion orders of private respondents on the basis of said final seniority list without considering the appellants are illegal and liable to be set-aside. The arguments advanced by the learned counsel for the private respondents that private respondents have been promoted as Additional District & Sessions Judge and some of them have also

been promoted as District & Sessions Judge and their promotion orders have not been assailed, hence, appeals have become infructuous has got no substance because the appellants have assailed the basic seniority list on the basis of which private respondents have been promoted which has been declared illegal, hence, all the super structure has to fall on the ground.

The sum and substance of the above discussion is, the instant appeals are hereby accepted, while setting aside the impugned seniority list dated 20.11.2012 and the tentative seniority list dated 05.05.2011 to the extent of appellants and private respondents is declared final. The appellants shall rank senior to private respondents in the seniority list, hence, the authority shall issue a fresh seniority list of civil judges accordingly and shall also pass fresh orders regarding promotions of appellants and private respondents in the light of fresh seniority list within a span of 3 months and most junior promotees on the basis of impugned seniority list shall be reverted.

Muzaffarabad;

03.04.2024.

JUSTICE/CHAIRMAN

JUSTICE/MEMBER

Approved for reporting.

JUSTICE/MEMBER