

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

Service Appeal No.07/2013;
Date of Institution 19.02.2013.
Date of hearing. 05.06.2024;
Date of Decision 07.06.2024.

Raja Khalid Asghar, Civil Judge Sharda, District Neelum Azad Kashmir.

....Appellant

VERSUS

1. Competent Authority (Honourable Chief Justice of High Court Azad Jammu & Kashmir), Muzaffarabad
2. Judicial Selection Board through its Chairman High Court of Azad Jammu & Kashmir, Muzaffarabad;
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. Chairman Public Service Commission Azad Jammu & Kashmir, Muzaffarabad;
7. Rashid Iftikhar Hashmi, Civil Judge Muzaffarabad, Azad Kashmir;
8. Arbab Azam Khan, Civil Judge Haveli/Kahutta, Azad Kashmir;
9. Syed Wasim Gillani, Civil Judge Rawalakot, Azad Kashmir;
10. Muhammad Idrees, Civil Judge Kotli, Azad Kashmir;
11. Jahangir Ahmed, Civil Judge Samahni, Azad Kashmir;
12. Muhammad Ghazanfar Khan, Civil Judge Dadyal, Azad Kashmir;
13. Riaz Shafi, Civil Judge Rawalakot, Azad Kashmir;
14. Nazia Ashraf, Civil Judge Muzaffarabad, Azad Kashmir;
15. Shahzaman, Civil Judge Mirpur, Azad Kashmir;
16. Ayaz Bashir, Civil Judge Pattikah, Azad Kashmir;
17. Nabila Nazir, Civil Judge Muzaffarabad;
18. Zaffar Mehmood, Civil Judge Muzaffarabad;
19. Muhammad Shabbir, Civil Judge Bagh, Azad Kashmir;

20. Muhammad Shahzad, Civil Judge Pallandri, Azad Kashmir.

.... Proforma Respondents

SERVICE APPEAL

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

PRESENT:

Barrister Hamayun Nawaz Khan, Advocate for the appellant.
Chaudhary Muhammad Manzoor, AAG for the respondents.

JUDGMENT:-

(Chaudhary Khalid Rasheed, Member.) The captioned appeal has been filed against the order dated 20.11.2012 recorded by competent authority/Chief Justice High Court qua a seniority dispute among the Civil Judges B-18 has been decided.

Precise facts forming background of the instant appeal are, appellant was serving as Section Officer BPS-17 in the Department of Law, Justice and Parliamentary Affairs of Azad Govt. of the State of Jammu & Kashmir, who was transferred/appointed as Civil Judge BPS-18 against 10% quota reserved for employees of Law Department under the Azad Jammu & Kashmir Judicial Service Rules, 1999 vide notification dated 31.08.2010, whereas, private respondents were appointed against the quota reserved for direct recruitment vide notification dated 27.08.2010. Department issued temporary

seniority list of Civil Judges B-18 on 05.05.2011 and sought objections wherein appellant was listed at serial No.19. Appellant herein objected the seniority. The competent authority after hearing parties, vide impugned order dated 20.11.2012 resolved objections and issued final seniority list, wherein appellant herein has been listed at serial No.17 of the seniority list. The appellant felt aggrieved from the final seniority list, assailed the same through captioned appeal with a prayer to be listed at serial No.3 of the seniority list.

Barrister Hamayun Nawaz Khan, learned counsel for the appellant vehemently argued that impugned order is not sustainable as being bad in law because it is an admitted position that appellant was 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-Rule (2) of Rule 8 of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, the appellant appointed otherwise was liable to be ranked senior to the private respondents appointed through initial recruitment. The learned advocate further argued that appointment of the appellant should be given effect from the date of availability of post of Civil Judge against the quota of employees of Law Department

or at least from the date of penal sent by the Law department on 30.06.2010 but the authority met the appellant in discriminatory manner and issued his appointment notification on 31.08.2010 whereas the private respondents were given effect from 18.08.2010. The learned advocate further argued that for determining seniority of civil servants the date of regular appointment has to be pondered as in the instant case, appellants and respondents were appointed on regular basis on the same day as appointment of appellant was given effect from 27.08.2010, hence the appellant 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 giving effect to the appointment of private respondents from 18.08.2010 from the day of recommendations by Public Service Commission was not justified, hence, it was prayed that by setting aside the impugned order, appellant be listed at serial No.3 of seniority list and the promotion orders of private respondents based on the anomalous impugned seniority list be set at naught.

The learned AAG appeared 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 18.08.2010, 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 18.08.2010. The learned advocates further argued that private respondents were selected through Public Service Commission whereas appellant has been selected by selection board on 31.08.2010, hence the respondents who were selected prior to appellant were rightly listed ahead to him in the seniority list vide impugned order dated 20.11.2012 in view of Rule 8(1)(a) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, thus the impugned order entails to be sustained.

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

The contest between the parties which is required to be resolved by this Court is regarding seniority of the appellant and private respondents as Civil Judge BPS-18 and to judge the legality of the impugned order dated 20.11.2012. A perusal of the record reveals that name of appellant being permanent Section Officer B-17 in the Law Department was forwarded by his parent department to be considered for appointment as Civil Judge B-18 on 30.06.2010. Selection board was convened on 27.08.2010 the other candidates were selected, however, the case of appellant was deferred on the pretext that his lien has been kept in the Shariat Court of Azad Jammu & Kashmir from where he was transferred as Section Officer. On the basis of same selection Board held on 27.08.2010 the appellant was selected for appointment as Civil Judge B-18 on the ground that lien was not a hurdle in his permanent induction as Civil Judge and notification in this respect against the quota of Law Department was issued on 31.08.2010, however, in the impugned order dated 20.11.2012 the authority while resolving seniority dispute between Civil Judges given effect to the appointment/adjustment of the appellant w.e.f. 27.08.2010 and the order dated 20.11.2012 has attained finality as nobody assailed the same to that extent before next higher

forum. The relevant observations recorded at pages 10 and 11 of the order dated 20.11.2012 are reproduced as under:-

“So far as the case of Raja Khalid Asghar is concerned, it may be stated that at the time of his induction against quota of Law Department he was serving as Section Officer B-17. On 27.08.2010 when Selection Board considered promotion of Kh. Habib-ur-Rehman, Ikram Malik, Sardar Akhtar Hussain and Syed Zulfiqar Husain Shah his case was deferred on the pretext that his lien has been kept in the Shariat Court of Azad Jammu & Kashmir from where he was transferred as Section Officer. The lien was not a hurdle in his permanent induction as Civil Judge because he was already serving permanently as Section Officer B-17. He was not superseded or declared ineligible in the proceedings of selection Board dated 27.08.2010. He has been approved on 31.08.2010 as stated above he earned a right to be considered by Selection Board along with other promotees. Therefore his appointment can be ordered with retrospective effect from 27.08.2010. Accordingly ordered.”

So, in view of above reproduced para it can safely be held that the appellant has been appointed as Civil Judge B-18 w.e.f. 27.08.2010 and the private respondents have also been appointed on the same date i.e. 27.08.2010. Though, the authority while passing the impugned order by exercising powers under section 21 of the General Clauses Act, given effect to the appointments of private respondents w.e.f. 18.08.2010, however, this Court while deciding Service Appeal No.2/2013 titled Ikram Malik Vs. Competent Authority and others decided on 03.04.2024 has observed that the authority was not

competent to exercise powers under section 21 of the General Clauses Act, when the order had acted upon and right has accrued in favour of other party, that too, without providing right of hearing in this regard. The relevant observations recorded at page 14 of the judgment are reproduced as under:-

“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.”

Now, the question which emerges for resolution is as to whether the appellant was entitled to be placed ahead to private respondents in the seniority list for having been appointed otherwise or the private respondents who were appointed through direct recruitment have rightly been placed ahead to the appellant. It is an admitted position that private respondents have been appointed through direct recruitment whereas appellant herein has been appointed through transfer from the Law Department. Rule 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, Rule 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."

As appellant herein was appointed as Civil Judge BPS-18 by transfer against 10% quota reserved for promotion of employees of law Department with effect from 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 I of Rule 8(2) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, which postulates 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 Rule 8(1)(a) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, is attracted in the instant case. The appointing authority erroneously applied provisions of rule 8(1) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977, hence the impugned order is not sustainable.

A plain reading of Rule 8 of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977 makes it blatantly obvious that rule 8(1)(a) deals with persons appointed by initial recruitment, sub-rule 8(1)(b) relates persons appointed otherwise meaning thereby that when both the persons are appointed otherwise to the initial recruitment rule 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 rule 8(2) of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977.

As we have reached to the conclusion that seniority list dated 20.11.2012 lacks valid legal sanctity and the appellant

should be listed at serial No.3 of seniority list, hence, promotion orders of private respondents on the basis of said final seniority list without considering the appellant are anomalous and liable to be set at naught.

Before parting with the case, it may be stated that for promotion to the next higher grade, particularly to a post of Judge, which is of an important nature as a Judge has to do justice with the litigants and for doing justice Judge should be aware of law and should keep law at the sleeves of his robe, seniority is not a sole criteria rather concerned Judicial Selection Board should also ponder the fitness of candidate that whether he/she is suitable for promotion or not. This Tribunal may decide the seniority of the litigants but cannot perform the role of selector which is the sole prerogative of concerned Selection Board/Competent Authority hence, the suitability must be considered and determined by the concerned selection board irrespective of seniority.

The sum and substance of the above discussion is, the instant appeal is hereby accepted while setting aside the impugned seniority list dated 20.11.2012 the appellant is declared senior to private respondents, who shall be placed at serial No.3 of the seniority list of Civil Judges B-18 and the

authority shall issue a fresh seniority list of civil judges accordingly.

Muzaffarabad;

07.06.2024.

JUSTICE/CHAIRMAN

JUSTICE/MEMBER

Approved for reporting.

JUSTICE/MEMBER