

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.4293/2021.
Date of institution 10.12.2021.
Date of decision 08.06.2022.

Shabraz Shabir s/o Mohammad Shabir (late) r/o Village Sumba Hoterari, Tehsil & District Muzaffarabad, Azad Kashmir.

Petitioner

VERSUS

1. District Education Officer (Male) Elementary & Secondary Education, Muzaffarabad having his office at new District Headquarter Complex Saheli Sarkar, Muzaffarabad;
2. So-called Selection Committee for Class Four Employees BPS-1 to BPS-4 (Naib Qasids, Chowkidars etc.) through its illegal Chairman District Education Officer (Male), having his office at new District Complex Saheli Sarkar Road Muzaffarabad;
3. Headmaster, Government Boys High School Hoterari, Tehsil & District Muzaffarabad;
4. Secretary Elementary and Secondary Education, Azad Govt. of the State of Jammu & Kashmir, having his office at new Secretariat Complex Chatter Muzaffarabad Azad Kashmir;
5. Mohammad Rafique s/o Noor Mohammad r/o Village Hoterari Paeen, presently illegally appointed as Naib Qasid B-1 on temporary basis, in Government Boys High School Hoterari, Tehsil & District Muzaffarabad Azad Kashmir;
6. Mohammad Ishfaq s/o Sultan Mohammad, r/o Village Sumba Hoterari, presently illegally appointed as Naib Qasid B-1 in Government Boys High School Hoterari, Tehsil & District Muzaffarabad Azad Kashmir.

Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

M. Maqsood Ahmed Sulehria, Advocate for the Petitioner.
Ch. Shoukat Aziz, Advocate for Respondents Nos. 5 & 6.

JUDGMENT:

Through this petition filed under Article 44 of Azad Jammu & Kashmir Interim Constitution 1974, the petitioner sought for cancellation of the impugned order dated 09.11.2021, through which respondents Nos. 5 and 6 have been appointed on the basis of merit list dated 10.09.2020.

I. FACTS IN BREVIETY AND ENSUING PROCEEDINGS:-

Through advertisement dated 14.08.2020 only one post of Naib Qasid B-1 pertaining to Union Council Muzaffarabad was advertised but the appointing authority made two appointments of respondents Nos. 5 and 6, which are allegedly contrary to law and various pronouncements of the Hon'ble Apex Court. As per contents of writ petition, the head of Institution was empowered to advertise the posts of Naib Qasids but DEO Muzaffarabad/higher authority by violating the law advertised the different posts of Union Councils and this Court through judgment dated 09.03.2020, set-aside the impugned notification dated 04.04.2018 to the extent of formation of the Selection Committee. It has further been alleged that as per notification/order dated 5th April 2021, (whereby the

appointing authority is the head of Institution) the appointments of all the employees of BPS-1 to 4 should have been made. Lastly, it has been prayed that the appointments of respondents Nos. 5 & 6 being contrary to law may be set-aside.

II. PARAWISE COMMENTS:-

The appointments of respondents Nos. 5 & 6 have been challenged by the petitioner Mohammad Naveed Khan in writ petition No.769-A/2021 and this Court on 30.10.2021 while setting aside the claim of petitioner dismissed the writ petition and against the judgment of this Court the petitioner filed PLA before the Hon'ble Apex Court of Azad Jammu & Kashmir which was also dismissed through order dated 20.12.2021. It has further been alleged that neither this Court nor the Hon'ble Supreme Court declared the selection process illegal pertaining to appointments of respondents Nos. 5 & 6 as the permanent orders of the aforesaid respondents have been issued after dismissal of the writ petition before this Court as well as after dismissal of petition for leave to appeal from the Hon'ble Supreme Court. It has further been alleged that the appointments of the supra respondents have purely been made by the relevant authority i.e. Headmaster Govt. Boys High School Hoterari Muzaffarabad

and as per condition No.8 of the advertisement, it has clearly been mentioned that the number of posts can be increased or decreased, therefore, due to availability of the post of Naib Qasid, the candidate falling at serial No.2 of the merit list was appointed and regarding the upper age limit, it has been stated that as per notification issued by Service and General Administration Department Govt. of Azad Jammu & Kashmir, from 01.08.2019 to 31.07.2021, the upper age for the appointment has been determined as 40 years and the advertisement has been issued/published as per supra notification and finally requested for dismissal of the writ petition with costs.

The learned counsel for the parties argued the case according to their respective pleadings.

III. COURT'S DETERMINATION:-

The claim of the petitioner is that the appointment orders of respondents Nos. 5 & 6 have been issued against the law on the ground that one post was advertised but two appointments were made and the Head of the Institution was the authority to advertise the posts and fill in the same. To resolve the supra controversy, I would like to reproduce the orders of both the respondents which have been challenged by the petitioner through the instant petition:-

از دفتر صدر معلم بوائز ہائی سکول ہوتریڑی مظفر آباد

حکم۔

حسب سفارش سلیکشن کمیٹی مسٹر محمد رفیق ولد نور محمد ساکنہ ہوتریڑی موزوں امیدوار کی تقرری بطور نائب قائد در سکیلیں بی۔1 (بعد از اخراج رٹ پٹیشن بعنوانی محمد نوید خان بنام بیکریٹی تعلیم سکولز وغیرہ محررہ 30.10.2021) بوائز ہائی سکول ہوتریڑی بخلاف خالی اسامی نائب قائد عمل میں لائی جاتی ہے۔ نو تقرر شدہ اہلکار تاریخ حاضری ادارہ سے سکیلیں بی۔1 میں تنخواہ معہ مر وجہ الاؤنسز حاصل کرنے کا حقدار ہوگا۔ نیز تقرری عرصہ دو سال کے لیے آزمائشی ہوگی۔

صدر معلم

گورنمنٹ بوائز ہائی سکول ہوتریڑی مظفر آباد

نمبر/184-87/2021 مورخہ 09.11.2021

از دفتر صدر معلم بوائز ہائی سکول ہوتریڑی مظفر آباد

حکم۔

حسب سفارش سلیکشن کمیٹی مسٹر محمد اشفاق ولد سلطان محمد ساکنہ ہوتریڑی موزوں امیدوار کی تقرری بطور نائب قائد در سکیلیں بی۔1 (بعد از اخراج رٹ پٹیشن بعنوانی محمد نوید خان بنام بیکریٹی تعلیم سکولز وغیرہ محررہ 30.10.2021) بوائز ہائی سکول ہوتریڑی بخلاف خالی اسامی نائب قائد عمل میں لائی جاتی ہے۔ نو تقرر شدہ اہلکار تاریخ حاضری ادارہ سے سکیلیں بی۔1 میں تنخواہ معہ مر وجہ الاؤنسز حاصل کرنے کا حقدار ہوگا۔ نیز تقرری عرصہ دو سال کے لیے آزمائشی ہوگی۔

صدر معلم

گورنمنٹ بوائز ہائی سکول ہوتریڑی مظفر آباد

نمبر/188-91/2021 مورخہ 09.11.2021

IV. A perusal of the above orders clearly shows that the same have been issued by the Headmaster Govt. Boys High School Hoterari Muzaffarabad against the vacant posts in light of recommendations of the respective Selection Committee after dismissal of the writ petition filed by one "Mohammad Naveed Khan through which impugned advertisement dated 14.08.2020 as well as orders of private respondents dated 26.10.2019 and 01.07.2020, were challenged. I have also gone through the judgment of this Court dated 30.10.2021, whereby, the petitioner challenged the aforesaid advertisement and orders of private respondents stating therein that the private

respondents, herein, have been appointed illegally without advertisement and without recommendations of the Selection Committee but a glance perusal of the record shows that after advertisement of the post of Naib Qasid in Union Council Muzaffarabad; Constituency No.2, the petitioner Mohammad Naveed participated in the selection process and was placed at serial No.10 of the merit list, so, when he could not attain the merit position, he with mala-fide aspiration filed a writ petition on 02.03.2021, by challenging the merit list as well as appointment orders of private respondents and this Court on 30.10.2021, dismissed the writ petition with the observation that the doctrine of acquiescence and estoppel are fully applied against the petitioner, therein. Against the judgment of this Court the petitioner, Mohammad Naveed Khan filed PLA and the Hon'ble Supreme Court of Azad Jammu & Kashmir dismissed the appeal on the ground that private respondents have been appointed permanently on the recommendations of the respective Selection Committee, so, the appeal has become infructuous.

V. It is worthwhile to mention here that when the petitioner could not succeed to prove his version regarding illegal appointments of the private respondents before this Court and in PLA before the Hon'ble Supreme Court of Azad

Jammu & Kashmir, then with mala-fide intention the present petitioner, Shabraz Shabir was compelled to challenge the lawful orders of the private respondents, which have been issued by the authority i.e. Headmaster Govt. Boys High School Hoterari Muzaffarabad after adopting due course of law, i.e. after advertisement and executing test and interview by the respective Selection Committee. In my considered view, the orders of private respondents have been issued by the authority after dismissal of the writ petition as well as well as after dismissal of petition for leave to appeal by the Hon'ble Supreme Court of Azad Jammu & Kashmir, therefore, 2nd round of litigation ex-facie seems proxy litigation. Furthermore, after advertisement of the post, the appointing authority through even dated order 09.11.2021, made appointments of the suitable candidates against the vacant posts after dismissal of the writ petition. So, in my considered view, both the private respondents have attained the merit position after obtaining 21 and 20 marks out of 30, have been appointed in accordance with law. The number of posts as per advertisement dated can be increased or decreased and the validity of the merit list is 180 days. The candidates falling in the waiting merit list can be appointed within the time frame of the validity of the

merit list i.e. within 180 days. It is germane to mention that vide order dated 5th of April 2021, (listed with the writ petition) fresh Selection Committee quo appointment against the such like posts has been constituted, appointment orders purportedly have been issued by the competent authority by exhibiting recommendations of the Committee. Moreover, it is also noteworthy to mention that Delegation of Powers simultaneously can exercise the powers conferred to delegation.

VI. Head of the Institution/Headmaster is competent authority to issue such like orders as per conditions incorporated in advertisement, it has been inserted that number of posts could be enhanced, thus, after availability of other post the second appointment was made, while the petitioner has not challenged this condition.

VII. So, when the proper course in the appointments of the private respondents has been adopted i.e. advertisement, test interview, and respective Selection Committee which declared them as successful candidates, thereafter, the appointment orders have been issued by the competent authority then how can it be said that no proper procedure has been adopted while issuing the aforesaid orders, in my considered view this is the clear-cut flagrant

and blatant mala-fide on part of the petitioner to challenge the lawful orders of private respondents which have been issued after dismissal of writ petition as well as after dismissal of petition for leave to appeal by the Hon'ble Supreme Court of Azad Jammu & Kashmir. In my opinion, the petitioner has failed to prove his case regarding illegal appointments of private respondents. Once the matter pertaining to appointments of the private respondents, herein, has been resolved up to the Hon'ble Supreme Court, then filing of the fresh petition on the same cause of action and same grounds is not warranted by law as the supra respondents are being lugging/dragging in the unnecessary litigation since 2021, so, if such vexatious and exasperating litigations are not halted or discouraged then the legally appointed persons will not only be agonized with anguish and torment but it will also cause a massive financial loss to them, therefore, it is the command and demand of the law to stay the hands of all those persons who cause awkwardness and embarrassment for the lawfully appointed candidates. Remedy of writ is not akin to civil suit, it is an

extraordinary constitutional remedy provided to an aggrieved person in extraordinary circumstances, where, no alternate or adequate remedy is provided under law, that too he/she has to come forward purely with clean hands and in attire of bona-fide. A mare stale and bald claims are not entertainable in extraordinary writ jurisdiction, conduct of the petitioner is always to be filtered through lens of bona-fide. Beneficiaries of the orders passed by the departmental authorities could not be penalized for loopholes, inaction or procedural irregularity of the authorities.

VIII. As adumbrated, the petitioner has not approached this Court with clean hands. Relief in extraordinary jurisdiction is equitable in nature and equity demands that one who asks for equity must come with clean hands, meaning thereby that a person who chooses to come forward and invokes extraordinary jurisdiction of this Court must prove at the outset that he is the bona-fide claimant. In fact, remedy of writ is two edged weapon in the hands of the petitioner as it can cut both ways.

The synopsis of the above discussion is that the instant writ petition is not maintainable as the same has been filed on akin grounds and on akin cause of action which have already been resolved up to the Hon'ble Supreme Court. Therefore, finding no force in this writ petition, it is hereby dismissed with no order as to the costs.

Muzaffarabad.
08.06.2022 (Saleem)

-Sd-
JUDGE

Note:- Judgement is written and duly signed. The office is directed to announce the judgment in presence of the parties or their counsel accordingly.

-Sd-
JUDGE