

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

Service Appeal No.01/2018;
Date of Institution 27.02.2018;
Date of hearing. 06.06.2024;
Date of Decision 07.06.2024.

Syed Zulfiqar Hussain Shah, Senior Civil Judge Athmuqam.

....Appellant

VERSUS

1. Competent Authority for Members of the Subordinate Judiciary (Chief Justice of High Court of Azad Jammu & Kashmir) through Registrar High Court of Azad Jammu & Kashmir;
2. Judicial Selection Board High Court of Azad Jammu & Kashmir through Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
3. Registrar High Court of Azad Jammu & Kashmir, Muzaffarabad;
4. Qadeer Hussain, Senior Scale Stenographer, Office of the District and Sessions Judge Poonch/Rawalakot, Azad Kashmir.

.... Respondents

SERVICE APPEAL

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

PRESENT:

Mr. Abdul Rasheed Abbasi, Advocate for the appellant.
Mr. Shahzad Shafi Awan, Advocate for the respondent No.4.
Chaudhary Muhammad Manzoor, AAG for official respondents.

JUDGMENT:-

(Chaudhary Khalid Rasheed, Member) The captioned
appeal has been filed against the notification dated 20.02.2018

through which Competent Authority reverted appellant to the post of Superintendent from Senior Civil Judge.

Precise facts forming background of the instant appeal are, appellant herein was serving as Senior Scale Stenographer who was promoted as Civil Judge B-18 against 10% quota reserved for the employees of Subordinate Judiciary vide notification dated 28.08.2010. Respondent No.4 herein, assailed promotion notification of the appellant through appeal before Subordinate Judicial Service Tribunal (hereinafter to be referred as Tribunal) on 28.11.2011. The Tribunal after hearing the parties, dismissed the appeal vide judgment dated 23.04.2016. Respondent No.4 herein challenged judgment dated 23.04.2016 before the Supreme Court and the Hon'ble apex Court set aside the judgment on the ground that Chairman of the Tribunal was consulted by one of the parties prior to his elevation in the bench, so it was not appropriate for him to associate with the bench. On remand, the Tribunal again dismissed the appeal vide judgment dated 04.07.2017. Respondent No.4 once more attacked the judgment of Tribunal before the Supreme Court through an appeal. The honourable Apex Court remanded the matter to the High Court with the direction to place the same before the respective selection board for re-examination vide judgment dated 19.01.2018. In the light of judgment of the

learned Apex Court, Judicial Selection Board reconsidered the matter and impugned notification dated 20.02.2018 was issued in the light of recommendation of judicial selection board held on 19.02.2018 qua the appellant was reverted as superintendent. Appellant assailed notification dated 20.02.2018 through the captioned appeal which was decided by Tribunal vide judgment dated 08.09.2018 and dismissed the appeal in limine. On appeal, the learned Apex Court of Azad Jammu & Kashmir vide its judgment dated 07.11.2018 admitted the appeal before the Tribunal and remanded the case with the direction to decide the same afresh after attending grounds raised in the appeal.

The learned counsel for the appellant reiterated the facts and grounds already taken in the appeal and mainly pressed into service that private respondent was failed to fulfill the required qualification at the time of promotion of the appellant dated 28.08.2010 as he had got just two years experience after qualifying L.L.B. examination, thus the appellant was rightly promoted as Civil Judge but the concerned Judicial selection board failed to understand the legal position, wrongly recommended reversion of the appellant and the competent authority erroneously issued notification dated

20.02.2018. The learned advocate placed his reliance on 2017 SCR 35.

The learned counsel for the respondents supported the impugned notification dated 20.02.2018 by contended that private respondent was senior to the appellant and was eligible for promotion as Civil Judge, hence appellant was wrongly promoted by the selection board sine pondering the case of private respondent thus, the subsequent judicial selection board convened in the light of judgment of the Apex Court dated 19.01.2018 accurately recommended the private respondent for promotion and reversion of appellant, thus the appeal entails to show the door. He placed his reliance on following case laws:-

1. 2004 SCR 284,
2. 2006 SCR 1599,
3. 2000 SCR 547,
4. 2003 SCR 264,
5. 2005 SCR 282,
6. 1998 SCR 278,
7. 2014 SCR 883 &
8. 2014 SCR 1169.

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

At the very outset it may be stated that earlier this appeal was dismissed by the tribunal in limine, however on appeal the learned Supreme Court remanded the case for fresh

decision by taking into account the grounds agitated in the appeal, so we are going to decide appeal ground-wise.

Ground (a) taken in the appeal is that no reason has been assigned in the impugned order for reversion of the appellant from the post of Senior Civil Judge to superintendent. A perusal of record reveals that in the light of judgment of Supreme Court dated 18.01.2018 reported as 2018 SCR 164 the matter was reconsidered by the concerned Judicial Selection Board for promotion as Civil Judge and appellant was recommended to be reverted on the ground that he was junior to private respondent in the seniority of BPS-16 and this reason was not required to be mentioned in the impugned notification dated 20.02.2018 rather is sufficiently mentioned in the working papers presented before the concerned Judicial Selection Board, hence this ground has got no legal sanctity in the eyes of law.

Ground (b) taken by the appellant is that he has not been provided an opportunity of hearing by the selection board or the competent authority before passing the impugned notification has also got no essence because the selection board was convened in the light of direction of the Apex Court, the selection board was not bound to hear the appellant rather the selection board has to perform its duty in a legal fashion and to give recommendations as per law. For the purpose of selection

board hearing of candidates is not necessary in any manner, thus this ground is also refuted.

Grounds (C & D) taken in appeal are that private respondent was not eligible for promotion because he was not fulfilling the required qualification as he has passed his LLB in the year 2008. This is the main ground agitated in the appeal and argued by the learned counsel for the appellant with vehemence. The Azad Jammu & Kashmir Judicial Service Rules, 1999, which were applicable at relevant time, postulates that the post of Civil Judge shall be filled in 10% by promotion on the basis of selection on merit from amongst the law graduate employees of administration of justice with 5 years service in B-16 as such. A plain reading of relevant rules makes it clear that a law graduate employee of the administration of justice having 5 years service in B-16 is eligible to be promoted and the words "as such" indicate 5 years service in B-16 and not 5 years service in B-16 after obtaining LLB. This question has already been resolved by the Apex Court in the judgment rendered in Civil Appeal No.265/2017 titled Qadeer Hussain v. the appointing Authority and others decided on 18.01.2018, reported as 2018 SCR 164 wherein at pages 15 and 16 it has been observed as under:

"...The stance taken by the learned counsel for the respondent No.3, the written statement filed before the Service Tribunal, concise statement before this Court and during the

course of arguments was that respondent No.3 acquired the requisite degree of LLB prior to the appellant, therefore, he became senior. This version seems to be funny as the seniority has to be determined according to the rules and no such provision is available in the relevant rules that an incumbent by acquiring the LLB degree shall become senior to the others. At the relevant time when the selection was made, under the rules, the appellant was eligible for promotion and he cannot be considered junior to respondent No.3 mere on such a flimsy ground that respondent No.3 acquired the requisite degree of LLB prior to the appellant....”

Thus, this argument is not available to the appellant.

The rule of law laid down in 2017 SCR 35 referred to and relied upon by the learned counsel for appellant is not applicable to the case in hand for having distinguishable facts and if for the sake of arguments it is accepted that on similar facts and in similar situation, the Apex Court in the case supra observed that the experience shall be counted after obtaining requisite qualification even then this case law is not helpful to the appellant because in civil appeal No.265/2017, the Supreme Court has held in blatant manner that the appellant was eligible for promotion at the time of Selection Board in the year 2010 and the judgment supra rendered on 19.01.2018 being latest and passed in the case in hand, deserves to be prevailed and followed, thus this argument of the learned counsel for the appellant is repelled.

The stand taken by the appellant in ground "E" that he was senior to private respondent in the lower grade has also got no force of law because it is clearly illuminated in ground "E" by the appellant himself that the private respondent was appointed as Typist/clerk B-5 on 08.12.1990 and was promoted as Stenographer B-12 on 01.06.1994 whereas appellant herein was appointed as Stenographer B-12 on 04.07.1994, thus in view of provision contained in Rule 8 of the Azad Jammu & Kashmir Civil Servants (Appointment & Conditions of Service) Rules, 1977 the employee senior in the lower grade shall rank senior in the higher grade and shall retain seniority. Furthermore, this proposition has also been decided by the Supreme Court vide judgment dated 19.01.2018 and at page 19 observed as under:-

"Another plea taken by the learned counsel for the respondent No.3, that both the contestant were promoted in B-16 on the same day, i.e. 27.02.2002, therefore, the appellant cannot claim himself senior to respondents No.3, has also no substance. The record shows that vide notification dated 18.01.2006, the post of Stenographer was upgraded to B-16 w.e.f. 27.02.2002, in the result thereof the contestant were also promoted against the upgraded posts but prior to the up-gradation of the post the appellant was serving in B-15, whereas, respondents No.3 was in B-12 and it is settled principle of law that when an employee is senior in lower grade to the other and both are promoted in the next higher grade then the employee who was senior in lower grade shall retain his seniority. Thus, it is clear that the appellant senior in lower grade was also senior

to respondent No.3, after promotion in equal grade.”

Thus this ground of the appeal is also not liable to be considered.

So far as the ground “F” of the appeal is concerned, as the appellant has been reverted through the impugned notification and is serving due to suspension of the impugned notification by the Courts, hence, it was not necessary for the private respondent to assail his further promotion because if the foundation is illegal the superstructure has to turn into ashes. The other ground agitated in the appeal did not require any deliberation as the same are interlinked with the resolved grounds.

The crux and epitome of the above debate is, the instant appeal having no soul stands dismissed.

Muzaffarabad;

07.06.2024.

JUSTICE/CHAIRMAN

JUSTICE/MEMBER