

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

Present:

Mr. Justice Nasir-ul-Mulk, HCJ  
Mr. Justice Amir Hani Muslim  
Mr. Justice Ijaz Ahmed Chaudhry

**Civil Petition No.84-P of 2015.**

(On appeal from judgment dated 22.1.2015, of the Peshawar High Court, Peshawar, passed in W.P. No.3258 of 2013).

Sarhad Development Authority through its  
Chairman.

...Petitioners.

VS

Syed Muhammad Latif Shah and others.

...Respondents.

For the petitioners: Mr. Muhammad Ijaz Sabi, ASC.

For the respondents: N.R.

Date of hearing: 25.3.2015.

**JUDGMENT**

**AMIR HANI MUSLIM, J.** – This Petition for leave to Appeal is directed against judgment dated 22.1.2015, passed by the Peshawar High Court, Peshawar, whereby Writ Petition filed by the Respondent No.1 was allowed and the Notification of Promotion of the Respondent No.9 was struck down.

2. The facts necessary for decision of the present Petition are that the Respondent No.1 filed Writ Petition before the Peshawar High Court, praying therein to set aside the Notification of Promotion of the Respondent No.9 against the Post of General Manager (Administration) (BS-19) being

violative of the Sarhad Development Authority (Appointment of Employees) Rules, 1977 framed under the Sarhad Development Authority Act 1973. The Respondent No.1 pleaded in the Writ Petition that he was the senior most BS-18 officer of Managerial Cadre in the Sarhad Development Authority (hereinafter referred to as the Authority) and Promotion of the Respondent No.9, who belongs to the Finance Cadre, was against the said Rules. At the relevant time the Respondent No.1 was working as Industrial Estate Manager (BPS-18) in the Managerial Cadre in the Export Processing Zone Risalpur and was posted against the post of General Manager (Administration) Sarhad Development Authority, keeping in view his seniority in the Managerial Cadre. However, the Departmental Promotion Committee in its meeting recommended the Respondent No.9 for promotion to the post of General Manager (Administration). Accordingly the notification for promotion of the Respondent No.9 was issued in compliance with the minutes of the meeting of the Departmental Promotion Committee.

3. Feeling aggrieved, the Respondent No.1 filed departmental Review Petition against the order of the Departmental Promotion Committee, which was turned down by the Competent Authority, by order dated 2.11.2013. Therefore, he filed Writ Petition before the Peshawar High Court, which was allowed as stated above. Hence this Petition for leave to Appeal.

4. The learned Counsel for the Petitioner has contended that the learned High Court has wrongly entertained the Writ Petition filed by the Respondent No.1, as the Sarhad Development Authority (Appointment of Employees) Rules, 1977 are non-statutory in nature and the Employees of

the Sarhad Development Authority are governed by the principle of Master and Servant. He next contended that the Sarhad Development Authority (Appointment of Employees) Rules, 1977, were not notified as required by Section 29 of the Sarhad Development Authority Act, 1973, therefore, the High Court has no jurisdiction to adjudicate upon the service matters of the employees of the Authority.

5. He further contended that the Respondent No.9 is the senior-most BS-18 officer of the Sarhad Development Authority and the Departmental Promotion Committee has rightly recommended his name for promotion to the post of General Manager (Administration) (BS-19) which is to be filled in by promoting the senior most officer of BS-18 of the Authority.

6. We have heard the learned Counsel for the Petitioner and have perused the record. The Petitioner-Authority is created by Sarhad Development Authority, N.W.F.P Act No.IX of 1973, promulgated on 12.1.1973. Section 29 of the Act provides:-

*“29 (1) Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.*

*(2) In particular and without prejudice to the generally of the foregoing powers, such rules may provide for –*

*(a) the manner of keeping accounts of the Authority and the companies managed by it;*

*(b) the recruitment of officers, advisers and employees of the Authority;*

*© the terms and conditions of service of the officers, advisers and employees of the Authority, including the functions of the advisers;*

- (d) *the borrowing by the Authority.*
- (e) *the purchase and sale of good by the Authority;*
- (f) *the date by which and the form in which, the annual budget statement shall be submitted in each year;*
- (g) *the procedure for appropriation and re-appropriation of moneys returns, at the credit of the Authority;*
- (h) *the form and manner in which and the authorities to whom returns, reports or statements shall be submitted; and*
- (i) *such other matters relating to the administration of the affairs of the Authority as Government may think fit to regulate by rules;*

7. From 1973 till date, the Government of KPK has failed to frame Rules in terms of Section 29 of the Act inclusive of the Rules for recruitment of the Officers, Advisors and employees of the Authority. The Government was further required to frame Rules pertaining to the terms and conditions of services of the officers and employees of the Authority. This omission, *prima facie*, shows that the Government, in absence of the proposed Rules is regulating the service of the Petitioner-Authority by exercising its unstructured discretion in recruitment/promotion of officers and employees in the Authority. We, therefore, direct the Government of KPK to comply with the provisions of Section 29 of the Act within three months from the date of this judgment and submit compliance report to the Registrar of this Court for our perusal in Chambers.

8. The Petitioner-Authority is bound by its own Rules which categorize different Cadres in the service of the Authority. In the case in hand, the exercise of jurisdiction by the High Court is immaterial, as the officer who is aggrieved by the impugned judgment has not challenged it

before this Court. The grant of leave by this Court under Article 185 (3) of the Constitution is discretionary. By the impugned judgment, the learned High Court has resolved the issue of promotion between the two individuals which has no bearing over the Petitioner-Authority. It is the aggrieved officer who could have approached this Court. The Petitioner-Authority has no *locus standi* to invoke the jurisdiction of this Court and is bound by its own Rules, which permit the Respondent No.1 to be promoted under its rules as has been determined by the learned High Court.

9. In the peculiar facts and circumstances of the case, we are of the view that our interference in the impugned judgment would perpetuate injustice and, therefore, we are not inclined to intervene. For the aforesaid reasons, this Petition being misconceived is accordingly dismissed and leave declined. A copy of this judgment be sent to the Chief Secretary and Advocate General, KPK, for the information and compliance of the direction contained in para 7 above of the judgment.

Chief Justice

Judge

Judge

Islamabad the,  
25<sup>th</sup> March 2015.

**Approved for Reporting.**

Sohail/\*\*