

20/21

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(AFR)

Civil Appeal No.178 of 2020

Against judgment dated 07.11.2019 of
Peshawar High Court, Peshawar, passed in
Civil Revision No.127-B of 2016.

Government of KPK through Secretary ...Appellant(s)
Elementary & Secondary Education,
Peshawar & Others

VERSUS

Latif Ullah Khan ...Respondent(s)

For the Appellant(s): Mr. Atif Ali Khan, Addl.AG, KP

For the Respondent(s): Mr. Tariq Javed Qureshi, ASC
A/w Respondent

Date of Hearing: 03.02.2021

JUDGMENT

IJAZ UL AHSAN, J.- Through the instant Appeal by leave of the Court, the Appellants have challenged the judgment of the Peshawar High Court, Peshawar dated 07.11.2019 (*hereinafter referred to as "the Impugned Judgment"*) whereby a Revision Petition (C.R.No.127-B of 2016) filed by them was dismissed.

2. Briefly stated the facts necessary for the disposal of this appeal are that the Appellants advertised various posts of Primary School Teachers (PST) in the Daily Aaj newspaper, dated 16.10.2008, inviting applications from eligible candidates. As per the said advertisement, sixty

percent of the posts would be filled through initial recruitment based on merit at District level and the remaining forty percent would be filled through recruitment on merit at union council level. The Respondent, being a permanent resident of union council Isak Khel and holding a two-year diploma in education from Regular Institute of Technical Education (R.I.T.E), applied against the respective post. However, after completing the requisite test and interview, the Respondent was placed at No.24 on the merit list and therefore other candidates who were higher on the merit list were appointed against the vacant posts. Aggrieved, the Respondent filed a civil suit for declaration and mandatory injunction against the Appellant in the Court of Senior Civil Judge, Lakki Marwat on 02.04.2012. The Respondent had two main grievances. First, that he is a qualified diploma holder in education from R.I.T.E whereas all the appointees had their diplomas from Allama Iqbal Open University and as per prevailing policy the R.I.T.E diploma was given preference over the diplomas of other institutions. Therefore, he contended that on the basis of such policy he should have been placed at serial No.01 on the merit list. The second grievance of the Respondent was that no marks had been given to him for his five years of experience in the field of teaching whereas under recruitment policy the Appellants were bound to count five extra marks in the total mark of the Respondent. After recording evidence, the Trial Court decreed the suit in favor of the Respondent vide judgment and decree dated

17.03.2015, directing the Appellant to appoint the Respondent against one of the available posts of PST in Union Council Isak Khel without further delay. Subsequently, the Appellant challenged the judgment and decree before the Additional District Judge, Lakki Marwat, which was dismissed vide judgment dated 25.05.2016. The Appellants then filed a Civil Revision Petition before the Peshawar High Court, Bannu Bench, which was also dismissed vide judgment dated 07.11.2019. Aggrieved of the same, the Appellant approached this Court and sought leave to appeal.

3. Leave to appeal was granted by this Court vide order dated 02.03.2020 which is reproduced below for ease of reference:

"Learned Additional Advocate General, KP has contended that all the three Court have misread the evidence, in that, DW-2 in his evidence, has made no admission that the 05 extra-marks were to be granted on account of field experience, as in his very cross examination he stated that no such policy of the Government was in the field rather, some proposal was circulating about it. He further contends that on merits, the respondent has not qualified and Hasinullah, who has obtained 67.832 marks from Isa Khel, Sher Zaman who has obtained 58.84 marks and Shafiullah, who has obtained 58.826, were appointed, while the marks obtained by the respondent Latifullah are 51.89. He further contends that even if the alleged 5 marks are counted for the petitioner, still he will not have similar marks as that of the three candidates notes above, who since have been appointed. He further contends that the suit was filed by the respondent after three years of appointment of process and such process of appointment had become past and closed transaction, which could not have been interfered with by the Court.

2. *The contentions raised by the learned AAG require consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal shall be heard on the available record but the parties are allowed to file additional documents within a period of one month. As the matter relates to service, office is directed to fix the same expeditiously, preferably after three months."*

4. The main argument advanced by the learned counsel for the Appellant is that all three Courts have misread the evidence and ignored the fact that all the posts were filled purely on merit in accordance with the relevant law and policy. With regards to the argument of the Respondent that five additional marks should be added to his total mark based on his five years of field experience, learned counsel contends that no such recruitment policy exists in practice and that only a mere a proposal regarding it has been circulated. Learned counsel points out that the Respondent's own witness, DW-2, in his cross-examination admitted this very fact. Thus, he argues that in the absence of any policy in practice, no relief could have been granted to the Respondent on the ground of five years of field experience.

5. Learned counsel for the Respondent, on the other hand, has argued that since the Respondent was a qualified diploma holder from R.I.T.E, which is an eighteen-month diploma, whereas the appointees obtained their diplomas from Allama Iqbal Open University, which is a nine-month diploma, therefore, in accordance with relevant policy, the Respondent should be given preference over other

candidates. Learned counsel further submits that no additional marks for experience were granted to the Respondent despite the fact that he possessed five years of experience in the field of teaching and as per recruitment policy five additional marks should have been added to his total mark. It has also been argued before us that other similarly placed candidates who possessed the R.I.T.E diploma were given preference and appointed against the posts of PST. Hence, a refusal to grant the same relief to the Respondent amounts to discrimination and violation of his fundamental rights protected under the Constitution of the Islamic Republic of Pakistan, 1973.

6. We have heard the learned counsel for the parties at considerable length and gone through the case record. The key question which falls for the determination of this Court is whether under the recruitment policy the Respondent should have been appointed against the post of PST based on his qualification and his five years' worth of field experience in education.

7. Perusal of the record reveals that the Respondent is a qualified diploma holder from R.I.T.E and as per notification Ex.DW1/1, the Associate Degree in Education (ADE) is given preference in recruitment against the post of PST, for the reason that ADE is a two-years program whereas the duration of other diplomas is nine months or one year. Therefore, it is clear from the outset that under recruitment policy, a R.I.T.E diploma holder is to

be given preference over other candidates. However, it is pertinent to note that such preference shall only be given when the candidate has equal marks as the other competing candidate on merit. Therefore, a distinction must be drawn between a R.I.T.E diploma holder who has equal marks as other candidates on the merit list and is thereby given preference on the basis of his qualification and a R.I.T.E diploma holder who scores significantly lower marks than competing candidates. The latter shall not be given preference merely by virtue of the diploma. Accordingly, the Respondent cannot be given preference over the candidates appointed against the respective posts when his overall marks were significantly lower than those who were appointed on merit. Therefore, we do not find this argument to be sustainable.

8. With regard to the second argument of the Respondent that he should be appointed against the post of PST based on the five additional marks for his field experience, we are not convinced of the same. It must be noted that the marks obtained by the Respondent were 51.89 and even if the additional five marks for experience were added, his overall mark would be 56.89. On the other hand, the candidates who have been appointed against the respective posts have obtained 67.832, 58.84, and 58.826 marks respectively. Therefore, even if the Respondent was granted the additional five marks, he would still not have similar marks as those of the three candidates who have

been appointed. It must also be noted that the Respondent's own witness (DW-2) admitted during cross examination that the said policy for granting additional marks for experience had yet not been implemented in practice and that only a mere proposal regarding it had been circulated. Therefore, in the absence of any concrete policy in place, the Respondent cannot get any relief on account of his five years of experience in the field of education.

9. With regard to the final argument of the learned counsel for the Respondent that various other candidates were given preference and appointed against the posts of PST based on the R.I.T.E diploma, therefore a failure to grant the same treatment to the Respondent amounts to discrimination, we are not persuaded by the same. We note that this argument was not made by the Respondent at any stage of the case, either before the Civil Judge, the Additional District Judge or before the Peshawar High Court. Since the Respondent failed to do so and also failed to implead the alleged similarly placed candidates, it is not possible for us at this point to ascertain whether the Respondent was discriminated against.

10. It is essential to note that under Section 115 of the Code of Civil Procedure (1908), the supervisory jurisdiction of the High Court in a civil revision petition is purely discretionary and rather limited. However, this Court has held on many occasions that such discretion must be exercised in a lawful and valid manner on the basis of well

entrenched principles of the exercise of such discretion. Therefore, the High Court shall not arbitrarily refuse to exercise its discretionary powers, rather, it must satisfy itself as to whether jurisdiction has been exercised properly and whether the proceedings of the subordinate Court suffer from any illegality or irregularity. We find that in the present case, the Peshawar High Court failed to exercise its revision jurisdiction properly in law.

11. In light of what has been discussed above, we find that none of the grounds on the basis of which the Appellant was ordered to appoint the Respondent against the post of PST are maintainable. Therefore, the Peshawar High Court has seriously erred in law by dismissing the Civil Revision Petition filed by the Appellant. Consequently, the impugned judgment dated 07.11.2019 passed by the Peshawar High Court is set aside and the listed appeal is allowed.

Sd/- HCT
Sd/- J
Sd/- J

ISLAMABAD, THE

3rd of February, 2021

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Not Approved For Reporting