

**HIGH COURT OF AZAD JAMMU & KASHMIR**

Application No. 150/2021  
Date of Institution 15.06.2021  
Date of Decision 19.06.2021

Anwar Mehmood S/o Ghazi Illahi Bakhsh, Director General  
Mirpur Development Authority, Mirpur Azad Jammu &  
Kashmir.

Applicant

***VERSUS***

1. Shakeel Qadir, Chief Secretary Azad Jammu & Kashmir  
having his office at New Secretariat Muzaffarabad;
2. Ch. Liaqat Hussain, Secretary Services and General  
Administration Department, Azad Govt. of the State of  
Jammu & Kashmir having his office at New Secretariat  
Muzaffarabad;
3. Mansoor Qadir Dar, Secretary Physical Planning and  
Housing/Development Authority, Azad Jammu &  
Kashmir having his office at New Secretariat  
Muzaffarabad.

Non-applicants

**Contempt Application**

---

***Before;- Justice Sadaqat Hussain Raja, CJ.***

**PRESENT:**

Mr. Haroon Riaz Mughal, Advocate for the petitioner-  
applicant.

AAG for the official respondents.

Mr. Tahir Aziz Khan, Legal Advisor for the Election  
Commission.

**ORDER:**

Through the above titled writ petition Writ  
Petition No. 1795/2021 filed under Article 44 of the Azad

Jammu and Kashmir Interim Constitution, 1974, a prohibition is sought to the respondents not to cancel the appointment notification of the petitioner dated 30.09.2020, whereby the petitioner-applicant has been appointed as Director General Mirpur Development Authority, Mirpur Azad Jammu & Kashmir.

The learned counsel for the petitioner also moved an application for ad-interim relief. This Court, vide order dated 28.05.2021 issued the status quo order in favour of the petitioner. The aforesaid order was served upon the non-applicants and during pendency of the writ petition, the non-applicants issued a notification in pursuance of direction of the Election Commission, whereby the applicant was removed from his office in presence of status quo order of this Court.

The applicant also filed an application for initiating contempt proceedings against the non-applicants and after filing of the aforesaid application, the non-applicants cancelled the impugned notification, whereby the applicant was removed from his office.

I have perused the impugned notification passed by the official respondents, heard the learned counsel for the parties as well as Legal Advisor for the Election Commission.

It is the duty of the Election Commission to conduct free, fair and transparent elections according to Article 50(18) of the Interim Constitution, 1974. The executive is duty bound to assist the Election Commission in this regard. Unfortunately, the aforesaid Article has been misconceived by the Election Commission and other machinery of the State. The whole system is regulated by the Interim Constitution, 1974, the law and rules made thereunder.

According to Article 12 of the Interim Constitution, 1974, the executive authority shall be exercised in the name of the President by the Government, consisting of Prime Minister and Ministers, which shall act through Prime Minister. Article 12 of the Interim Constitution, 1974, is hereby reproduced as under:-

**“12. The Government:- (1) The executive authority of Azad Jammu & Kashmir shall be exercised in the name of the President by the Government, consisting of the Prime Minister and the Ministers, which shall act through the Prime Minister who shall be the Chief executive of Azad Jammu & Kashmir;**

(2). In the performance of his functions under the Constitution, the Prime Minister may act either directly or through the Ministers.

(3). The Prime Minister and the Ministers shall be collectively responsible to the Assembly.”

(Underlining is mine)

Under Article 12(4), the Government may make Rules for convenient transaction of its business. Sub Article 5 of the same Rule empowers the Government to delegate any of its

functions to the officers or authority subordinate to it. Article 12(4) and 5 of the Interim Constitution, 1974 are reproduced as under:-

**“12(4).** Orders and other instruments made and executed in the name of President shall be authenticated in such manner as may be specified in rules to be made by the Government, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(5) The Government may regulate the allocation and transaction of its business and may for the convenient transaction of that business delegate any of its functions to officers or authorities subordinate to it.”

Similarly, Rule 10 of the Rules of Business, provides that the Prime Minister is head of the Cabinet and also responsible for all the policy matters. Rule 10 of the Rules of Business is also reproduced as under:-

**“10. Orders, Instructions, Agreements and contracts:**

(1) All executive actions of Government shall be expressed to be taken in the name of the President.

(2). Save in cases where an officer has been specifically empowered to sign an order or instrument of Government, every such order or instrument shall be signed by the Secretary, the Additional Secretary [Joint Secretary], [the Deputy Secretary], [the Under Secretary], the Section Officer to Government or the officer on Special Duty in the Department concerned, and such signature shall be deemed to be proper authentication of such order or instrument.

(3) Instruction for the making of contracts on behalf of the President and the execution of the such contracts and all assurance of property shall be issued by the [Law, Justice, and Parliamentary Affairs Department],

According to the Rules of Business, no order shall be issued without approval of the Prime Minister in cases enumerated in III Schedule. Rule 5(2) of Rules of Business provides procedure for correspondence between the head of attached Department. The same is reproduced as under:-

**“5. Functions of Prime Minister:** (1) The Prime Minister shall;  
 (a). \_\_\_\_\_  
 (b). \_\_\_\_\_  
 (c). \_\_\_\_\_  
 (d). \_\_\_\_\_  
 (2). No order shall be issued without the approval of the Prime Minister in cases enumerated in Schedule III.”

No doubt, Election Commission is an independent authority for free, fair and transparent Elections but these powers do not allow to encroach in the jurisdiction of other organs. It is century old maxim that **“you cannot rob Paul to pay Peter”**.

Hence, according to the Constitution and Rules of Business, Election Commission is not empowered to encroach in the sphere of other organ which is not warranted by law. The notification whereby the applicant was removed from his office clearly amounts encroachment in the jurisdiction of the Court and also ultra-vires to the Constitution and law, hence, it is necessary for the Election Commission to follow Constitutional Provisions as well as the Rules of Business. It is pertinent to mention here that in the Azad Jammu & Kashmir, the Interim Constitution is in field and the Government is also functional. All the organs of the State i.e Judiciary, executive and legislature are functioning in accordance

with law, hence, any act by any authority against the law is not maintainable. The authorities have withdrawn the Notification, therefore, no further deliberation is required. However, the observations made in the order shall be followed strictly by the concerned authorities.

In the light of what has been stated above, the contempt application stands consigned to record.

**Muzaffarabad;**  
**19.06.2021**

**-Sd-**  
**CHIEF JUSTICE**

*Approved for reporting*

**-Sd-**  
**CHIEF JUSTICE**