

HIGH COURT OF AZAD JAMMU AND KASHMIR



Writ Petition No.1478/2024;
Date of institution 05.06.2024;
Date of hearing. 14.01.2026;
Date of decision 16.01.2026.

Aamir Mehboob S/o Mehboob-ur-Rehman, R/o House No. KC-286 Street No.5 Muhallah Kashmir Colony Rawalpindi, Pakistan.

.....Petitioner

VERSUS

1. Azad Government of the State of Jammu & Kashmir through Chief Secretary Azad Jammu & Kashmir, Muzaffarabad;
2. Azad Jammu & Kashmir Board of Revenue through Senior Member Board of Revenue Azad Jammu & Kashmir, Muzaffarabad;
3. Senior Member Board of Revenue Azad Jammu & Kashmir, Muzaffarabad;
4. Secretary Board of Revenue Azad Jammu & Kashmir, Muzaffarabad;
5. Inquiry Committee Constituted under section 6 of Azad Jammu & Kashmir State Subject Act, 1980 through its Chairman, Senior Member Board of Revenue;
6. Secretary Law, Justice and Parliamentary Affairs Azad Government of the State of Jammu & Kashmir, Member Inquiry Committee, Muzaffarabad;
7. Commissioner Rehabilitation Muzaffarabad, Azad Jammu & Kashmir;
8. Deputy Commissioner Rehabilitation Mirpur, Azad Jammu & Kashmir;
9. Assistant Commissioner Rehabilitation Mirpur, Azad Jammu & Kashmir;
10. Registrar Board of Revenue Azad Government of the State of Jammu & Kashmir, Muzaffarabad;
11. Ministry of Kashmir Affairs and Gilgit Baltistan through its Secretary, Islamabad;

12. Iftikhar Riaz Khan S/o Sardar Riaz, R/o Ghaziabad Dhirkot District Bagh, presently America.

.... Respondents

WRIT PETITION

Before:- Justice Sardar Muhammad Ejaz Khan, J.
Justice Chaudhary Khalid Rasheed, J.

APPEARANCES:

Chaudhary Amjad Ali, Advocate for the petitioner.
 Syed Faisal Gillani, AAG for the respondents.

VERDICT:

The instant petition is hereby dropped for having no essence.

JUDGMENT:

FOREWORD

(Chaudhary Khalid Rasheed, J.) The captioned writ petition has been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby, notification dated 29.02.2024, notices dated 03.04.2024 and 20.05.2024 have been assailed.

STANCE OF THE PETITIONER:

The learned counsel for the petitioner reiterated the grounds already taken in the writ petition by contended that mode and manner provided in the State Subjects Act, 1980 and Rules, 1980 has not been adopted in the case of petitioner as no notice has been issued to the petitioner by the Govt. rather it was issued by the Commissioner Rehabilitation. He further

argued that that Senior Member Board of Revenue being Chairman of the committee constituted vide notification dated 29.02.2024 has got no judicial experience which is a mandatory requirement of section 4 (5) of the Azad Jammu & Kashmir State Subjects Act, 1980, hence the notification dated 29.02.2024 and notices dated 03.04.2024 and 20.05.2024 are liable to show the doors as being coram non judice. The learned counsel for the petitioner placed his reliance on the following case law:

1. 2005 SCR 314;
2. 2004 SCR 23;
3. 2004 SCR 378;
4. 1995 SCR 73;
5. 1997 SCR 336;
6. 2023 SCR 303;
7. AIR 1959 Allahabad 472;
8. AIR 1960 Rajasthan 105;
9. 1981 CLC 200.

REFUTATION OF THE RESPONDENTS:

The learned counsel for the respondents contended with vehemence that the writ petition has been filed with malicious intention just in order to procrastinate and to spoil the proceedings initiated by the inquiry committee, hence liable to turn into ashes. He also claimed that Senior Member Board of Revenue has got a judicial experience as being a Judicial Officer while deciding appeals, revisions and reviews in revenue matters, hence has accurately been designated a role of the Chairman of the inquiry committee as per relevant law.

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

COURT OBSERVATIONS AND RELEVANT LAW:

At the very outset, it may be stated that earlier the captioned writ petition was dismissed by this Court in limine vide its judgment dated 28.06.2024, on appeal the Honourable Supreme Court of Azad Jammu & Kashmir remanded the case to decide a question as to whether the Senior Member Board of Revenue is a judicial officer under the applicable laws? Sub section (5) of section 4 of the Azad Jammu & Kashmir State Subjects Act, 1980 which deals with the deprivation of State Subject Certificate postulates that the Azad Government shall refer the case to a committee of inquiry consisting of a Chairman being a person possessing judicial experience and of such other members appointed. In view of the provisions contained in section 4(5) of the Azad Jammu & Kashmir State Subjects Act, 1980 and rule 6(5) of the Azad Jammu & Kashmir State Subjects Rules, 1980 as well as according to the direction of the Honourable Supreme Court the question which is required to be resolved by this Court is as to whether the Senior Member Board of Revenue appointed as Chairman Inquiry Committee possesses

judicial experience or not? In order to resolve the supra proposition it primarily requires to determine the correct definition of word “judicial experience”. Neither in the Act, 1980 nor in Rules, 1980 the expression “judicial experience” has been defined, thus in order to reach at a just conclusion we have to ponder the general definition of word “judicial experience”. Ordinarily a person performing judicial functions can be declared as a judicial officer. The word “Judicial Officer” has been defined in Rafiq’s Law Dictionary 4th Edition in the manner that “Judges and Justices of all Courts and all persons exercising judicial powers by virtue of their office” are the judicial officers. In Black’s Law Dictionary the word “judicial officer” has been defined as under:

“Judicial officer. (17c) 1. A judge or magistrate. 2. Any officer of the court, such as a bailiff or court reporter. 3. A person, usu, an attorney, who serves in an appointive capacity at the pleasure of an appointing judge, and whose actions and decisions are reviewed by that judge.—Also termed magistrate, referee, special master, commissioner; hearing officer.”

The essence of judicial function has been formulated by Professor S.A. de Smith in his “Judicial Review of Administrative Action (2nd Edition)” in the following words”

“An authority acts in a judicial capacity when after investigation and deliberation, it performs an act or makes a decision that is binding and conclusive and imposes

obligations upon or affects the rights of individuals."

After precise scrutiny of the above reproduced definitions of words "judicial officer" and "judicial functions" it can safely be concluded that any person who performs an act to decide the rights of subject whose decision is binding is a judicial officer and such assignment amounts to a judicial experience.

The same like controversy came under the consideration before Lahore High Court Lahore in PLD 1980 Lahore 15, wherein it has been observed that even the responsibilities of Secretary to Government while hearing a revision petition under section 6 sub-section (3) of the West Pakistan Foodstuffs Distribution Order, 1967 are of judicial nature for the reason that he has been empowered to hear a revision petition being higher in the hierarchy of administrative set-up of the government. The relevant observations recorded at page 23 in para 16 are reproduced as under:

"16. In the light of above discussion it is clear that the responsibilities of the Secretary while hearing a revision petition under section 6, subsection (3) of the West Pakistan Foodstuffs Distribution Order, 1967 are responsibilities of a judicial nature. They are not covered by the Rules of Business. Rules of Business are applicable to cases of administrative or ministerial nature. These rules relate essentially to the administration of the Secretariat. They refer to making of decisions, issue of orders or the execution of acts in which the element

of judgment or discretion is either absent or relatively very small."

The expression "judicial experience" has not been defined in any law but the expression "responsibilities of a judicial nature" has been defined by Lopes, L.J. in Royal Aquarium, Summer and Winter Garden Society v. Parkinson in the following words:

"The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a judge of justices in Court, or to administrative duties which need not be performed in Court, but in respect of which it is necessary to bring to bear a judicial mind—that is, a mind to determine what is fair and just in respect of the matters under consideration."

Keeping in view of the above debate, we can safely be concluded that a person/officer authorized by law when decides a matter relating to the rights of subjects and his decision is of binding nature is performing in a judicial capacity and such pursuit has got an experience of a judicial nature.

Under section 161 of the Land Revenue Act, the Member Board of Revenue has got the authority to decide an appeal on a point of law when the order is passed by a Commissioner, thus said powers are of judicial nature and while performing such functions he gains a judicial experience. Similarly, under section 27 of the West Pakistan Land Revenue Act, 1967, every inquiry under this Act shall be deemed to be a

judicial proceedings and the revenue officer holding an inquiry shall be deemed to be a Court for the purposes of such inquiry. For ready reference section 27 of the Act is reproduced as under:

“Inquiries under the Act to be deemed judicial proceedings.- (1) Every inquiry under this Act shall be deemed to be a “judicial proceeding” within the meaning of sections 193, 219 and 228 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and the Revenue Officer holding an inquiry shall be deemed to be a Court for the purposes of such inquiry.”

It is also not out of context to mention here that under section 7 of the West Pakistan Land Revenue Act, 1967, the Member Board of Revenue is a revenue officer who is empowered under section 22 of the Act to summon persons in order to give evidence and produced documents. Under section 5(2) of the Azad Jammu & Kashmir Board of Revenue Act, 1993 the Board shall be the highest Court of appeal in revenue cases, thus the proceedings conducted by a revenue officer in appeals and revisions are obviously judicial in nature which have got a binding nature, hence the revenue officer who decides appeals and revisions cannot be declared as a person having no judicial experience.

Judicial experience refers to the practical knowledge and skills gained by the person while working as a judge or in a

judicial capacity, which includes trial of cases and decision as appellate Court, analyzing evidence and applying legal principles, presiding Court proceedings and interacting with lawyers, litigants, witnesses etc. In Azad Jammu & Kashmir the person appointed as Assistant Commissioner also performs his functions as a Magistrate first Class, conduct trial of certain cases under Cr.P.C. and APC and when promoted as Deputy Commissioner besides administrative powers, he also performs his duties as a presiding officer in different cases, record evidence, appreciate the same and pass decisions. Deputy Commissioner is further promoted as Commissioner and being Commissioner he also plays the role of a judge to decide appeal/revisions against the orders of Deputy Commissioner. Thereafter avenue of his further promotion is Member Board of Revenue and in capacity of Member Board of Revenue he obtains the experience by hearing appeals/revisions against the order of Commissioner, analysis evidence and pass binding decisions regarding rights of subjects, hence, while performing as A.C., D.C., Commissioner and Member Board of Revenue he gains judicial experience, so the argument advanced by the learned counsel for the petitioner carry no water to hold, thus not only the constitution of inquiry committee by the government vide notification dated 29.02.2024 is declared as justified but also held to be in

consonance and nexus with the spirit of relevant supra mentioned law.

It is also pertinent to mark that as per record appended by the petitioner in his writ petition, the proceedings were initiated against the petitioner upon receiving a written application by Commissioner Rehabilitation on 17.03.2023 and then notices were issued to the petitioner for hearing on 03.04.2024 and 20.05.2024, whereas the photo copy of the allotment order dated 16.10.1967 on the basis of which the State subject was issued in favour of the petitioner has been found bogus vide report of D.C. Rehabilitation dated 20.12.2023 and that inquiry report has never been assailed till date. Record also reveals that at the time of getting the disputed State Subjects Certificate only photo copy of the same allotment order was produced which was neither original nor certified. Moreover, the ministry of Kashmir Affairs vide letter dated 20.09.2023 also denied to certify the certificate issued in favour of the father of the petitioner as has not being found in the record. The petitioner instead of appearing before the concerned committee filed the instant writ petition before this Court on 05.06.2024 just in order to halt and procrastinate the process.

A complete mechanism has been provided in section 4 of the Azad Jammu & Kashmir State Subjects Act, 1980 for deprivation of State Subject Certificate. A contemplate perusal of the said section envisages that under sub section (4) of section 4 the Azad Government shall give the person a notice in writing to show cause as to why the proposed order should not be made before making an order under sub-section (2) of section 4. Section 4 (5) portrays that if an order is proposed to pass on any of the grounds specified in sub-section (2) the person against whom it is proposed to make the order applies in the prescribed manner for any inquiry, the Azad Government is bound to refer the matter to committee and if he did not apply in the prescribed manner for any inquiry and the Azad Government thinks proper may refer the case to a committee of inquiry, hence, the issuance of notice by the Azad Government itself is not a mandatory requirement of law rather if an order is proposed to make on any ground under sub-section (2), the Azad Government may constitute an inquiry committee and in such situation the inquiry committee shall issue a notice to the person against whom it is proposed to make the order to show cause as to why he should not be deprived of state subject certificate. Even otherwise, the notice dated 03.04.2024 has been issued by the Azad Govt. through Commissioner

Rehabilitation Muzaffarabad, which is sufficient compliance of the relevant law, hence, the argument advanced by the learned counsel for the petitioner that mode and manner provided by the Azad Jammu & Kashmir State Subjects Act, 1980 and Rules, 1980 has not been adopted has got no plausible essence rather after constitution of committee by the Azad Govt. vide notification dated 29.02.2024 the issuance of impugned notices are quite justified.

The case law referred to and relied upon by the learned counsel for the petitioner due to peculiar circumstances of the case mentioned in the preceding paragraphs does not attract in the instant matter, hence entails to show the doors as being impertinent.

DISPOSAL:

The sum and substance of the above debate is, finding no essence the instant writ petition is hereby send away. The inquiry committee is hereby directed to conclude the inquiry proceedings within a span of one month positively by extending a fair and square right of hearing to the petitioner as per law.

Muzaffarabad;

16.01.2026.

JUSTICE

JUSTICE