

HIGH COURT OF AZAD JAMMU AND KASHMIR

(1) Writ Petition No.2752/2024.
Date of institution 31.10.2024.
Date of decision 21.05.2025.

Affeera Abbasi D/o Muhammad Saleem Abbasi R/o Narakot Tehsil
Dhirkot District Bagh, Azad Jammu & Kashmir; student of M.Phil 3rd
Semester in University of AJ&K.

...Petitioner

Versus

1. University of Azad Jammu & Kashmir through its Registrar
Muzaffarabad, Azad Jammu & Kashmir.
2. Vice Chancellor University of Azad Jammu & Kashmir
Muzaffarabad, Azad Jammu & Kashmir.
3. Registrar University of Azad Jammu & Kashmir Muzaffarabad.
4. Department of Kashmiriyat Muzaffarabad through its
Registrar, University of Azad Jammu and Kashmir.

....Real-Respondents

1. Ombudsman/ Mohtasib Azad Jammu and Kashmir having his
office near District Court legal Secretariat Muzaffarabad.

.....Proforma-Respondent

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(2) Writ Petition No.2846/2024.
Date of institution 08.11.2024.

1. University of Azad Jammu and Kashmir through its Registrar,
Chehla Campus Muzaffarabad.
2. Vice Chancellor University of Azad Jammu & Kashmir Chehla
Campus Muzaffarabad.
3. Registrar University of Azad Jammu & Kashmir Chehla Campus,
Muzaffarabad.
4. Director Institute of Kashmir Studies, University of Azad
Jammu and Kashmir Chehla Campus, Muzaffarabad.
5. Deputy Registrar General (Affiliation & Registration) University
of Azad Jammu and Kashmir, Chellah Campus Muzaffarabad.

....Petitioners

Versus

1. Ombudsman through its Secretary having his office at District
Headquarter Complex Muzaffarabad.

2. President (Appellate Authority) Azad Government of the State of Jammu & Kashmir through Secretary to President of Azad Jammu & Kashmir, Jalalabad, Muzaffarabad.
3. Afeera Abbasi D/o Muhammad Saleem Abbasi R/o Nahara Kot Tehsil & District Bagh, Azad Jammu & Kashmir.

.....Respondents

WRIT PETITIONS

Before:- *Justice Syed Shahid Bahar, J.*

PRESENT:

Miss Afia Abbasi, Advocate for the petitioner-Afeera Abbasi.
Raja Gul Majeed Khan, Advocate/ Legal Advisor for University of Azad Jammu & Kashmir.

JUDGMENT:

Above titled writ petitions have been filed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974. Since identical law points and facts are involved in both the titled writ petitions, therefore these were clubbed up, heard together and are decided through this single judgment.

2. In writ petition No.2752/2024, the petitioner Afeera Abbasi, prayed as infra:-

- “i. Direct the respondents jointly and severally to implement the order passed by the Ombudsman/ Mohtasib dated 30th November 2023 in letter and spirit.
- ii. Direction may kindly be issued to the respondent No.2 and 4 to restore the educational process of petitioner forthwith without any delay.”

FACTS TERSELY

3. Petitioner is 1st Class State Subject of Azad Jammu and Kashmir and Gold Medalist in M.Sc. She got admission in M.Phil

Kashmiriyat department (Institute of Kashmir Studies), University of Azad Jammu & Kashmir in session 2020-22, and she was studying in 3rd Semester. Petitioner contended that the respondent No.3, called up her on 10.01.2022 and asked regarding the comments made by the petitioner in Whats-App student group about University fee, respondent No.3 harassed her and forcibly seized the mobile of the petitioner and kept the same in his possession for 40 hours. Petitioner submitted an application before respondent No.2 on 14.01.2022, against the act and conduct of respondent No.3 but instead of taking action against respondent No.3, the respondent No.2 and Ex-Registrar pressurized the petitioner to take back the application; petitioner refused to do so, resultantly respondent No.2 and 4 restrained the petitioner to attend her classes just to sweep the matter under the rug on preposterous grounds that she was dropped from the 1st Semester, whereas fact of the matter is that she is the student of 3rd Semester. In support of his stance, petitioner attached documentary evidence with the writ petition i.e. Annexure "PA" & "PB" to "PB/13". After that, petitioner submitted an application before the worthy Chancellor on 14.02.2022 against illegal act and conduct of respondent No.2 & 3 upon which an Inquiry Committee was constituted on 06.04.2022. Petitioner was inquired and she submitted her written response on 06.06.2022 but respondents No.2 and 3 deliberately did not inform the petitioner about the inquiry nor passed any written order regarding termination of petitioner from department of Kashmir Studies. After that,

petitioner filed an application for redressal of her grievance before AJ&K Ombudsman, Muzaffarabad on 19.06.2023, who sought comments from the respondents and after due process of law, the Ombudsman AJ&K, Muzaffarabad, **accepted** the application of the petitioner and **restored** the education process of petitioner. Respondents preferred an appeal before the worthy President against the order/Judgment of Mohtasib/ Ombudsman, which was **dismissed** on 03.07.2024 and decision of the AJ&K Ombudsman was maintained. Petitioner alleged that the University authorities/respondents have not implemented the aforesaid decision of the Mohtasib, up till now, despite the fact that the same has attained finality; hence, instant constitutional petition for the implementation of the order/decision of Mohtasib due to his non-availability.

4. Written statement has been filed on behalf of respondents wherein the claim of the petitioner has been refuted by negating the version of the petitioner at length.

5. In writ petition No.2846/2024, the petitioners AJ&K University and others contended that the respondent No.3 on 21.06.2023 filed a Complaint before respondent No.1, alleging therein that she is student of M.Phil 3rd Semester (department of Kashmir Studies) who has been dropped from University. Respondent No.1 invited objections from University which were accordingly filed and stance of respondent No.3 has been refuted. Petitioners averred

that the respondent No.1, vide order dated 30.11.2023, while accepting the Complaint filed by the respondent No.3 has directed the University to freeze the 1st Semester of respondent No.3 and to allow her to continue her education in 3rd Semester. Feeling aggrieved, the petitioners, herein, filed representation before respondent No.2. The respondent No.2 vide order/ letter dated 03.07.2024 rejected the representation filed by the petitioners. Petitioners prayed that the order dated 30.11.2023 passed by respondent No.1 & order dated 03.07.2024 passed by respondent No.2 are liable to be set aside.

6. Written statement has been filed on behalf of respondent No.3 wherein the claim of the petitioners has been rebutted and contended that the petitioners have challenged the order of Ombudsman dated 30.11.2023 and the Worthy President dated 30.07.2024 on 08.11.2024 without any explanation of such delay, hence, instant writ petition is liable to be dismissed on the ground of laches. Respondent negated the stance of the petitioners and prayed for dismissal of the writ petition.

NARRATIVE OF THE PETITIONER

7. Miss Afia Abbasi, the learned counsel for the petitioner reiterated the facts and grounds narrated in the writ petition and vehemently contended that according to Section 12 of the Establishment of the Office of Mohtasib (Ombudsman) in Azad Jammu and Kashmir, Act, 1992 in case of "Defiance of

recommendation” the Mohtasib may refer the matter to the Worthy President of AJ&K for implementation but the office of Mohtasib is vacant, thus, there is no authority available for implementation of judgment of Mohtasib and the conduct of respondent No.2 caused an irreparable loss of right to education, to the petitioner by violating Section 11(2) of the Act supra, according to which Agency is duty bound to implement the judgment and order of Mohtasib within specified time and same is also negation of the Statute of University by misuse of power. Counsel for the petitioner vehemently contended that principle of law settled in various pronouncements of the Hon’ble Court as well as Apex Court that the discretionary power vests in the public authorities are liable to be exercised in a judicious manners without colorful exercise of power, but respondent No.2 and 4 have exercised the power in an arbitrary manner, deprived the petitioner from right to education, just to victimize her. The learned counsel prayed for acceptance of the writ petition by issuing direction to respondents to implement the decision of Ombudsman/ Mohtasib dated 30.11.2023.

The learned counsel also opposed the cross writ petition No.2846/2024 filed by the AJ&K Universities-petitioners and contended that petitioner has challenged the order of Ombudsman dated 30.11.2023 and the order of Worthy President dated 30.07.2024, on 08.11.2024 without any explanation of such delay, hence, petition is not maintainable. In support of her assertion,

counsel for the petitioner has also placed reliance on 2022 SCR 1088, 2000 SCR 22, 2021 SCR 238, 2022 SCR 145, 2008 SCR 417.

NARRATIVE OF UNIVERSITY

8. In reply, Raja Gul Majeed Khan, Legal Advisor for University of AJ&K contended that the orders dated 30.11.2023 and 03.07.2024 passed by respondents No.1 & 2 are contrary to law, rules and norms of justice, hence, same are liable to be set aside. Legal Advisor vehemently contended that respondent No.3 herself admitted in her complaint that she could not give her first semester terminal papers due to her ailment, thus, respondents No.1 and 2 have failed to consider this aspect of the case, therefore, in view of the facts and circumstances of the case, the impugned orders passed by respondent No.1 & 2 are liable to be quashed. Legal Advisor further contended that the respondent No.1 has failed to make out a case for freezing of her first semester however, respondents No.1 & 2 have not taken into consideration this aspect of the case while passing the impugned orders. He zealously contended that respondent No.3 has failed to deposit semester freezing fee and fulfilled other mandatory requirements as has been pointed out by the University, however, respondents No.1 and 2 have not properly attended the stance of petitioners and illegally passed the impugned orders. Legal advisor staunchly contended that the petitioner has been dropped vide notification dated 22.09.2022, which was not challenged by her at any fora and after issuance of the said

notification, only course available to petitioner to get fresh admission but she failed to do so, now at this belated stage she is not entitled to any relief. Legal Advisor finally prayed for acceptance of the writ petition by setting aside the impugned orders passed by respondents No.1 and 2 as well as prayed for dismissal of cross writ filed by the respondent No.3.

9. I have heard the learned counsel for the parties and gone through the record annexed with the petition with due care.

DICTA

10. **It is bitter pill to swallow, that internal system of our Educational Institutions is facing deterioration day by day. It was legitimately presumed that people who are the helm of affairs in Universities are carrying encyclopedic wisdom.**

11. As the petitioner has asked for issuance of writ of mandamus, hence in this connection prime consideration is three fold. First, the petitioner must have a legal right to the performance by the public office of the particular duty sought to be enforced, secondly, the duty of the public officer which is to be enforced, in plain, positive, specific and ministerial duty presently existing and imposed by law upon the officer, thirdly, no other adequate remedy is available qua redressal of grievance.

12. As a general rule, mandamus does not lie where there is another, plain speedy and adequate remedy available. As argued and

intimated that office of the Ombudsman is yet vacant, thus it would be futile exercise to approach the said office for implementations of the decision rendered by the Ombudsman.

13. Petitioner is an aggrieved person. Thus, she can maintain the constitutional petition for issuance of writ of mandamus.¹

14. Malafide on part of the relevant quarters is reflecting from the record. Stance of the university authorities that the petitioner was admitted in 1st semester M.Phil Kashmiriyat and she appeared only in one paper and remained absent in the rest of papers, more so she has failed to follow the proper procedure qua freezing the semester to her extend, thus, she was dropped, and subsequent admission and participation in on line classes could not be considered or for that matter creates any right in favour of the petitioner, hence, petition of the petitioner is not sustainable. On the very face of it, stance of the university authorities is not plausible and is discarded. Having said that if any procedural loophole was found in the procedure for applying to freeze the semester on account of ailment on part of the petitioner a lenient view was liable to be taken instead of harming the educational career of the petitioner.

15. Doctrine of Administrative justice is fully attracted in the instant case. It is also reflecting from the record that the petitioner appeared in one paper of 1st semester M.Phil and could not appear in rest of the papers on account of ailment which is established from

¹. AIR 1954 SC 403 --- PLD 2009 SC 644.

the record in shape of medical certificate that too, the petitioner regularly participated in on line classes for 2nd semester due to covid-19, wherein she had taken face to face classes submitted written papers and was promoted in 3rd semester as well and this stance of the petitioner is further strengthen by the fact that she remained part of HEC in M.Phil based research project. Stance of the petitioner seems plausible that she has been victimized on account of statement attributed to her regarding enhancement of fee by university authorities and that is why she was dropped.

16. Perusal of decision of the learned Mohtasib (Ombudsman) and documentary record unequivocally revealed that the petitioner has been meted out with mala-fide treatment and bias, prior to passing any order qua dropping the petitioner from 1st semester no notice was issued to the petitioner. Petitioner well within time filed an application for freezing the semester of her extent, which was not further processed by the university authorities. Depriving the gold medalist student from further education is an act of mal-administration. Mala-fide order does not qualify as action in accordance with law. Decision of the AJ&K Ombudsman, Muzaffarabad is completely in line with the scheme of law and norms of justice require no indulgence at all.

17. I am fortified to follow the verdict of the Apex Court expounded in the case titled "Choudhary Abdul Latif vs. Azad Govt. and others" **2020 SCR 121**, wherein somehow identical proposition

was involved. Writ of mandamus was sought before this Court qua implementation of the decision of Ombudsman and the same was dismissed. The Honorable Supreme Court while setting aside the judgment of this Court issued a writ of mandamus for implementation of the decision of the Ombudsman. Para 7 of the above judgment is reproduced as infra:-

“In view of the above stated facts, the respondents/agency neither filed any representation before the President against the final recommendations/findings of the Ombudsman nor assigned the reasons for not complying with the same within the specified time of two months, thus, the final recommendations/findings of the Ombudsman have attained finality and under the statutory provisions of enforced law the respondents/agency has failed to do what was required by the law to be done. In this state of affairs, the appellant is an aggrieved person who has successfully established that the person performing the function in connection with the affairs of the Azad Jammu and Kashmir or local authority has failed to do what was required by the law to be done, thus, under the provisions of Article 44 of the AJ&K Interim Constitution, 1974 it was enjoined upon the High Court to exercise the extraordinary writ jurisdiction for redressal of his grievance.”

Doctrine of procedural fairness

18. Doctrine of procedural fairness is somehow akin to Doctrine of due process of law, which speaks for entitlement to procedural fairness on part of the public authority/ Govt. functionary in connection with the content of fair procedures, there is a broad range of requirements, which vary according to the context in which the public function is exercised, including

- (i) To give notice of a proposed decision before making it
- (ii) To consult and receive written representations
- (iii) To disclose information before a final decision is reached
- (iv) To provide oral hearings, at which

The person offered legal representations or other assistance and has the right to cross-examine witnesses and a right to be given reasons explaining why a decision or action was taken.

Term natural justice has somehow replaced by the term general duty to act fairly, which is key element of procedural propriety.²

19. In view of insertion of Article 4(19) of the interim Constitution it is by now imperative/mandatory to provide fair trial and in this parlance adhere to procedural fairness, co-exist with the ibid right. Thus, in this sense as per combine wisdom gathered from Article 4(19) read with the concept of better government provided in the preamble clause coupled with the principles of policies enshrined in the Constitution, open textured standard of fairness is required at eve of taking administrative decisions.

(Underlining is mine)

20. In exercise of extraordinary jurisdiction conferred upon this Court under Article 44 of the Interim Constitution, 1974, duty of the Court is to confine itself to the question of legality and propriety of the proceeding/orders impugned, in a sense that whether a decision making authority, exceeded its powers, committed an error

². De Smith's- Judicial review, ninth edition (Sweet & Maxwell)

of law committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal/authority would have reached, or abused its powers.³

21. In the matters of judicial review the basic test is to see whether there is any infirmity in the decision making process. The interference with the decision making process is warranted where it is vitiated on account of arbitrariness, illegality, irrationality and procedural impropriety or where it is actuated by mala-fides.⁴

22. **Where bad faith, ulterior motive or colourable exercise of power is oozing from the record, judicial audit is inherent in this Court in order to have a judicial review.**

23. In writ petition No.2846/2024 the relief claimed is in the shape of certiorari judicial juristic approach designed by the superior courts; can be gleaned from the infra propositions,

- (i) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it;
- (ii) Certiorari will also be issued when the Court or tribunal acts illegally in the exercise of its undoubted jurisdiction as when it decides without giving an opportunity to the parties to be heard, or violate the principles of natural justice; and the Court issuing a writ of certiorari acts in exercise of a supervisory and not an appellate jurisdiction.⁵

³. 2012 SCMR 455.

⁴. 2014 SCMR 676.

⁵. AIR 1955 SC 233 + AIR 1964 SC 477 + PLD 1973 SC 24.

24. Trite that writ of certiorari can also be issued, when the act of the authority, Court, or tribunal is *extra legem* or for that matter offends the norms and premise of natural justice. Wrong conclusion of factual controversies provides no room for indulgence through the lens of certiorari.

(Underlining is mine)

25. Certiorari is meant for providing supervisory checks/ audit of the decisions/acts of the inferior tribunals/authorities in a way to ascertain on the touch stone of jurisdiction so conferred to them as well as to compare the impugned act/instruments in paralance of the relevant law. Resultantly if any decision or instrument is found beyond jurisdiction or in opposition with law annulment by way of high prerogative command is better treatment of such like orders.

(Emphasis supplied)

26. Writ of certiorari against the decision of a learned Ombudsman filed by AJK University is bereft of merit.

27. Crux of the above is that petition No.2752/2024 titled “Afeera Abbasi vs. University of AJ&K and others” is accepted and universities authorities are directed to implement the decision of the Mohtasib (Ombudsman), which has attained finality, in its pros and cons within 01 month and compliance report be submitted before Registrar of this Court. Connected writ petition No.2846/2024 filed by AJ&K University and others is not maintainable, hit by doctrine of

laches as filed after lapse of more than 01 year in view of the judgment of Hon'ble Apex Court handed down in "Syed Altaf Hussain Bukhari vs. Zeeshan Shaukat (2022 SCR 1088), coupled with the fact that the petitioners-AJ&K University & others have been failed to point out any illegality or infirmity in the impugned decision, hence, petition fails.

Writ of certiorari against the decision of Ombudsman is dismissed. Writ petition No.2752/2024 qua implementation of decision of Ombudsman in shape of Mandamus issued.

After completion of requisite procedure, file be kept in archive.

Muzaffarabad,
21.05.2025.

JUDGE

(Approved for reporting)

JUDGE