

**HIGH COURT OF AZAD JAMMU & KASHMIR**

Writ petition No. 228/2022  
Date of Insti. 22.07.2022  
Date of decision 25.07.2022

Barrister Adnan Nawaz Khan, Advocate Supreme Court of Azad Jammu & Kashmir.

Petitioner

**VERSUS**

1. Govt. of Azad Jammu & Kashmir through its Chief Secretary having office at Lower Chatter Muzaffarabad;
2. President of Azad Jammu & Kashmir through Secretary to President, having office at President Secretariat, Muzaffarabad;
3. Department of Law, Justice, Parliamentary Affairs and Human Rights through its Secretary, having office at Lower Chatter Muzaffarabad;
4. Additional Secretary Law, Justice, Parliamentary Affairs and Human Rights, having office at Lower Chatter, Muzaffarabad;
5. Registrar Azad Jammu & Kashmir Supreme Court, having office at Supreme Court Building, Muzaffarabad;
6. Mr. Muhammad Younas Tahir, presently holding the post of Ad-hoc Judge Supreme Court (under the impugned Notification), Supreme Court, Muzaffarabad.

Respondents

**WRIT PETITION**

**BEFORE:**           **Justice Sadaqat Hussain Raja,   C.J.**  
                          **Justice Mian Arif Hussain,       J.**  
                          **Justice Sardar Liaqat Hussain,   J.**

**PRESENT:**

Barrister Adnan Nawaz Khan, Advocate/petitioner in person.

**JUDGMENT**

*(Justice Sadaqat Hussain Raja, CJ)* The above captioned writ petition has been filed under Article 44 of the AJ&K Interim Constitution, 1974, whereby the appointment of

respondent No.6 as an Ad-hoc Judge of Supreme Court has been challenged.

2. The petitioner sought the following relief:-

- i. the Notification No. LD/AD/2077-92/2021 dated 10.11.2021 kindly be declared being issued in violation of the mandatory provisions of the Constitution hence, the same is void, ineffective and of no legal effect; and
- ii. the respondent No.6 may kindly be asked under what authority of law he is holding the office of Ad-hoc Judge Supreme Court;
- iii. Any other relief which this Hon'ble Court deems appropriate may also be awarded."

3. Through the instant writ petition, the petitioner submitted that he is a State Subject of Azad Jammu & Kashmir, qualified Barrister of England and Wales and Advocate of Supreme Court of Azad Jammu & Kashmir as well as Lahore High Court. It is submitted that on 10.11.2021, respondent No.4 issued a Notification No. LD/AD/2077-92/2021 (hereinafter referred as the impugned Notification) of the appointment of respondent No.6 as Ad-hoc Judge of the Supreme Court. It is averred that the impugned Notification of appointment of respondent No.6 as Ad-hoc Judge of the Supreme Court of Azad Jammu & Kashmir is unconstitutional and void ab-initio. Feeling aggrieved from the impugned Notification, the petitioner filed the instant writ petition.

4. We have heard the preliminary arguments advanced by the petitioner, perused the record and considered the controversy with utmost care.

5. The petitioner reiterated the facts and grounds as taken in the writ petition, therefore, there is no need to reproduce the same.

6. The cursory study of the instant writ petition reveals that regrettably, the petition has not decently been drafted in accordance with discipline of pleadings and the grounds referred below in the writ petition are ex-facie contemptuous. Specifically, in grounds “**A**, **B** and **H**”, the petitioner submitted as under:-

“**Ground “A”**. -----It is submitted that no information whatsoever has been provided in the impugned Notification about the specific cases (to be heard and disposed of by respondent No.6 as Ad-hoc Judge) which on account of any legal infirmity, the permanent Judges cannot decide rather, the respondent No.6 since his appointment as Ad-hoc Judge Supreme Court, practically hears and disposes of all cases in normal routine (like a permanent Judge of Supreme Court) without and distinction as provided under the Constitution and explained by the Hon’ble Supreme Court (relevant record can be summoned by the Hon’ble Court from the respondent No.5 in this regard for perusal). **Hence, the appointment of respondent No.6 as well as the disposal of all those cases (for**

*which respondent No.6 has not been appointed) is illegal, against the Constitution and the judgments of the Hon'ble Supreme Court.*

**Ground "B".** -----Whereas, it clearly manifests from the impugned Notification that respondent No.6 has neither been appointed for certain cases not for a fixed short period rather, respondent No.6 has been appointed for a period "till pleasure of the Chief Justice" which is highly un-constitutional, having no legal backing (*the service of a Judge cannot be contingent with pleasure of the Hon'ble Chief Justice, which is a serious risk for the independence of judiciary and the same poses a question mark (?) upon the impartiality of respondent No.6 too, whose service is contingent with the pleasure of the Hon'ble Chief Justice.* Hence, the impugned Notification is liable to be set aside being highly unlawful.

**Ground "H"** *That the impugned Notification dated 10.11.2021 is politically motivated, pre-conceived, collusive and issued with mala fide to deprive of the institution of Judiciary from Judges of impartiality which is continuously affecting the independence and the working of the judiciary.*

*(Emphasis is supplied)*

7. The aforesaid contemptuous paragraphs are deleted from the memo of the writ petition. Instead of dismissing the writ petition as being contemptuous, we opt to decide the writ petition on merit.

8. It is pertinent to mention here that the petitioner has misconstrued the reported judgment [2004 SCR 52] delivered

by the Hon'ble Supreme Court of Azad Jammu & Kashmir. After thirteenth amendment) Act, 2018, the situation altogether has become different as in the definition clause of the Azad Jammu & Kashmir Interim Constitution, 1974, the Ad-hoc Judge of the Supreme Court has now been included in the definition of Judge. It is useful to reproduce the same as under:-

**“Judge:-** In relation to the Supreme Court of Azad Jammu & Kashmir or the High Court, includes the Chief Justice of the Supreme Court of Azad Jammu & Kashmir or, as the case may be, High Court and also includes an [*ad-hoc Judge of the Supreme Court and*] Additional Judge of the High Court.”

9. Whereas, in the Azad Jammu & Kashmir Interim Constitution Act, 1974 (amended upto 2006), the Judge has also been defined as under:-

**“Judge:-** In relation to the Supreme Court of Azad Jammu & Kashmir or the High Court, includes the Chief Justice of the Supreme Court of Azad Jammu & Kashmir or, as the case may be, High Court and also includes an Additional Judge of the High Court.”

10. While in juxtaposition, an Ad-hoc Judge was not defined in the definition clause before thirteenth amendment, therein, previously. It is crystal clear from the plain language of Article 42(8) of the Azad Jammu & Kashmir Interim Constitution, 1974 that inter alia for any reason, it is necessary to increase temporarily the number of the Judges of the Supreme Court, the Chief Justice of Azad Jammu & Kashmir may in writing, request any person qualified for appointment as

Judge of the Supreme Court with the approval of the worthy President to attend sitting of the Court as an Ad-hoc Judge and he shall have the same powers and jurisdiction as a Judge of the Supreme Court. The aforesaid Article is reproduced as under in order to streamline our findings:-

“8-A:- If at any time it is not possible for want of quorum of Judges of the Supreme Court to hold or continue any sitting of the Court, or for any other reason it is necessary to increase temporarily the number of Judges of the Supreme Court, the Chief Justice of Azad Jammu & Kashmir may, in writing;

[(a). with the approval of the President, request a person who has held the office of a Judge of that Court, the Supreme Court of Pakistan or the Judicial Board or has held the office of Judge of the High Court for a minimum period of three years and since whose ceasing to hold that office three years have not elapsed; or

(b). with the approval of the President and, except in the case of Chief Justice, with the consent of the Chief Justice of High Court, require a Judge of that Court who has held office as such Judge for a minimum period of three years; or

(c). with the approval of the President, request any person qualified for appointment as Judge of the Supreme Court];

*to attend sittings of the Supreme Court as an ad-hoc Judge for such period as may be necessary and while so attending an ad-hoc Judge shall have the same power and jurisdiction as a Judge of the Supreme Court.”*

(Emphasis is supplied)

**11.** It is in our judicial notice that since last seventeen years, many ad-hoc Judges were appointed in the apex Court and those Judges continued to perform their functions like permanent Judges. Later on, some Ad-hoc Judges were elevated as permanent Judges in the apex Court and in the recent past,

one ad-hoc Judge of the apex Court was relieved from his office after attaining the age of superannuation. This continued practice of the Supreme Court shows that it is a sole prerogative of the Hon'ble Chief Justice of Azad Jammu & Kashmir to determine the necessity of ad-hoc Judge in the Supreme Court.

*12.* It is an admitted fact that it is a sole prerogative of the Hon'ble Chief Justice of Azad Jammu & Kashmir to ascertain the necessity of Ad-hoc Judge and to constitute the benches for disposal of cases and in this regard, the Hon'ble Chief Justice is not answerable before any authority.

*13.* An ad-hoc Judge of the Hon'ble Supreme Court appointed in view of the above constitutional mandate is definitely at the same footing in performance of his assigned liabilities and no redundancy can be attributed to the plain language of the Constitution, therefore, acts done and judgments rendered by the ad-hoc Judge are judgments of the Hon'ble Supreme Court and he has the same powers and jurisdiction as a permanent Judge of the Supreme Court.

*14.* So far as the next question raised by the petitioner that the impugned notification was issued for a period till pleasure of the Chief Justice, which is serious risk for independence of judiciary is concerned. It is worth mentioning that it has specifically employed in Article 42(8)(a)(c) of the Constitution that the ad-hoc Judge so appointed shall continue,

keeping in view the necessity of the position and necessity in this regard is to be judged and ascertained by the Hon'ble Chief Justice and it is definitely sole prerogative of the Hon'ble Chief Justice. Word "*pleasure*" employed in the impugned notification is to be read in light of furtherance of the word necessity appearing in the Constitution.

**15.** Necessity in its normal parlance means, the pressure of circumstances. Context normally supplies a sense of the decree of urgency. The word necessity has been defined in 11<sup>th</sup> Edition *Black's Law dictionary* as under:-

**"Necessity:-**

A force or influence that compels an unwilling person to act. The term refers to a lack of free will to do a legal act, as opposed to libera voluntas (free will).

A force, power, or influence which compels one to act against his will."

**16.** Thus, the pleasure and discretion in this regard breath from the necessity, which definitely in the instant matter is to be judged by the Hon'ble Chief Justice of Azad Jammu & Kashmir and Constitution itself included his wisdom as a final say in the matter by leaving the matter up to his pleasure, which strengthen the concept of independence of judiciary rather to undermine the same, this argument goes against the clear cut wisdom of the legislature, which cannot be accepted. As per canon of construction of the Constitution, it has to read as whole and no word can be supplied or omitted. In our view, the



pleasure of the Hon'ble Chief Justice is a power to decide the necessity of Ad-hoc Judge on individualized evaluation guided by the Constitution, Law and rules, hence, the aforesaid contention of the petitioner is also repelled.

17. Writ jurisdiction can only be exercised, where there is violation of law or principle of law. The similar view has been reiterated by the Hon'ble apex Court in case titled as '*Perveen Azam & others v. SSP District Mirpur & 4 others*, [2015 SCR 837].

18. In the instant case, the petitioner has challenged the appointment of respondent No.6, hence, to test the validity of his appointment, it would be useful to consider the following question only:-

Whether the appointment of respondent No.6 is made in accordance with the relevant provision of the Constitution.

19. According to Article 42-A(8) of the Azad Jammu & Kashmir Interim Constitution, 1974, the Hon'ble Chief Justice of Azad Jammu & Kashmir has to initiate the process for appointment of ad-hoc Judge and the notification is issued with the approval of the worthy President. The impugned notification clearly reveals that it was made on the initiation of Hon'ble Chief Justice by the approval of the worthy President. No further mode is provided by the Constitution for appointment of Ad-hoc Judge. The qualification of respondent No.6 is not disputed. It is a settled principle of law that an order, letter or Notification can only be set-aside in exercise of writ jurisdiction, if it violates any legal provision but no such

situation exists in the present case, as no violation of law or of any instrument having the force of law has been shown. Our this view finds support from *PLD 2012 Lahore 52, PLD 2009 SC 28 and 2007 SCMR 1318*.

20. It is established that Notification of appointment of respondent No.6 is completely as per scheme of the Constitutional command. The language employed in the writ petition is to some extent derogatory and contemptuous. After inclusion of the ad-hoc Judge in definition clause of Azad Jammu & Kashmir Interim Constitution, it is clear enough that ad-hoc Judge is at par with permanent Judge of the Hon'ble Supreme Court for all practical purposes. No redundancy can be attributed to the Constitutional provision.

Thus, the instant Constitutional petition being meritless, is hereby dismissed in limine.

**Circuit Rawalakot,**  
**25.07.2022**

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

**Approved for reporting**

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