

HIGH COURT OF AZAD JAMMU AND KASHMIR

1. Writ petition No.2104/2024,
Date of Inst. 16.08.2024,
Date of Decision 22.10.2024

Shahid Zaman S/o Muhammad Zaman R/o Ambore Ward
No. 1, Muzaffarabad, Azad Jammu and Kashmir.

...Petitioner

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Law, Justice Parliamentary Affairs and Human Rights Department, having his office at new Secretariat Muzaffarabad;
2. Law, Justice Parliamentary Affairs and Human Rights Department Azad Government of the State of Jammu & Kashmir through its Secretary having his office at new Secretariat Muzaffarabad;
3. Department of Services & General Administration Department through its Secretary office situated at Secretariat Muzaffarabad;
4. Prime Minister/Chief Executive through Principal Secretary to Prime Minister, Office situated at new Secretariat Muzaffarabad;
5. Mushtaq Ahmed Janjua, Advocate Supreme Court presently Chairman Ehtesab Bureau office at Thori Lower Chatter Muzaffarabad;
6. Accountant General of Azad Jammu and Kashmir office situated at Sathra Hills Muzaffarabad.

...Respondents

2. Writ petition No.2215/2024,
Date of Inst. 29.08.2024,

Ch. Tariq Farooq General Secretary PML (N) Azad Jammu and Kashmir, Ex-Senior Minister Azad Government of the State of Jammu and Kashmir.

...Petitioner.

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through Secretary Law, Justice Parliamentary Affairs and Human Rights Department, having his office at new Secretariat Muzaffarabad;
2. Law, Justice Parliamentary Affairs and Human Rights Department Azad Government of the State of Jammu & Kashmir through its Secretary having his office at new Secretariat Muzaffarabad;
3. Azad Jammu and Kashmir Cabinet through Secretary Cabinet/Chief Secretary, having his office at new Secretariat Muzaffarabad;

4. Services & General Administration Department Azad Government of the State of Jammu and Kashmir, through its Secretary, having his office at new Secretariat Muzaffarabad;
5. Azad Jammu and Kashmir Ehtesab Bureau through its Director5 Admin, having office at Lower Chatter Thori Muzaffarabad, Azad Jammu and Kashmir;
6. Department of Elementary & Secondary Education, Azad Government of the State of Jammu and Kashmir through its Secretary having its office at new Secretariat Muzaffarabad;
7. Department of Local Government & Rural Development Azad Government of the State of Jammu and Kashmir through its Secretary having office at new Secretariat Muzaffarabad;
8. Azad Jammu & Kashmir Bar Council through Secretary Bar Council, having office at old Secretariat, Muzaffarabad;
9. Mushaq Ahmed Janjua, Chairman Azad Jammu and Kashmir Ehtesab Bureau Office situated at Lower Chatter Thori Muzaffarabad, Azad Jammu and Kashmir.

Respondents

WRIT PETITIONS

Before: - **Justice Sadaqat Hussan Raja,** **Chief Justice**
Justice Sardar Liaqat Hussain, **Judge**

PRESENT:

Mr. Fayyaz Khan, Advocate for Petitioner. (Shahid Zaman),
 Syed Zulqarnain Ali Naqvi, Advocate for Petitioner.(Ch. Tariq Farooq)

Sh. Masood Iqbal, Advocate General, Ch. Manzoor Ahmed, Raja Saeed Khan, Additional Advocates General and Haider Rasheed Mughal Assistant Advocate General for official Respondents.

M/s Barrister Humayun Nawaz Khan, Mir Sharafat Hussain, Adnan Ahmed Pirzada, Manzoor Hussain Raja, Sh. Attique Ahmed, Fazal Mehmood Baig, Hammad Mushtaq Janjua, Advocates for the private respondent (Mushtaq Ahmed Janjua), Syed Mazhar Azad Gillani, DCP for Ehtesab Bureau.

JUDGMENT:

Justice Sardar Liaqat Hussain, J. As common questions of facts and law are involved in the instant writ petitions, therefore, the same were heard together and are decided through this single judgment.

Both the petitioners in the captioned writ petitions have challenged the notification dated 10.02.2024, whereby,

private respondent has been appointed as Chairman Ehtesab Bureau and also called in question the validity of notification dated 27.03.2024 in writ petition No.2215/2024.

Precise facts of Writ Petition No. 2104/2024 (nature of Quo Warranto) as per claims of the petitioner are that he is 1st Class State Subject of Azad Jammu and Kashmir & claims member of Civil Society. It is stated that he filed the writ petition in order to protect the fundamental rights of every State Subject and he is continuously struggling for protection of public funds, against the corruption and corrupt practices, as some cases have been decided by Apex Court regarding social and legal betterments, result of which, he was awarded the "Pride of Pakistan" by Government of Pakistan. It is submitted that the private respondent no.5 has been appointed as Chairman Ehtesab Bureau vide notification dated 10.02.2024 and the petitioner has challenged the same on the ground that previously the respondent no.05, was appointed as Science Teacher and was removed from service due to his misconduct and later on, private respondent no.5 with the connivance of politicians obtained the order of compulsory retirement instead of dismissal, thus, the compulsory retirement falls within the ambit of major punishment and private respondent cannot be appointed against any constitutional post. It is submitted that respondent no.05 during service has acquired degree of law by committing fraud and forgery without obtaining leave /study leave and NOC from the Education Department, as is evident from the record available in the website of Bar Council, wherein, date of enrollment of private respondent is mentioned as Advocate Lower Court as 01.01.1995, while, the respondent

no.5 was compulsory retried from Education Department on 30.06.1995, meaning thereby, that private respondent no.5 has obtained a license of lower court by committing fraud. In this regard, petitioner submitted application to the Bar Council for providing record but the Bar Council replied that record of the Bar Council stood destroyed in July 2017, so, mentioned record is not available. It is further alleged that respondent no.5, due to his political influence approved development scheme in his favor for construction of Building of dispensary of Nokot and appointed him Project Leader but he never completed the scheme and huge amount was received from the Local Government and Rural Development, upon which, one Muhammad Suleman, being a member, filed an application before Chairman Ehtesab Bureau (time) while alleging that private respondent no.5 herein misappropriated the amount of various projects, upon which, matter was inquired and allegation was proved against respondent no.5 that he has committed embezzlement of funds, result of which, respondent no.5, deposited the embezzled amount in government exchequer under the direction of Ehtesab Bureau, as is evident from the bank challan deposited by the respondent no.5. hence, after proving the numbers of allegation, the private respondent no.5 is not competent to hold the post of Ehtesab Bureau, which is constitutional one, so, while allowing the petition in hand, the notification of appointment order of the petitioner dated 10.02.2024 be set aside.

In the petition No.2215/2024 (nature of quo warranto), filed by the Ch. Tariq Farooq, the petitioner has requested to ask the petitioner under what authority of law, he is

holding the post of Chairman Ehtesab Bureau in light of notification dated 10.02.2024 and also challenged the notification dated 27.03.2024, through which, perks and privileges of Chairman Ehtesab Bureau were determined.

Facts shortly stated in the petition are that he is Secretary General of PML(N) and remained Senior Minister of Azad Govt. of the State of Jammu and Kashmir and he has contested four elections against the sitting Prime Minister of Azad Jammu and Kashmir, hence, the petitioner challenges the appointment of private No. 9, on the grounds discussed in the connected petition hereinabove, however, additionally, he has challenged the notification dated 27.03.2024, through which, the perks and privileges was determined for Chairman Ehtesab Bureau. In this regard, petitioner is claimant that the perks and privileges granted to the Chairman Ehtesab Bureau equal to the Judge High Court is against the law for the reason that Hon'ble Apex Court of Azad Jammu and Kashmir in case reported as "2016 SCR 206", held that "no one can be granted perks and privileges equal to the Judge High Court". It is alleged that the private respondent has obtained his license of advocacy and membership during his service, so, he is not an advocate, therefore, his appointment as Chairman Ehtesab Bureau is against the law, rules and the same is liable to be set aside. The petitioner seek writ of quo warranto against private respondent and prays this Court to ask private respondent that under what authority of law he is holding the office of Chairman Ehtesab Bureau? It is contended that if a constitutional provisions and rules are violated, every citizen falls within the definition of an aggrieved person, hence, keeping in

view the allegation levelled against the petitioner, the petition may kindly be accepted and notification of appointment of the petitioner dated 10.02.2024 and notification regarding perks and privileges dated 27.03.2024 be set aside.

Preliminary notices were issued in both the petitions to the other side for filing comments, however, in the meantime, petitioners filed PLAs before the Apex Court against the order dated 12.09.2024. After hearing the learned counsel for parties, the Hon'ble Apex Court, vide judgment dated 02.09.2024, while admitting both the petitions, directed the High Court to decide the lis within a period of one month. Vide order dated 26.09.2024, this Court provided an opportunity for file written statement. In compliance of aforesaid order, written statement were filed accordingly.

The official respondents 1 to 4 & 6, contested the petition by filing written statement, separately, wherein, it is stated that writ petition has been filed with malafide intention as the petitioners are not aggrieved person. It is submitted that law is settled that in writ of Quo Warranto firstly the aggrieved Person has to satisfy the Court regarding his grievance. It is further submitted that appointment of respondent no.5 was challenged through writ petition, after elapsing a period of more than 7 months, hence, writ petition is hit by laches and in order to recover the laches, no reason has been explained by the petitioner, thus, as per law, the petition should be filed within a period of three months. It is further submitted that petitioner while filing the petition in hand, raised question of facts, which

cannot be resolved in writ jurisdiction. It is submitted that the appointment of the private respondent has been made by competent authority, after adhering all the pre-requisites, hence, private respondent no.5 fulfills the qualification, so, he has rightly been appointed. It is further argued that no allegation is proved regarding fraud and corruption against private respondent for the reason private respondent neither has committed any plea bargain nor deposited any amount in Government Exchequer. It is further contended that private respondent fulfills the qualification of Chairman Ehtesab Bureau, as is evident that Chief Justice of Supreme Court and Chief Justice High Court have previously recommended the private respondent for nomination as Judge High Court. It is further submitted that Muhammad Suleman, has died in year 2009 and the verification of concerned union council was also appended, wherein, it has been mentioned that neither the respondent no.9 has remained Project Leader of Local Government nor any allegation with respect to any Project was investigated by the Ehtesab Bureau and private respondent has not entered into any pre bargain. It is submitted that the petitioner (Shahid Zaman) appeared before private respondent and filed an application to conduct an inquiry under AJK Ehtesab Act against the Director and other officials of the Bureau, upon which, the private respondent initiated inquiry by forming committee which is still pending for further probe and the petitioner has exerted his pressure to investigate his application according to his personal preference leading to file the writ petition for achieving his ulterior motives. Additionally, when the petitioner submitted his application before private respondent, he

acknowledged the role of private respondent as Chairman Ehtesab Bureau. It is contended that the petitioners have filed the instant writ petitions without permission of Hon'ble Court under Order 1 Rule 8 of CPC and Advocate General. It is further contended that the petitioners placed reliance on photo-state copies of the documents, so, the writ petition is also liable to be dismissed under Rule 32(2) of High Court Procedure Rules, 1984. It is submitted that the private respondent fulfills the qualification required to be appointed as Chairman as he remained appointed as Judge Shariat Court, Chief Prosecutor Ehtesab Bureau and now the Chairman and the qualification of Chief Prosecutor is the same as the qualification of the High Court Judge. The petitioners have not challenged the notification of private respondent as Chief Prosecutor. It is further submitted that the petitioners filed writ petitions against the law and facts and the petitioners have no concern with the writ petitions.

Respondent No.5 has filed written statement separately, wherein, ground raised by official respondents hereinabove, have been reproduced, which needs not to be reiterated here again, however, additionally, it is submitted that the Apex Court in Raja Zulqurnian Abid's case held that writ petition can only be entertained only on the application of aggrieved person not by a pro bono publico litigant. It is further submitted that writ of quo warranto cannot be issued as a matter of routine. It is further contended that writ petition has not been filed by the petitioner in order to enforce rule of law rather the same has been filed in order to achieve ulterior goals in toto on legal and factual grounds.

In the connected writ petition filed by Ch. Tariq Farooq, official respondents and private respondent no.9 tendered written statements separately, in which, version taken in connected petition were reproduced, hence, the same need not to be reiterated, however, the official respondents additionally submitted regarding perks and privileges submitted that it is consistent practice in Azad Jammu and Kashmir Ehtesab Bureau Act that whenever any lawyer is appointed to the office of Chairman Ehtesab Bureau, lawyer is granted the pay perks and privileges equal to the Judge of High Court.

Replication has been filed on behalf of petitioners wherein, it is stated that under the command of Constitution and law, a writ of quo warranto can be filed by any person. It is further stated that doctrine of laches is not attracted for filing a writ of quo warranto. It is submitted that respondents have filed subsequent written statement which is not permissible under law. It is further submitted that the private respondent is not eligible to be appointed on the post in question as the private respondent is found guilty of providing false, fabricated and bogus information to AJ&K Bar Council regarding his enrolment of pleader-ship i.e. 01.01.1995.

Mr. Fayyaz Khan, the learned counsel for the petitioner **Shahid Zaman**, vehemently argued that private respondent was appointed as Chairman Ehtesab Bureau on 10.02.2024, who was not eligible to be appointed as Chairman Ehtesab Bureau because he was compulsorily retired from service on 30.06.1995 due to misconduct. He maintained that the compulsory retirement is a major punishment under disciplinary

law. The learned counsel emphasized that private respondent during service as Science Teacher has acquired degree of law by committing fraud and forgery without obtaining leave/study leave, NOC or permission from the Education Department. The learned counsel argued that private respondent was appointed as Chairman Ehtesab Bureau and granted perks and privileges equal to Judge High Court and a person who was compulsorily retired cannot hold a public office. He argued that after the admission of the case, it was duty of the private respondent to provide record but he failed to provide the same. He further argued that according to the record of Bar Council, the date of enrollment of private respondent as an Advocate of Lower Court is mentioned as 01.01.1995 while the private respondent was compulsorily retired from Education Department on 30.06.1995, hence, the license has been obtained fraudulently while concealing the facts. He argued that private respondent has got some development schemes for his village and himself appointed as Project Leader but he never completed the schemes and inhabitants of Village Leepa through Muhammad Suleman filed an application before the Chairman Ehtesab Bureau (then) and alleged that private respondent misappropriated huge amount of various project and when the allegations were proved against private respondent, he entered in pre-bargain and deposited the embezzled amount Rs. 72,000/-

Syed Zulqarnian Raza Naqvi, Advocate, the learned counsel for the petitioner (**Ch. Tariq Farooq**) additionally argued that the petitioner has filed an application for summoning of record of private respondent which is attached with the writ

petition. He argued that the private respondent has got LLB Degree during his service, without obtaining NOC or permission from the concerned department. He maintained that the private respondent was appointed as Chairman Ehtesab Bureau and granted pay and privileges equivalent to a Judge High Court and according to case reported as "2016 SCR 206", the Hon'ble Supreme Court held that the practice of granting terms and conditions equal to those of High Court is not in accordance with the spirit of the Constitution, hence, private respondent cannot be granted perks and privileges equal to Judge High Court. The learned counsel in support of their contentions referred to and relied upon the following case law.

- i. 2020 SCR 01
- ii. 2014 SCR 149
- iii. 2015 SCR 1384
- iv. 2022 SCR 365
- v. 2016 SCR 206
- vi. 1993 SCR 27

In case reported as **2020 SCR 01**, if a court is satisfied that holding of public office by a person is against law or in violation of law, the writ of quo warranto can be issued.

In case reported as **2014 SCR 149**, has no nexus with the case at hand.

In a case reported as **2015 SCR 1384**, it was held by the Hon'ble Supreme Court that evasive denial amounts to admission.

The case reported as **2022 SCR 365**, has no nexus with the case at hand because under Article 129 of Qanoon-e-Shahdat Order, 1984, is related to provision of witnesses in criminal litigation.

In case reported as **2016 SCR 206**, it was held by the Hon'ble Supreme Court that the Ombudsman Azad Jammu and Kashmir in the said reported case claims the terms & conditions, perks and privileges of the Judge High Court, in the past, terms and conditions, perks and privileges were never equally and uniformly determined rather these have been determined from time to time and from person to person differently. The powers have been exercised by the authority as given under the statutory provision keeping in view the status etc. of the incumbent of the Ombudsman's office. Thus, if the principle as is applied by the High Court is accepted as correct, then every one may claim that he should be given the same terms and conditions as are of the Chief Justice Supreme Court like Hon'ble Justice (R) Raja Khursheed Ahmed Khan and Justice (R) Sardar Said Muhammad Khan, former Ombudsmen but surely neither this can be done nor it is spirit of law.

In case reported as **1993 SCR 27**, it was held by the Hon'ble Supreme Court of Azad Jammu and Kashmir that it is for the petitioner in the first instance to show that in view of the given fact of the case, the non-petitioner is holding the office under the authority of law, if he initially makes out his prima facie case, the burden of proof will shift to the opposite side but if the material fact are not pleaded by the petitioner on which he basis his claim or the same are not sufficient enough to make an prima facie case it cannot be said that a rule nisi can be issued as a matter of routine.

A copy of an unreported judgment case titled Maqsood Ahmed Vs Azad Govt. and others, Aqeel But and others Vs Azad

Govt. and others and Azad Govt. and others Vs Maqsood Ahmed Khan and others has also been referred, wherein, the Degree of B.Tech (Hons) obtained by the private respondent has no sanctity in the eye of law because the same was obtained without obtaining NOC or study leave from the department.

A copy of judgment of this Court titled Amir Jamil and another Vs Azad Govt. and others decided by High Court AJK on 03.07.2024.

On the other hand, **Sh. Masood Iqbal**, the learned **Advocate General** appeared on behalf of official respondents raised preliminary objection that writ petition titled **Shahid Zaman Vs Azad Govt. and others**, has been filed on 16.08.2024 while, the appointment order of private respondent as Chairman Ehtesab Bureau has been issued on 10.02.2024, similarly, the writ petition titled **Ch. Tariq Farooq Vs Azad Govt. and others** has been filed on 29.08.2024, so, both the writ petitions have been filed after delay of 08 months and according to the judgment of the Hon'ble Supreme Court each and every day has to be explained by the petitioners, so, the writ petitions are not maintainable. The learned Advocate General further argued that the petitioners have not filed any record regarding fraud and forgery rather the facts that private respondent has remained an Advocate of Supreme Court but no one has objected him. The learned Advocate General has further objected that the petitioners have not fulfilled the requirements under Rule 32(2) of the High Court Procedure Rules 1984.

Barrister Humayun Nawaz Khan, the learned counsel for private respondent argued that writ of quo warranto

lies where any violation of law has been pointed out and in the petitions in hand, no violation of law or rule has been pointed out by the petitioners. The learned counsel further maintained that the writ petitions have been filed after delay of 8 months and according to the judgment of the Hon'ble Supreme Court each and every day has to be explained by the petitioners and according to Section 42-B, the decisions of Hon'ble Apex Court are binding on all other courts in Azad Jammu and Kashmir and the petitioners have not come to the Court within time. The learned counsel further maintained that the private respondent being a civil servant was compulsory retired from service and as per Rule 4 of the AJ&K Civil Servant (Efficiency and Discipline) Rules, 1977 does not bar or disqualify the compulsory retiree for future employment. He argued that the petitioners have not challenged the license of pleader-ship or Degree of private respondent before any proper forum. The learned counsel further maintained that writ petition can lie on violation of law but no violation of law is pointed out by the petitioners. He argued that for verifying the Degree University or HEC is necessary party but the petitioners did not array them as respondents, therefore, the writ petition is liable to be dismissed. He maintained that the writ petition is actuated with malice and mala-fide as the petitioner (Shahid Zaman) filed application for inquiry before Chairman Ehtesab Bureau, who wants to build pressure to conduct inquiry against the officials of Ehtesab Bureau and exert him to investigate his application according to his whims and wishes. The learned AG and learned counsel for private respondents in support of their contentions referred to and relied upon the following cases.

- i. 2022 SCR 1088
- ii. 2004 SCMR 1299
- iii. PLD 2018 SC 114
- iv. PLD 1993 SC (AJK) 12
- v. 2022 SCR 1088

In case reported as **2022 SCR 1088**, it was held by the Hon'ble Supreme Court that three months declared as reasonable time to file writ petition.

In case reported as **2004 SCR 1299**, it was held by the Hon'ble Supreme Court of Pakistan that whether in the case of writ of quo warranto challenging the legal authority of public office, it was essential of an employee to have a locus standi to file a writ and whether the employee was guilty of misconduct by using the documents of the service and general administration department without permission by the concerned authority.

In case reported as **PLD 2018 Supreme Court 114**, it was held that ranting relief in the nature of quo warranto was within the discretionary power of the superior Courts.

In case reported as **PLD 1993 Supreme Court (AJ&K) 12**, it was held that legality of the enrollment of a pleader or an Advocate does not fall within the ambit of proceedings of quo warranto for he does not hold a public office.

In case reported as **2022 SCR 1088**, the Hon'ble Supreme Court held that three months declared as reasonable time to file writ petition.

We have heard the learned counsel for the parties and gone through the record of the case.

A perusal of record shows that private respondent (Mushtaq Ahmed Janjua) was appointed as Chairman of the Ehtesab Bureau through a notification dated 10.02.2024.

Subsequently, by a notification dated 27.03.2024 he was granted perks and privileges equal to Judge High Court. The petitioners challenge these notifications in the above titled writ petitions. It is the claim of the petitioners that private respondent was ineligible for the position of Chairman of the Ehtesab Bureau because he was initially appointed as Science Teacher but he was compulsorily retired on 30.06.1995 due to misconduct, additionally, during his service he obtained LLB Degree and used this qualification to secure a pleader's license without obtaining any NOC or study leave and thirdly the Local Government and Rural Development Department sanctioned several development projects in which private respondent was designated as Project Leader but failed to execute these projects and ultimately in light of report of inquiry, private respondent deposited the amount in the Government Exchequer. We have also reviewed the record of the case with utmost care.

In light of pleadings of the parties, following points are formulated to resolve the controversy at hand.

- i. Whether compulsory retirement is stigma and impediment to hold public office or re-employment?**
- ii. Whether private respondent obtained LLB Degree during his service and pleader-ship license without obtaining any NOC or study leave?**
- iii. Whether Local Government and Rural Development Department approved several development projects against which private respondent was appointed as Project Leader and failed to execute these project and ultimately after pre-bargain deposited amount in Government Exchequer ?**

- iv. **Whether the writ petitions are hit by principle of laches?**
- v. **Whether the writ petition of quo warranto can be issued mere on allegation of relater without providing any adverse record.**
- vi. **Whether the Government has rightly paid perks and privileges to the private respondent in light of notification dated 27.03.2024 or not ?**

A writ of quo warranto can be issued only if a person holding public office lacks eligibility or his appointment is against the rules. The jurisdiction of this Court while issuing writ of quo warranto is limited one and can be issued when the person holding public office lacks the eligibility criteria or where the appointment is contrary to statutory rules. We have examined the law relating to the appointment of Chairman Ehtesab Bureau. The procedure for appointment of Chairman of the Ehtesab Bureau has been prescribed under the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001 and Section 06 deals with appointment of Chairman of Ehtesab Bureau. For convenience, Section 06 of said Act is reproduced as under:

- 6. Chairman of the Ehtesab Bureau (1)** There shall be Chairman of the Ehtesab Bureau to be appointed by the President on the advice of the Prime Minister and on such terms and conditions as may be prescribed.
- (2) No person shall be appointed as Chairman Ehtesab Bureau unless he:-
- (i) has been or qualified to be appointed as Judge of the Supreme Court or the High Court
 - (ii) is or has been civil servant of Azad Jammu and Kashmir in BPS-21 and above.

A bare reading of above aforementioned Section indicates that Chairman of Ehtesab Bureau is to be appointed by the President on the advice of the Prime Minister, who is qualified to be appointed as Judge Supreme Court or High Court. The learned counsel for the petitioners raised objection that the

private respondent does not meet the required qualification for appointment as Judge of the High Court or the Supreme Court. It should be noted here that the qualification for appointment of the Judge of High Court is governed under Article 43 (3). The relevant Article is reproduced as under:

43. High Court

- (3) A person shall not be appointed as a Judge of the High Court or Advocate General unless:-
 - (a) he has for a period, or for period aggregating, not less than ten years, been an Advocate or Pleader of the High Court of Azad Jammu and Kashmir or a High Court in Pakistan;
 - (b) he has for a period of not less than ten years held a judicial office out of which not less than three years shall have been as District and Sessions Judge.

Whereas the qualification for appointment of the judge of the Hon'ble Supreme Court is also provide in Article 42. Article 42 is reproduced as under:

42. Supreme Court of Azad Jammu and Kashmir:-

- (1)
- (2)
- (3)
- (4)
- (5) A person shall not be appointed a Judge of the Supreme Court of Azad Jammu and Kashmir unless he has:-
 - (a) for a period of, or for periods aggregating, not less than five years been a Judge of High Court.
 - (b) for a period of, or for periods aggregating, not less then fifteen years been an advocate or pleader of a High Court.

The petitioners have attached appointment order of private respondent which transpires that the private respondent has been appointed as Chairman Ehtesab Bureau vide order dated 10.02.2024. The order is reproduced as under:

**Azad Government of the State of Jammu and Kashmir
Law, Justice, Parliamentary Affairs and Human Rights
Department**

Muzaffarabad
Dated 10.02.2024

Notification

No. LD/AD/138-54/2024. In exercise of the powers conferred by Section 06 of the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001, the President, Azad Jammu and Kashmir is pleased to appoint Mr. Mushtaq Ahmed Janjua, **Senior Advocate Supreme Court**, as Chairman, AJ&K Ehtesab Bureau for a period of three years.

2. The other terms and conditions shall be determined later on.

(Ghulam Amber)
Section Officer (Ad)

It is an admitted fact that the private respondent is an Advocate of Supreme Court and fulfills the qualification for appointment as Judge High Court. The private respondent does not lack the required qualification. According to the Constitution, the appointment of Judge High Court or Supreme Court, an individual must meet the qualifications that he should be advocate with 15 years of experience for the Supreme Court and 10 years' experience for High Court. It is the claim of petitioners that private respondent was compulsory retired from service and was ineligible to be appointed as Chairman Ehtesab Bureau. It is an admitted fact that the private respondent is an advocate and is actively practicing at the time the bar counsel act 1995 enacted and possesses the required requisite experience as outline in the Interim Constitution, 1974, of AJK. The terms Advocate is defined in Section 02 of the Azad Jammu and Kashmir Legal Practitioners

and Bar Council Act, 1995. The relevant Section is reproduced as under:

The Azad Jammu and Kashmir Legal Practitioners and Bar Council Act, 1995;

2. Definition: In this Act, unless there is anything repugnant in the subject or context,

(a) "Advocate" means an advocate entered in the roll under the provision of this Act;

(b)

.....

(c)

.....

According to the record appended with the written statement, the private respondent obtained the license of pleader ship on 01.01.1995, as advocate of the High Court on 15.03.1999 and as advocate of Supreme Court on 04.08.2005 and was appointed as Chairman Ehtesab Bureau on 10.02.2024. According to memorandum of Bar Council Act, 1995 a person who was practicing as an Advocate at the time of enactment of Bar Counsel Act is declared as an Advocate. Hence, it is an admitted fact that the private respondent fulfills the qualification for appointment as Judge of the High Court.

The petitioners in both the writ petitions did not challenge the Advocacy License of private respondent. For better appreciation, the prayer clause of Writ Petition No. 2104/2024 titled Shahid Zaman Vs Azad Govt. others is reproduced as under:-

"In view of the above submission in the public interest at large, it is most respectfully prayed by accepting the writ petition an appropriate writ may kindly be issued in favour of petitioner & public at large by:-

- i. The respondent No. 5 may kindly be asked under what authority of law he is holding the post of Chairman Ehtesab Bureau;
- ii. Set aside the impugned notification dated 10.02.2024 against the constitutional provision and the law, fundamental right and also against the judgments of superior judiciary.
- iii. Grant any other, further or better relief to which the petitioner may be entitled to and which the Hon'ble Court deem fit and proper to under article 44 of Azad Jammu and Kashmir Interim Constitution, 1974,:

Similarly, the prayer clause of writ petition No. 2215/2024 titled Ch. Tariq Farooq Vs Azad Govt. and others is also reproduced as under:-

"In view of above mentioned facts and circumstances, it is, therefore, very humbly prayed on behalf of the petitioner that an appropriate writ may kindly be issued in the following manner:-

- i. That the private respondent be asked, under what authority of Law he is holding the office of Chairman Ehtesab Bureau Azad Jammu and Kashmir;
- ii. That the official respondents be asked under what authority of law they appointed the private respondent to the office of Chairman Ehtesab Bureau Azad Jammu and Kashmir against law.
- iii. That the impugned notification dated 10.02.2024 of the private respondent along with notification dated 27.03.2024 may kindly be declared illegal, void, without lawful authority, coram-non-Judice, ultra vires to the constitutional norms and the same may kindly be struck down to the extent of serial No. 1 of the impugned notification.
- iv. That the post held by the private respondent may very graciously be declared as vacant and the official respondents be thereafter directed to appoint a suitable person to the office of the Chairman Ehtesab Bureau.
- v. Any other relief for which the petitioner is entitled may kindly be granted in the interest of justice.

Regarding the eligibility of educational degree, when the learned counsel representing the petitioner (Ch.Tariq Farooq) was queried in the terms that regarding securing an educational degree in the absence of No Objection Certification (NOC) or without sanctioning the study leave from the department, whether such a degree would be considered as invalid ? The learned counsel acknowledged that the degree could not be rendered, however, We are of the view that the anomalies benefits and privileges approved to its holder whereupon the holder of such a degree, would not be assessable. Such a stance not only undermine the purpose of obtaining a degree but also troubling the rights of an individual, who strikes to further education. The petitioner's objection regarding educational degree of the petitioner holds no merit as it is the question of fact that the private respondent (Mushtaq Ahmed Janjua) has denied the allegation made in the writ petition and asserted that he obtained a degree legally. Furthermore, the department submitted that record was destroyed in the earthquake, which furthermore, complicates the situation and the combination of factor reveals that the petitioner's objection may not only lack substantial evidence but also fail to address the complicities the surrounding issues of the educational degree in question.

As previously stated that the Advocacy license of private respondent has not been challenged in any forum even in the instant writ petitions. It is important to note here that the license of Advocacy issued to any individual, who is holding LLB Degree and meet other legal requirements. Thus, the LLB Degree is fundamental pre-requisite for obtaining an Advocacy License.

Without declaring the Degree of LLB illegal, the license of advocacy cannot be contested ? Likewise without declaring the private respondent's license as illegal, the contested notification regarding the Chairman Ehtesab Bureau cannot be declared as annulled and void. It should be noted here that the Degree of LLB has been issued by the University while the license of pleader-ship of an advocacy has been issued by the High Court. Additionally, the license of the Apex Court has been issued by the Hon'ble Supreme Court. Furthermore, the issuing authority of Degree or license of private respondent have not been impleaded as parties in the writ petitions. The learned counsel for the petitioners presented the following objections regarding the illegality of respondent's license of an Advocate and Degree of LLB.

- a. The private respondent obtained education during service without securing NOC and leave from the Department.**
- b. The private respondent was compulsory retired from service rendering him ineligible for public office.**
- c. The petitioner was implicated in the embezzlement of Local Government and Rural Development funds under the pretense of developments projects.**
- d. The credibility of private respondent as an Advocate has also been challenged.**

The petitioners have attached a copy of order dated 30.06.1995, wherein, the private respondent was compulsory retired from service as per AJ&K Civil Servants (Efficiency and Discipline), Rules 1977. It is the claim of the petitioners that the private respondent was compulsory retired and compulsory retirement disqualifies for future employment. Section 4 of the AJ&K Civil Servants (Efficiency & Discipline) Rules, 1977 is reproduced as under:

4. Penalties (1).....

(a) Minor Penalties

(i)

(ii)

(iii)

(iv)

(b) Major Penalties:

(i)

(ii) Compulsory retirement;

(iii) Removal from Service and

(iv) Dismissal from service

(2) Removal from service does not, but dismissal from service does, disqualify for future employment.

The private respondent has been compulsory retired from service and according to above reproduced section there is no bar or disqualification for future employment, so, the objection raised by the learned counsel for the petitioners is repelled.

The petitioners filed writs of quo warranto to ask the private respondent under what authority of law he is holding the office of Chairman Ehtesab Bureau Azad Jammu and Kashmir. A writ of quo warranto can be filed under Section 44 of the Interim Constitution, 1974. The relevant Section is reproduced as under:

44. Jurisdiction of High court (1)

(2)

(a).....

(b).....

(i)

(ii) requiring a person holding or purporting to hold a public office in connection with the affairs of Azad Jammu and Kashmir to show under what authority of law he claims to hold that office.

The learned counsel for the petitioners claim that private respondent during his service has obtained LLB Degree and based on this qualification secured a pleader's license without obtaining any NOC or study leave. The petitioners have not attached any record with the writ petitions in this regard. Upon Court query, the learned counsel for the petitioner frankly conceded that no record in this context is available. It is worthwhile to mention here that the private respondent is practicing as Advocate from last approximately three decades and the petitioner kept mum on this whole scenario. The private respondent was also appointed as Chief Prosecutor but the petitioners did not challenge his appointment as Chief Prosecutor. The High Court does not assume muchless exercise its extraordinary discretionary constitutional jurisdiction to issue writs in nature of a direction; declaration and habeas corpus or quo warranto.

The petitioners levelled the allegations upon the private respondent that he has obtained LLB Degree without getting proper NOC from the relevant department and obtained the Pleader-ship License, in this regard, in our considered view that allegation fall within ambit of questions of facts, which required detailed deliberation based upon facts and evidence and this Court cannot enter into the disputed question of facts without recording of evidence. Our this view finds support from the reported judgments of Apex Court of Azad Jammu and Kashmir cited as 2023 SCR 106 and 2022 SCR 1277.

The private respondent further objected that the titled writ petitions have been filed with malice and mala-fide intention because the petitioner Shahid Zaman intends to conduct inquiry to the officials of Ehtesab Bureau for personal gains and the private respondent filed reference against petitioner (Tariq Farooq) regarding misuse of official car. Element of malice in a writ of quo warranto has been well elaborated by the Hon'ble Supreme Court in Ahmed Nawaz Tanoli's case reported as 2016 SCR 360. Relevant paragraphs 11 and 12 of the afore-cited judgment are reproduced as under:-

۱۱۔ جہاں تک سائلان کے طرز عمل، محرکات اور نیت کا تعلق ہے اگرچہ دلوں اور نیتوں کا حال اللہ تعالیٰ کو ہی معلوم ہے تاہم دنیادی معاملات میں ان پہلوؤں کو جانچنے کے لیے ایک فرد کا طرز عمل ہی اہم بنیاد فراہم کرتا ہے۔ دلائل فریقین کے علاوہ طرز عمل کے بارہ میں عدالتی استفسار پر سردار افتخار احمد (سائل) نے بتایا کہ وہ عرصہ بارہ سال سے عدالت العالیہ کے وکیل ہیں اور 2013-14 میں بار ایسوسی ایشن کے صدر بھی رہے، سائل احمد نواز تنولی نے بھی بتایا کہ وہ عرصہ پانچ سال سے عدالت العالیہ کا وکیل ہے۔ دونوں مسؤلان 7، 8 کی عدالت میں پیش ہوتے رہے اور دونوں نے عرضی ہذا دائری سے قبل کسی بھی سطح پر یا کسی بھی ادارہ میں مسؤلان کے بارہ میں نہ تو تحفظات کا اظہار کیا اور نہ ہی کوئی شکایت کی۔ یہ امر بھی اظہر من الشمس ہے کہ مسؤلان 7، 8 مجلس عام میں حلف اٹھانے کے بعد سے اپنے فرائض سرانجام دے رہے ہیں۔ سائلان کی اپنی بیان کردہ وجوہات کو ہی اگر زیر غور لایا جائے تو ان کے بقول سارے معاملہ کی علیت ان کو بار کونسل کی قرارداد منظور ہونے پر ہوئی۔ بار کونسل کی قرارداد کی نقل پیش کردہ سائلان سے عیاں ہوتا ہے کہ یہ شریعت کورٹ میں ججز کی تقرری کے چند روز بعد منظور ہوئی جس کی اشاعت بھی کی گئی۔ اس قرارداد میں مسؤلان 7، 8 کی تقرری کا بالصرحت ذکر نہ ہے۔ جیسا کہ شریعت کورٹ کے ججز کی تقرری کے حوالے سے موجود ہے جس ترتیب سے واقعات وقوع پذیر ہوئے اس کے مطابق شریعت کورٹ ججز کی تقرری کے فوراً بعد ضلعی انجمن ہاؤز اور آزاد جموں و کشمیر کونسل نے احتجاج کیا، قرارداد منظور کی اور چند دنوں بعد ہی عرضی بھی عدالت العالیہ میں دائر کر دی گئی۔ جس کی کھلی عدالت میں سماعت ہوئی۔ عرضی منظور کرتے ہوئے شریعت کورٹ ججز کو بروئے فیصلہ مصدرہ 06.08.2015 (جو کہ مسؤل نمبر 7 نے تحریر کیا)۔ اپنے منصوبوں سے سبکدوش کر دیا گیا۔ سائلان نے رد بروعدالت یہ بھی اعتراف کیا کہ قبل ازیں نہ تو انہوں نے ایسی کوئی عرضی دائر کی اور نہ ہی شریعت کورٹ ججز والے مقدمہ، جس کے حوالہ سے بار کونسل نے احتجاج کیا اور قرارداد منظور کی، میں کوئی کردار ادا کیا۔ اس طرح سائلان کا دعویٰ ہے کہ وہ نیک نیتی سے عدلیہ کی آزادی، قانون کی عملداری اور تحفظ کے لیے آگے آئے ہیں، ان کے طرز عمل سے مطابقتاً نہ رکھتا ہے۔ اس سے بھی اگر صرف نظر کر لیا جائے تو اس کے باوجود بار کونسل کی قرارداد کی تاریخ کے بعد بھی چھ ماہ تک خاموش رہنا اور ماسوائے ایک مکتوب محررہ 15.10.2015 کوئی ایک بھی ثبوت ریکارڈ پر نہ لانا، حتیٰ کہ بیان حلفی میں بھی وضاحت نہ کرنا کے انہوں نے معاملہ کی علیت کے بعد کیا اقدامات اٹھائے، سائلان کے طرز عمل کا عکاس ہے۔ فیصلہ ججز شریعت کورٹ مورخہ 06.08.2015 کے صادر ہونے کے بعد عرضی دائر کرنا حالات اور قرآئین و شواہد کے تناظر میں سائلان کے کردار کو مشکوک بناتا ہے۔ خصوصی طور پر جبکہ مسؤلان نے موقف لیا کہ عرضی ہذا شریعت کورٹ ججز فیصلہ کا رد عمل ہے، حالات و واقعات کے تناظر میں مسؤلان کے اس عذر کو نظر انداز نہیں کیا جاسکتا۔

۱۲۔ مسؤلان نے عرضی میں شامل کیے از سانلان سردار محمد خورشید خان کے متعلق موقف اختیار کیا ہے کہ وہ فیصلہ ججز شریعت کورٹ محررہ 06.08.2015 کی رو سے سبکدوش ہونے والے ایک جج سردار شہزاد احمد خان کے شریک چمبرر ہے۔ تائید میں بیان حلفی بھی شامل کیا جس کی تردید جوابی بیان حلفی سے نہ کی گئی ہے اس طرح مسؤلان کا بیان حلفی بلا تردید ریکارڈ پر پایا جاتا ہے اور سانلان کے اپنے دلائل کے مطابق ایسا بیان حلفی حالات و واقعات کے مطابق قابل انحصار ہے۔ عدالت ہا بر صغیر اس امر پر متفق ہیں کہ ایسے حالات میں عرضی اجراح پرواندا استفسار کو محض معمول میں ہے۔ مہابہ جاری نہیں کر دینا چائے بلکہ سانلان کے طرز عمل اور نیک نیتی کو بہر طور پر مد نظر رکھنا چائے۔ اس حوالہ سے یہ عام اصول بھی واضح کیا گیا ہے کہ ایسے رجحان کی تیج کنی اور حوصلہ شکنی کرنے چائے۔

The learned AG objected that the writ petitions have been filed after lapse of 8 months and no reasonable explanation has been furnished for condonation of delay. It may be stated here that in a case reported as "2022 SCR 1088", the Hon'ble Supreme Court declared three months as reasonable time to file writ petition. The relevant portion of the judgment is reproduced as under:

(b) Laches

....Writ Petitionattraction of laches Three months declared as reasonable time to file writ petition..... writ petition filed after delay of three months then reasonable explanation has to be furnished to condone delay... writ petition filed after nine months of passing of impugned order Held ... the respondent failed to give any plausible and reasonable explanation with regard to filing of writ petition. Constitutional petition has to be filed within a reasonable time.

So, the writ petitions have not been filed within the reasonable time, so, the same are liable to be dismissed on this ground as well.

It is established principle of law that only individual approaching the Court with genuine public interest can be granted locus standi. The individuals are merely busy bodies, meddlesome interlopers or lacking any genuine public interest

often seeking personal gain of serving as proxies for other, driven by ulterior motives or seeking public attention are not proper parties for filing of writ of quo warranto, the Court must ensure that (a) The credentials of the applicants (b) The prima facie correctness or nature of information given by him (c) The information provided is clear and against the relevant law (c) it must balance between two conflicting interest (d) protecting individual from reckless allegations damaging the character of others (e) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions. The Court has to be extremely careful to see that under the guise of redressing a public interest, it does not encroach upon the sphere reserved by the Constitution to the Executive and Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men. It must exercise scrutiny in cases involving busybodies and so called public spirited. Individual fully implicated him as Advocate for justice having no genuine public interest. In this context, this Court while exercising its writ jurisdiction must first access that there is legitimate for issuance of writ of quo warranto or even this act is driven by bad fault to obtain undue advantage on behalf of this. No doubt, the Court is responsible to uphold the rule of law but it is also the duty of the court to discourage the individual busy bodies and those who claim to act in public interest.

In writ petition No. 2104/2024 titled **Shahid Zaman Vs Azad Govt. and others** in paragraph No. 4 of the writ petition submitted that he has previously filed writ petition before the

Court for public interest and it has also been brought on record that the petitioner has also filed an application against the employees of the Ehtesab Bureau before filing of instant writ petition, which clearly indicates that the petitioner's intervention in the matter for personal interest of seeking public attraction. On the other hand, the said petitioner is not an advocate, who is aware of the relevant provisions of the law. In this view of the matter, this writ petition is not filed for public interest but for personal interest as for publicity and public attraction. It is settled principle of law that only a person who comes to the court with bona-fide and public interest can have locus standi. The person approaching to the Court with genuine public interest can be granted locus standi. The individual lacking of genuine public interest often seeking personal gains or serving as proxies for others, driven by ulterior motives or seeking public attraction. It is not necessary that personal gain or benefit is always in shape of material form but attempt to seek public attention or is also personal gain which amounts to public interest.

In Writ Petition No. 2215/2024 titled **Ch. Tariq Farooq Vs Azad Govt. and others** in para No. 1 of the writ petition, it has been mentioned by the petitioner that he elected as MLA from Constituency LA-07, Bhimber and he and Prime Minister of Azad Jammu and Kashmir have contested four elections for the seat of Legislative Assembly against each other including last General Election. However, the private respondent mentioned in his written statement that large number of complaints against petitioner has been received for investigation under Ehtesab Act and the private respondent started the inquiries

and investigation in accordance with law and constituted various inquiry committees for the purpose. The private respondent has appended documents as annexure RA to RA/01. The record also reveals that the petitioner intervene in the matter for personal interest i.e. seeking public attraction.

Another issue highlighted by the learned counsel for the petitioners pertains to private respondent's credibility and alleged embezzlement of funds also lacks evidence. In both the writ petitions, it was alleged by the petitioners that Local Government & Rural Development Department sanctioned several development projects in his name but he failed to execute these projects. The record further shows that a photocopy of application has been brought on record however it shows to be filed on behalf of Inhabitants of Batliaan through Muhammad Suleman who has passed away in the year 2009 and no date is mentioned in the said application. The learned counsel for the petitioner failed to clarify the authenticity of the application and unable to inform the court of the source of this application. In this regard, a verification was produced by Ehtesab Bureau, wherein, it was mentioned that record to the extent of complaint is not available, so, in such a situation, we are of the view that such verification discourages the allegation levelled against the private respondent.

A copy of another application submitted by a client of private respondent has also been brought on record. In the written statement, the private respondent filed the judgment of Apex Court in the said case, whereby, the aforementioned application was not mentioned in that judgment. So, mere submission of an

application by a client against an Advocate does not undermine the credibility of an Advocate.

The learned counsel for the petitioners emphasized the judgment of this Court reported as "2016 CLC 947" and submitted that considering the observations made in para No 17 of that judgment the petitioner is not an Advocate, therefore, challenging his license unnecessary. We have reviewed the relevant portion of the judgment and it reveals with majority view of the larger bench observed in para No. 17 of the judgment. It was observed that a dismissal or removal person cannot obtain license of Advocacy. In this context, it may be stated here that the private respondent neither has been dismissed nor removed rather he has compulsory been retired from service. According to AJK Legal Practitioners and Bar Council Act, 1995, the sole authority for cancellation of license of an Advocate is Bar Council. The Court may only suspend the practice of an Advocate. Rule 51 of AJK Legal Practitioners and Bar Council Act, 1995 is reproduced as under:

51. Power of Supreme Court, High Court and Shariat Court to suspend advocates from practices:- (1) The Supreme Court, High Court/ Shariat Court may, while making a complaint under sub-section (2) of section 38 against an advocate, make an order for the suspension of the advocate from practice, if, after hearing such advocate, the Court is of the opinion that he has committed an act of grave indiscipline in the view of the Court on grave professional misconduct in relation to any proceeding before it, and his immediate suspension is expedient or necessary in the interest of administration of justice.

- (2) On a complaint made to it against an advocate by a Court, Sub-ordinate to it and the High Court may:-
- (a) make an order under sub section (1) in respect of such advocate if, after hearing him, it is of opinion that he has committed grave professional or other misconduct in relation to any proceedings before such subordinate court, and his immediate suspension, pending the proceeding before the Bar Council, is expedient or necessary in the public interest and forward the complaint to the Bar Council for action in accordance with Section 38 or
- (b) without making any order under sub-section (1) forward the complaint to the Bar Council for action in accordance with section 38 of
- (C) direct that no further action need to be taken in respect of the complaint.

According to Rule 38(2) AJK Legal Practitioners and Bar Council Act, 1995, the Court must file a complaint with Bar Council for cancellation of license which is also reproduced as under:

38. Punishment of advocates for misconduct (1)
.....
- (2) A complaint that an advocate has been guilty of misconduct may be made by any court or person to the Bar Council.

It is pertinent to mention here that the private respondent was actively practicing as an advocate before Hon'ble Supreme Court, High Court, Tribunals and all other Courts since that judgment even before author Judge of judgment. He has never faced a ban from any Court nor any complaint has been referred to Bar Council for cancellation of license on the basis of referred judgment. Consequently, this argument hold no merit which is hereby repelled.

The learned counsel for the petitioners frankly conceded during course of arguments that there is no record of private respondent regarding ineligibility, however, the learned counsel for the petitioner (Ch. Tariq Farooq) filed an application for summoning of record and stated that it is the duty of court to obtain record from the relevant officials. He referred 1993 SCR and 129 Qanoon-e-Shahadat as well as civil precedents from criminal judgment relating to that matter. The learned counsel for the petitioner stated that he applied for obtaining record before Education Department from wherein, it was responded that record has been destroyed due to disaster earthquake, so, no record is available. It is in our judicial notice that record of most of record of departments was destroyed in earthquake. So, it would be futile exercise to issue an order for summoning of record. So, the application filed by the petitioner for summoning of record is hereby rejected.

Interestingly, in both the writ petitions no evidence supporting an allegation was attached, leaving it, court to summon the record, investigate the matter and issue a writ in favour of petitioners. It is well established legal principle that a writ of quo warranto is an extra ordinary remedy that cannot be granted in vacuum. The article 129 (g) of Qanoon-e-Shahdat and precedents do not apply in that particular case.

As far as the question of awarding the perks and privileges to the private respondent in light of notification dated 27.03.2024 is concerned, from perusal of record, it reflects that through notification dated 27.03.2024, the private respondent

was declared entitled to receive perks and privileges equal to Judge High Court. Admittedly, regarding the appointment of Chairman of Ehtesab Bureau, the matter is dealt under the Azad Jammu and Kashmir Ehtesab Bureau Act, 2001, wherein, it is mentioned that the Chairman Ehtesab Bureau shall be appointed by the President on the advice of Prime Minister on such terms and conditions as may be prescribed. Relevant section is reproduced as under:—

7. Chairman of the Ehtesab Bureau (1) There shall be Chairman of the Ehtesab Bureau to be appointed by the President on the advice of the Prime Minister and on such terms and conditions as may be prescribed.

From bare reading of aforesaid reproduced section, it reveals that the terms and conditions of Chairman Ehtesab Bureau may be prescribed. Here, the question arises as per claim of the petitioner that if the Government is not competent to award privileges equal to Judge high Court, so what would be the standard to compensate the Chairman in lieu of rendering the services, defiantly, there was no reply on part of petitioner . In the matter in hand, the President of Azad Jammu and Kashmir is authority to appoint Chairman Ehtesab Bureau on the advice of Prime Minister and it has categorically been mentioned in the Act that the terms and condition of job shall be determined by authority, meaning thereby, that the appointing authority of the private respondent under the aforementioned Act is competent to determine perks and privileges of the private respondent and such Act is not under challenge before this Court, hence, keeping in view the aforesaid situation, the Government is competent to

determine perks and privileges under the Act and we are the affirmed view that the official respondents while issuing notification dated 27.03.2024 has not committed in any violation, hence, contention to that extent is also turned down.

The contention of Barrister Humayun Nawaz Khan, the learned counsel for private respondent is that private respondent has not been receiving the judicial allowance despite the fact that whenever, any advocate was appointed as Chairman Ehtesab Bureau, he received perks and privileges equal to Judge High Court. It was noted that the Law Department, recognizes the position of Chairman Ehtesab Bureau and its perks and privileges, as is evident from the notifications dated 03.04.2010 (Annex. RE/2) and 19.10.2012 (Annex. RF/2) respectively, whereby, the appointees as Chairman Ehtesab Bureau were awarded the perks and privileges equal to the Judge High Court, hence, after perusal of the above referred notifications, it can safely be observed that power for determination of perks and privileges of post in question is sole prerogative of Government and we are of the considered view that the Government has rightly determined the perks and privileges in the matter in hand.

In light of what has been discussed above, both the writ petitions are dismissed with no order as to the costs. A copy of judgment is ordered to be annexed with the connected file.

Muzaffarabad
22.10.2024 (Awais)

CHIEF JUSTICE

JUDGE