

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.1086/2022.

Date of institution. 14.03.2022.

Date of decision 26.03.2022.

Fayyaz Ahmed Janjua Advocate Supreme Court of AJ&K Member
Central Bar Association Old Secretariat Muzaffarabad.

....Petitioner

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary having his office at New Secretariat Muzaffarabad, AJ&K.
2. Prime Minister of AJ&K through Secretary to Prime Minister having his office at P.M. Secretariat, Muzaffarabad.
3. President of AJ&K through Secretary to President having his office at President Secretariat, Muzaffarabad.
4. Department of Law, Justice Parliamentary Affairs and Human Rights through its Secretary having his office at Lower Chatter Muzaffarabad.
5. Secretary Law, Justice and Parliamentary Affairs of Azad Kashmir having his office at New Secretariat Complex, Muzaffarabad.
6. Registrar High Court/ Shariat Appellate Bench of AJ&K High Court having his office at High Court Building Muzaffarabad AJ&K.
7. Registrar Supreme Court/ Shariat Appellate Bench of AJ&K Supreme Court having his office at Supreme Court Building Muzaffarabad, AJ&K.
8. Raja Tariq Javed Chairman Service Tribunal, illegally appointed under Notification Number LD/AD/598-613/2022 dated 08.03.2022.
9. Accountant General of AJ&K Sathra Hills Muzaffarabad.

.....Respondents

1. AJ&K Bar Council, through its Vice Chairman having his office at Old Kacheri, Muzaffarabad.
2. Supreme Court Bar, through President Supreme Court Bar, having his office at Supreme Court building Muzaffarabad.
3. High Court Bar, through its President having his office at High Court Building, Muzaffarabad.
4. Central Bar Association Old Secretariat Muzaffarabad through its President having his office at Block A Old Secretariat Muzaffarabad.

.... Proforma-Respondents

WRIT PETITION

***Before:- Justice Syed Shahid Bahar, J.
Justice Sardar Muhammad Ejaz Khan, J.***

PRESENT:

Fayyaz Ahmed Janjua, Advocate/Petitioner in person.
Mr. Mushtaq Ahmed Janjua, Advocate on behalf of the petitioner.
Raja Muhammad Hanif Khan, Raja Sajjad Ahmed Khan and Raja Tariq Bashir Khan, Advocates on behalf of respondents.

Judgment:-

(Justice Syed Shahid Bahar). The captioned constitutional petition has been filed by the petitioner under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 wherein he beseeched the prayer as infra:-

- “(I) *Petitioner in person most respectfully prayed that by accepting this writ of Quo Warranto the official respondents and Private Respondents may kindly be inquired that under what authority of law, the private respondent is holding the Public Office as Chairman Service Tribunal.*
- (II) *It is, further prayed that the Notification Number LD/AD/598-613/2022 dated 08.03.2022 may kindly be set aside and the same may kindly be declared as void ab-initio.*
- (III) *Any other relief which is admissible under law may kindly be granted.”*

BRIEF FACTS:-

The sum and substance of the case projected by the petitioner is that he assails the vires of notification regarding appointment of respondent No.8, as Chairman Service Tribunal, by raising multiple grounds of attack. Notification, impugned herein, dated 08.03.2022 is appended with the writ petition as “Annexure A” and verbatim of the same is as follows:-

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND
KASHMIR**

Law, Justice, Parliamentary Affairs and Human Rights
Department

Muzaffarabad, the 8th of March, 2022.

N O T I F I C A T I O N

No.LD/AD/598-613/2022. In exercise of the powers conferred by Section 3(4) (a) of the Azad Jammu and Kashmir Service Tribunals Act, 1975, the President Azad Jammu and Kashmir, in consultation with Chief Justice of Azad Jammu and Kashmir and Chief Justice of High Court and on the advice of Prime Minister, has been pleased to appoint Raja Tariq Javed, retired District and Sessions Judge presently serving as Judge Election Tribunal, as Chairman Azad Jammu and Kashmir Service Tribunal for a period of three years.

2. This notification shall take effect from date of joining of the Chairman.

Signature
(Muhammad Ishfaq Ch)
Section Officer

Copy to the:-

1. to. 16

Section Officer

The main plank of the arguments and pleaded stance of the petitioner is that the appointment of respondent No.8 is violative of the statutory scheme of Service Tribunal Act and rules made there-under as well as in contravention to the dicta of the Apex Court laid down in plethora of precedents. Furthermore, the process of consultation is not in accordance with law. The petitioner referred and relied upon only single judgment rendered by the Hon'ble Supreme Court reported as 2016 SCR 228, titled Azad Jammu and Kashmir Govt. & 2 others Versus Syed Khalid Hussain Gillani.

On the previous date of hearing, notices were issued to respondents to appear and offer parawise comments/objections, hence, today on response of the notices, Mr. Raja Muhammad Hanif Khan, Raja Sajjad Ahmed Khan and Raja Tariq Bashir Khan, erudite Advocates appeared on behalf of respondents and filed parawise comments, while Prizada Muhammad Sajjad, learned Assistant Advocate General appeared on behalf of Azad Jammu & Kashmir Government.

We have heard the learned counsel for the parties at length and minutely perused the record.

PETITIONER'S SUBMISSIONS:-

Mr. Fayyaz Ahmed Janjua Advocate, petitioner in person himself opted to argue the case by contending vehemently that the notification impugned herein dated 08.03.2022 is against the codal scheme of relevant law and completely in contravention with dicta of the Hon'ble Supreme Court as well as violative of the concept of the independence of judiciary. The petitioner has framed 11 questions of law (as per his estimation) seeking adjudication/reply. The petitioner Fayyaz Ahmed Janjua, Advocate staunchly contended that as per scheme of Service Tribunals Act, 1975 i.e. under Sub-section (3), Section 3 of Service Tribunal Act, respondent No.8 is not qualified to be appointed as a Chairman. As per estimation of the petitioner, private respondent No.8 was a retired District & Sessions Judge who could not be appointed as

Chairman Service Tribunal, while elaborating the point he further contended that even otherwise as per Re-employment Policy, respondent No.8 was not eligible to be reappointed. Mr. Fayyaz Ahmed Janjua, the petitioner zealously relied and referred the reported judgments i.e. 2016 SCR 228 and 2012 SCR 213 by contending that the dicta of the Hon'ble Supreme Court of Azad Jammu & Kashmir has terribly been brushed aside while issuing the notification, impugned herein. The learned counsel Mr. Fayyaz Ahmed Janjua by elaborating the pleaded stance taken by him in Para No.4 of the writ petition argued that the appointment of respondent No.8 is illegal from all corners, which has been carried out on extraneous reasons and on behest of highly influential person. He further added that respondent No.8 was appointed as Chairman when he was already performing his duties as member Election Tribunal and there is no concept of appointing member Election Tribunal as Chairman Service Tribunal.

During the course of arguments, Mr. Mushtaq Ahmed Janjua, the learned Advocate requested and sought permission to allow him to argue the case as well, he was accordingly allowed by this Court to furnish/argue the points which have not yet been argued. The learned counsel appearing on behalf of petitioner, Mr. Mushtaq Ahmed Janjua, Advocate additionally argued that the impugned notification receives no strength from codal scheme of the Service Tribunals Act, 1975 neither consultation process has

been made in accordance with law nor the requirement of panel for the purpose has been adhered to, only respondent No.8 was recommended and appointed, thus, the appointment of respondent No.8 is violative of law. He staunchly contended that the instant case is a fit for admission and issuance of high prerogative writ of quo-warranto by this Court.

SUBMISSIONS OFFERED ON BEHALF OF RESPONDENTS:-

In juxta-position while controverting the arguments advanced by the petitioner in person and learned counsel for the petitioner Mr. Mushtaq Ahmed Janjua, Advocate, Mr. Raja Muhammad Hanif Khan, learned Senior Advocate has raised enormous issue of maintainability of the writ petition. The learned counsel appearing on behalf of respondents vehemently contended that the instant writ petition is actuated with mala-fide as the allegations levelled and attributed to the respondents are false, frivolous and preposterous which are simple based upon assumptions of the petitioner without any strength of proof. The learned counsel further contended that the appointment of respondent No.8 has been made by the competent authority after adhering to all pre-requisites and following roadmap indicated by the law which is unequivocally reflecting from the plain language of the notification regarding appointment of respondent No.8, wherein wisdom of issuance of aforesaid notification has been divulged. The learned counsel for respondent No.8 staunchly

contended that the facts narrated in the writ petition by all means are disputed questions of facts which cannot be decided/resolved by this Court in its extraordinary jurisdiction. He further added that the appointment of respondent No.8 is completely in line with the scheme of law and dicta of the Hon'ble Supreme Court of Azad Jammu & Kashmir laid down in numerous precedents, particularly, Chief Justice Rtd. M. Tabassum Aftab Alvi's case reported as **[2020 SCR 01]**. He also referred the case law reported as **[1989 CLC 1369]** titled "M.D Tahir Vs. Federal Govt. & others" (which was referred by the Hon'ble Supreme Court in 2020 SCR 01). The learned counsel further contended that as the petitioner has challenged the consultative process, hence, it was enjoined upon him to array the necessary party in the line of respondents. He zealously contended that keeping in view Rule 42 of the High Court Procedure Rules, 1984 the provisions of Order 1 Rule 10 of CPC are applicable regarding this state of affairs as well as the respondents No.6, 7, 9 and proforma respondents No.1 to 4 do not fall either into the category of "necessary party" or "proper party". He submitted that the impleading of the aforesaid institutions into the line of respondents is on the one hand an illegal act and on other hand its exploitations under the umbrella of the act of filing of the writ petition and this exploitation on the part of the petitioner may kindly be discouraged in order to maintain the fair principle of administration of justice and he prayed that respondents No.6, 7, 9 and proforma respondents No.1 to 4 may be struck off from the line

of respondents. He maintained that keeping in view the averments made in the contents of the writ petition, particularly relating to consultative process, no complete and effective resolution of the controversy is possible unless Hon'ble Chief Justice of Azad Jammu & Kashmir and Hon'ble Chief Justice of the High Court is not impleaded as party. The learned counsel strongly submitted that the petitioner has made averment in para 4 of the writ petition with ulterior objects so as to scandalize the humbly respondent No.8 for no fault on his part; and these averments are a proof of the fact that the petitioner having some hidden personal ill-will with the respondent No.8 and that the petitioner is not in a position to substantiate it. The learned counsel for respondents Mr. Raja Muhammad Hanif Khan, further submitted that as per rule of law laid down by Hon'ble Supreme Court in Syed Khalid Hussain Gillani's case reported as 2016 SCR 228, the Service Tribunal is a "Court" and the principle of "independence of judiciary" is applicable upon the Service Tribunal, whereas, the petitioner with ulterior motive has instituted the writ petition, so as to humiliate the Presiding Officer of the Court and the institution of the writ petition on the part of the petitioner is tantamount to flout the objectives of "independence of judiciary". Keeping in view trend of arguments and pleaded stance of the petitioner, coupled with specific allegation levelled in para No.4 of the writ petition, the learned counsel for the respondents prayed for dismissal of the writ petition.

In support of his submissions, the learned counsel referred and placed reliance upon the following case law; i.e.

1. PLD 2004 SC 261.
2. 1994 SCMR 2142.
3. 1994 PLC (CS) 1381.
4. PLD 1991 Lahore 230.
5. PLD 1991 Oahore 306.
6. PLD 1990 Questta 8..
7. PLD 1993 SC AJK 12.
8. 2014 SCR 1470.
9. 2016 SCR 1359.
10. 2003 CLC 44.
11. PLD 2009 SC 194.
12. 1993 SCMR 511.
13. 2007 SCMR 910.
14. 2008 SCMR 960.
15. 1997 SCR 389.
16. 2000 SCR 57.
17. 2002 SCR 128.
18. 2003 SCR 142.
19. 2005 SCR 57.
20. PLD 1990 Karachi 445.
21. 1993 CLC 1327.

The learned counsel Mr. Raja Sajjad Ahmed Khan staunchly contended that the instant writ petition is not maintainable and liable to be dismissed. He has drawn the attention of this court towards material fact by indicating that the writ petition infact had been prepared on 07.03.2022 which is reflecting from one of the application appended with the writ petition at page 17 while in juxta-position the impugned notification had admittedly been issued after one day of the preparation of the writ petition i.e. 08.03.2022. He further contended that this sole fact is suffice to establish that the writ petition has been filed for ulterior motive in guise and garb of rule of law. Mr. Raja Sajjad Ahmed Khan further contended that

the application submitted by the petitioner for summoning of record is pertaining to the appointment of Judges of this Court which has got no nexus and relevance with the facts of the instant petition, therefore, in such like eventuality, the instant writ petition is devoid of any merits which deserves to be dealt with accordingly.

Mr. Raja Tariq Bashir, learned Advocate and Sajjad Ahmed Pirzada, learned Asst. A.G. endorsed the arguments of Mr. Raja Muhammad Hanif Khan, Advocate and Raja Sajjad Ahmed Khan, Advocate and also prayed for dismissal of the writ petition.

DETERMINATION BY THE COURT:-

At this juncture, first of all we deem it proper to ponder over the codal scheme of the parent law wherein modus-operandi quo appointment of Chairman Service Tribunal has been envisaged. This mechanism is provided in Azad Jammu & Kashmir Service Tribunals Act, 1975. Sub-section 3 of Section 3 having direct nexus to the matter is reproduced as below:-

The AJ&K Service Tribunals Act, 1975:

3. **Tribunals:-**{(1) xxxxxxxxxxxxxxxxxxxxxxxxx

(2) xxxxxxxxxxxxxxxxxxxxxxxxx

(3) A Tribunal shall consist of,-

(a) a Chairman, being a person, who is a state subject and is not less than 45 years of age, and he has-

(i) for a period of, or for periods aggregating, not less than ten years been an advocate of the High Court of Azad Jammu and Kashmir or High Court in Pakistan; or

(ii) ten years experience of judicial service having at least three years service as a District and Sessions Judge.

Explanation.- In computing the period during which a person has been an advocate of a High Court or held judicial office, there shall be included any period during which he has held judicial office after he become an advocate or, as the case may be, the period during which he has been an advocate after having held judicial office.

(b) One or more Members having qualification as prescribed under sub-section (4).

4[(c) The President may extend the term of office of the Chairman or a Member of the Tribunal for such period not exceeding two years.]

(4) The Chairman of a Tribunal shall be appointed for a period of three years by the President on the advice of the Prime Minister, with the consultation of Chief Justice of Azad Jammu and Kashmir and Chief Justice of High Court on such terms and conditions as may be determined; and

(b) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(i)(ii)(iii)”

A bare verbatim of the above codal scheme reveals that for appointment to the office of Chairman Service Tribunal the first requirement of a person is that he must be a State Subject and minimum age limit for the said purpose has been fixed as 45 years. Likewise if the appointment is likely to be made from legal fraternity then at least 10 years practice as an advocate of the High Court is sine qua non while in second proviso ten (10) years experience of judicial service having at least 3 years service as a District & Sessions Judge is condition precedent. As the matter in hand specifically pertains to method No.(a) provided under section 3 subsection 3(a)(ii) in light of which the appointment of respondent No.8 has been made as Chairman Service Tribunal. Conjunctive reading of above para makes it crystal clear that any

person who is a state subject and having not less than 45 years age and 10 years of experience of judicial service having at least three years service as District & Sessions Judge is eligible to be appointed as Chairman Service Tribunal.

As adumbrated above no upper age limit has been provided/ mentioned in the corridor of Service Tribunals Act, 1975 viz-a-viz, neither any embargo has been placed (which may become barrier for appointment of retired District & Sessions Judge) nor implied intention of the legislature can be garnered in support of such negative feelings after brooding over the Act.

Wisdom and intention of the legislature can be judged by the unamended/original provision of the law wherein word “retired District & Sessions Judge” was also inserted/ included for the purpose. It is a celebrated principle of canon of interpretation that in order to ascertain the real intention of the legislature entire statute is liable to be read in a harmonious manner instead of reading any provision in isolation. In this regard, reliance is placed on Presidential reference reported as **[PLD 1957 SC 219]** wherein the Apex Court of Pakistan by enunciating general principles of interpretation held that the Courts should avoid a construction which renders any provision meaningless or inoperative and must lean in favour of a construction which will render every word operative rather than one which may make some words idle and nugatory.

In backdrop of above discussion it unequivocally reveals from documents appended with the writ petition particularly “Annexure PB” authored by worthy President of Azad Jammu & Kashmir that prior to the appointment of respondent No.8, consultative process had been carried out in accordance with law. Both the Hon’ble Consultees i.e. Chief Justice of Azad Jammu & Kashmir and Chief Justice of Azad Jammu & Kashmir High Court, were duly consulted and had exposed their wisdom in writing. Joint wisdom of Hon’ble Judicial Consultees is behind the Notification of appointment of respondent No.8. Question is whether above notification which is an outcome of joint wisdom of Judicial Consultees is open to attack or not?

The Service Tribunal falls under the judicial hierarchy as per law laid down by the Hon’ble Supreme Court in the reported case titled “Riaz Ul Haq Vs. Federation of Pakistan [PLD 2013 SC 501], and matter of appointment of the Chairman Service Tribunal is governed and regulated by the scheme of an Act known as Azad Jammu & Kashmir Service Tribunals Act, 1975 (amended up to date), which is purely an executive function of the President to be performed on the advice of the Prime Minister with the consultation of Hon’ble Chief Justice of Azad Jammu & Kashmir and Hon’ble Chief Justice of High Court of Azad Jammu & Kashmir on such terms and conditions as may be determined. So the proposition can be summed up in a manner that appointment is to be made by the

President on the advice of the Prime Minister and with the consultation of Hon'ble Judicial Consultees.

Be that as it may consultation envisaged in Azad Jammu & Kashmir Interim Constitution, 1974 for appointment of the Judges of superior Courts cannot be *stricto sensu* equated with the concept of consultation provided in the Service Tribunals Act. Consultation in case of the appointment of the Judges in superior Courts requires consultation under command of the Constitution, whereas in case of Chairman Service Tribunal it is mandated and provided in the Service Tribunals Act, 1975. Both cannot be brought on the same pedestal in view of logical sense and parameter of the proposition involved in the *lis in hand*.

In the matter of the appointment of the Chairman Service Tribunal, equilibrium is based upon four limbs/corners (i) Worthy President (ii) Worthy Prime Minister (iii) Hon'ble Chief Justice of Azad Jammu & Kashmir, and (iv) Hon'ble Chief Justice of High Court of AJ&K. Definitely in the above roadmap provided in the Act, pivotal and preferential role is attached to the opinion of the Judicial Consultees.

We are of the considered view that Court should be extremely reluctant to substitute its own view as to what is proper, prudent or who is suitable in relation to academic matters in preference to joint opinion of Judicial Consultees in the matter.

Joint wisdom of Judicial Consultees as per our estimation is indeed not amenable to judicial review nor can be questioned randomly. It is not within scope of judicial review under Article 44 of the Constitution to embark upon such like wisdom oriented joint opinion.

For the safe administration of justice we summoned the record of the matter pertaining to “consultation” from Registrar of this Court and minutely perused the same in order to ensure the complete justice which reveals that panel for appointment of Chairman Service Tribunal has duly been made comprising three (3) nominees for the said slot, in essence;

- i. Raja Tariq Javed, Retd. District and Sessions Judge
- ii. Khawaja Imitaz Ahmed Advocate, and
- iii. Mr. Manzoor Hussain Raja, ex-member Service Tribunal of AJ&K.

It is in the fitness of things to state here that in the said panel complete particulars of nominees have been mentioned with remarks which efficaciously satisfy the requirement of consultation and wisdom divulged therein by the Honorable consultees which is not open to attack.

Be that as it may generally even wisdom of the appointing authority or for that matter Selection Committee/ Board in case of appointment in civil services can not be substituted by the High Court randomly in every case while exercising extra-ordinary writ jurisdiction then how room can be provided to a challenger to

question combined wisdom of the Honorable consultees i.e. highly esteemed Chief Justice of Azad Jammu & Kashmir and worthy Chief Justice of the High Court AJ&K in garb of mere apprehensions of malafide by attributing naked allegations without any sort of proof. It is a celebrated principle of law that malafide even in normal parlance cannot be attributed/pleaded without having any cogent proof. In this regard we are fortified to follow the vertical precedent of the Honorable Apex Court of Pakistan in a case titled “The Federation of Pakistan through the Secretary Establishment Division, Government of Pakistan Rawalpindi Versus Saeed Ahmed Khan and others” reported as **[PLD 1974 SC 151]** wherein the term “malafide” has been clearly expounded in the following terms i.e,-

“Malafide is one of the most difficult things to prove and the onus is entirely upon the person alleging malafides to establish it, because there is, to start with, a presumption of regularity with regard to all the official acts, and until the presumption is rebutted, the action can not be challenged merely upon a vague allegation of malafide.”

In saga of the above discussion albeit the pleaded stance of the petitioner has stood falsified from the record and plain language of Section 3 of the Service Tribunals Act, 1975, despite fact we deem it expedient to shed some light upon the eleven questions of law drawn by the petitioner in the writ petition as all questions are amalgamated and almost academic in nature we

would like to answer the material and relevant questions in a collective manner i.e.

ANSWER:-

No doubt the judiciary is one of the highly adored, venerated, esteemed and dignified pillar of the State. In connection with the proposition in hand the notification of appointment of respondent No.8 dated 08.03.2022 has been issued by the competent authority in consultation with Honorable Chief Justice of AJ&K and Honorable Chief Justice of High Court on the advice of worthy Prime Minister of AJ&K. Furthermore full consultation (which meets requirement of consultation as per dicta of the Honorable Supreme Court in numerous pronouncements particularly Younas Tahir's case i.e. 2012 SCR 213) has duly been carried out which reveals that the notification is based upon joint wisdom of both the honorable judicial consultees which is not open to attack at all. Thus, the notification impugned herein is completely in line with the scheme of law and dicta of the honorable Apex Court.

So far as the question regarding appointment of a retired District and Sessions Judge as Chairman Service Tribunal is concerned, same is also answered in an affirmative manner. Yes, the retired District and Sessions Judge (with ten years experience of judicial service in his credit having at least three years service as a District and Sessions Judge) can be appointed as Chairman Service

Tribunal as no embargo has been placed by the law in this regard. As trend of the arguments of the petitioner reveals that experience of judicial service stands ceased after retirement from judicial office is not in consonance with law and is repelled accordingly. Experience once acquired by a person cannot be ceased simply on account of retirement as it is attached with a person with for good.

Resultant of the process of the appointment, respondent No.8 as being a consensus nominee was appointed as such. We have found no dent in the procedure and process of appointment of respondent No.8. The writ is an extraordinary relief, particularly writ of quo-warranto cannot be issued randomly and in routine simply in guise and garb of rule of law. It is a two-edged weapon which can cut both ways. Conduct of the petitioner/relator is very relevant, particularly, in such like cases where challenge has been made to esteem offices then at the outset, conduct of the petitioner is to be filtered through the lens of bona-fide. We particularly come to the para No.4 of the writ petition which unfortunately is not happily worded as it is not according to the protocols of pleadings nor it can be lightly ignored on account of impliedly attributing mala-fide to the Hon'ble consultees, despite fact during course of the arguments we twice had drawn the attention of the petitioner to this aspect of the matter hoping so that he will mend his ways but instead of realizing it he pressed the same with more vehemence. We cannot shut our eyes if such like practice is allowed to be

continued, it will not bring positive result which will ultimately ruin entire fabric of the society as well as it will open the door of maligning the highly placed institutions. Language used in the writ petition palpably in para No.4 attributing favoritism/ malafide to the Honorable Consultees in the matter in hand is contemptuous, preposterous, showing disrespect and hatred on part of the petitioner (who is an advocate). Obviously such like conduct militates against the Code of Conduct of the advocates as well as lethal attack on the independence of Judiciary. Such like attitude by poking nose in each and every matter flexing muscles show of simply in garb of rule of law, itself is a question mark for rule of law. Bar Council as a statutory body and Apex fora is responsible for regulating the Profession who is also expected to take notice of the fact. As all the allegations and grounds have stood falsified from record, hence inference can safely be drawn that the instant petition has palpably been filed in order to scandalize the Judiciary for ulterior motives and ill designs, in our estimation such like practice amounts to undermine the Judiciary hence the same is liable to be dealt with iron hands. Reliance in this regard is placed on reported precedent of the Hon'ble Supreme Court reported as **[2002 SCR 455]**, titled Abdul Raheem Zubair Butt Vs. Azad Jammu & Kashmir High Court. As the petitioner forcefully argued that in the recommendations quo appointment of Chairman Service Tribunal word "public service tribunal" has been inserted instead of Service Tribunal, therefore, recommendation on this ground are not serving

the purpose of appointment against the post of Chairman Service Tribunal. Objection is repelled, as a typographical mistake can not provide room for any interference because writ of quo warranto is not in any sense a writ of correction. Admittedly errors of fact or law cannot be inquired into in quo warranto in order to arrest or disturb the force of impugned instrument.

A writ of Quo warranto is more in the nature of a public interest litigation where undoing of a wrong or vindication of a right is sought by an individual not for himself but for the good of the society or as the matter of principle.

In a writ of Quo warranto only three (3) elements had to be seen.

Firstly whether the appointment was made by the Competent Authority;

Secondly, whether procedure prescribed for such appointment has been followed and

Thirdly, whether the person appointed possess the prescribed qualification.

Minor irregularities in appointment or procedural loophole or lapse can not provide room to ask for issuance of writ of Quo warranto as laid down in **2018 PLC (CS) Note 187**.

Writ of Quo warranto is a discretionary relief and status of a person is simply a whistle blower/informer and relief is based

upon principles of equity. Conduct and motive of the petitioner can be looked into by the Court.

Furthermore writ of Quo warranto is not a writ of course, albeit this Court is blessed with bouquet of powers and is entitled to inquire into conduct and motive of the petitioner for such a writ and if the information furnished by him is considered merely of vexatious nature, court is entitled to refuse to exercise its discretion in favour of the petitioner. Thus, where the issuance of the writ would disturb the peaceful and orderly functioning of an institution/tribunal the court is also entitled to refuse this writ on this count as well. Be that as it may in garb of hoisting a flag of rule of law nobody can be allowed to satisfy his personal ego and longings merely to malign the judiciary randomly and scandalize with false hope to arrest and derail the system structures under the auspicious of Azad Jammu & Kashmir Interim Constitution, 1974.

In view of the legal maxim, *Omina pracsnmuntur legitime facta donec probetur in contrarium*; i.e. All acts are presumed to have been done rightly and regularly until proved contrary, we would like to presume accordingly as the petitioner has miserably failed to prove whatever he has portrayed and pleaded. Horizontal precedent is ready reference in this regard i.e. PLD 1965 AJK 32 (DB).

Under Order 6 Rule 16 of C.P.C read with enabling laws this Court is empowered to expunge and strike out any matter in any pleadings which may unnecessary or scandalous etc. Horizontal precedents in this regard are ready reference (i) **PLD 1993 Lah. 183** (ii) **PLD 1974 Lah. 359** and (iii) **PLD 2016 Sindh 392**. Thus, para No.4 of the instant writ petition is expunged/struck out accordingly (necessary alteration be made).

Before parting with the decision as adumbrated above, the language used in the writ petition, particularly, in para No.4 is contemptuous and scandalous, obviously meant for bringing the authority and Administration of Law into disrespect and disregard. During the course of arguments by showing magnanimity we have provided a chance to the petitioner to recite Para No.4 of the writ petition twice with hope to mend his ways but all in vain. Thus, we are fortified to follow the dicta of Apex Court laid down in the case titled “Robkar-e-Adalat Vs. Liaqat Ali Mir” reported as 2020 SCR 676, wherein guiding principles have been chalked out for dealing such like matter. Relevant captions of the above dicta is reproduced as under, which was produced at page 735 with caption “D” of the report:-

“---direction to the concerned including State Judicial Policy Making Committee to provide express provision in the Procedural Rules barring all Courts from entertaining contemptuous lis--- the Court while exercising constitutional powers vested in it directed all the concerned including the State Judicial Policy Making Committee to take necessary steps to provide express provisions in the Procedural Rules of every

Court for not entertaining any lis offending the limits prescribed under the constitution. The concerned official of the Courts were held duty bound to carefully examine the cases presented to them and the appeals, writ petitions, applications, etc. and the documents which are irrelevant, scandalous, contemptuous, scandalous and against the public order, decency and morality, and not entertain the same.

Caption “F” of the aforesaid report reveals on page 736:-

----contempt of Court--- common duty of all Courts to maintain intra-institutional harmony, which is fundamental to curb any attempt to undermine dignity, repute and independence of judiciary--- the Court observed and desired that it is the common duty of all the Courts and Judges to maintain the dignity, repute and independence of judiciary, specially, intra-institutional harmony and no blackmailer, exploiter or law offender should be allowed to play with the dignity, respect, harmony and independence of the Judiciary and the Judges.”

Facts of the instant lis warrant initiation of contempt proceedings against the petitioner and we are inclined to do so. Registrar of this Court is directed to do the needful quo implementation of the judgment of the Hon’ble Supreme Court rendered in **2020 SCR 676 titled “Robkar-e-Adalat Vs. Liaqat Ali Mir”** and make sure that at the eve of filing of the writ petition, applications etc. contents of such like petitions as well as documents are in line with the dicta of the Hon’ble Supreme Court and if a little bit deviation is found meaning thereby any petition containing scandalous material/language which can be termed contemptuous, scandalous against decency and morality, same should be returned back to the petitioner and matter must be

brought to the notice of Hon'ble Chief Justice forthwith in black and white.

The compendium of above discussion is that the titled writ petition is devoid of merits on above multiple reasons, which is dismissed in limine.

Muzaffarabad,
26.03.2022.

-Sd-
JUDGE
(S)

-Sd-
JUDGE
(E)

Approved for reporting

-Sd-
JUDGE
(S)

-Sd-
JUDGE
(E)