

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.2639/2021.

Date of institution. 16.08.2021.

Date of decision 12.11.2022.

1. Fazim Khan S/o Bagga Khan R/o Ringoli Khas Tehsil Dhirkot District Bagh Azad Kashmir presently serving as H/A in Circle Office Pakistan Post at Chatter Domail Muzaffarabad.
2. Syed Tanvir Hussain Gillani Sub Engineer Civil Circle Office Pakistan post Chatter Domial Muzaffarabad.
3. Muhammad Dawood Khan, Circle office Chatter Domail Muzaffarabad.
4. Khalid Hussain R/o village Sahotar Poth Kacheeli, Tehsil and District Muzaffarabad, Serving as H/A in Circle Office of Pakistan post at Chatter Domial Muzaffarabad.
5. Tajeeba Begum R/o Ringoli Khas Tehsil Dhirkot, District Bagh Azad Jammu and Kashmir serving as Steno Typist in Circle office of Pakistan post at Chatter Domial Muzaffarabad.
6. Shafique Gohar UDC Circle Office of Pakistan post at Chatter Domail Muzaffarabad.
7. Tanveer Ahmed UDC Circle Office of Pakistan post of Chatter Domial, Muzaffarabad.
8. Naeem ur Rehman UDC Circle Office of Pakistan post at Chatter Domail Muzaffarabad.
9. Mrs. Amber Mazhar UDC Circle Office of Pakistan post at Chatter Domail Muzaffarabad.
10. Nawaz Ahmed UDC Circle Office of Pakistan Post at Chatter Domail Muzaffarabad.
11. Zahid Ahmed H/C Circle Office of Pakistan Post Chatter Domail Muzaffarabad.
12. Ghulam Ahmed UDC Circle Office of Pakistan post at Chatter Domail Muzaffarabad.
13. Amjid Ali Khan UDC Circle Office of Pakistan Post at Chatter Domail Muzaffarabad.
14. Tahir Tayyab UDC Circle Office of Pakistan Post at Chatter Domail Muzaffarabad.
15. Tariq Zaman UDC Circle Office of Pakistan Post at Chatter Domail Muzaffarabad.
16. Muhammad Atif LDC Khan Circle Office of Pakistan Post Chatter Domail Muzaffarabad.
17. Muhammad Anwar Electrician Circle Office of Pakistan Post at Chatter Domail Muzaffarabad.

18. Muhammad Ashfaq Driver Circle Office of Pakistan Post at Chatter Domail Muzaffarabad.
19. Imtiaz Alam Naib Qasid in Circle Office of Pakistan Post at Chatter Domail Muzaffarabad.
20. Makhkam Din Sanitary Worker Circle Office of Pakistan post at Chatter Domail Muzaffarabad.

....Petitioners

VERSUS

1. Azad Govt. of State of Jammu and Kashmir through its Chief Secretary having his office at Civil Secretariat, Muzaffarabad.
2. Chief Secretary Azad Jammu and Kashmir having his office at Civil Secretariat, Muzaffarabad.
3. Secretary Ministry of Communication and Works Government of Islamic Republic of Pakistan having his office at block-D G-5/1 Pak Secretariat Islamabad.
4. Secretary Finance Division Government of Islamic Republic of Pakistan having his office at Finance Division Pak Secretariat Islamabad.
5. Director General Post Office Department having his office at G-8/4 Islamabad Pakistan.
6. Post Master General Post Office Department Azad Jammu and Kashmir Circle of Chatter Domail Muzaffarabad.
7. Secretary Ministry of Housing and Works Govt. of Pakistan Office situated at Pak Secretariat B-Block, Islamabad.

.....Respondents

WRIT PETITION

Before:- ***Justice Mian Arif Hussain, J.***
 Justice Syed Shahid Bahar, J.
 (Division Bench)

PRESENT:

Raja Sajid Mehtab Siddiqui, Advocate for the petitioners.
Mr. Bashir Ahmed Mughal, Advocate for respondents.
A.A.G for Azad Govt.

Judgment:-

(Justice Syed Shahid Bahar, J). The captioned constitutional petition has been filed under Article 44 of the

Azad Jammu & Kashmir Interim Constitution, 1974, whereby
infra relief has been solicited by the petitioners:-

- “i) letter bearing No.B.4.10/2020 dated 23rd June 2021, whereby respondents have illegally and unlawfully ordered for recovery of self hiring already paid to the petitioners No.1 to 10 may kindly be set aside.
 - ii) respondents may kindly be directed to extent hiring facility to the petitioners No.11 to 20 by restraining them from depriving the petitioners from facility of hiring.
 - iii) Official respondents may kindly be directed to withdraw illegal and malicious clarification/ letter dated 30.04.2021 to the extent of house hiring facility to the employees of Muzaffarabad from the date of declaration of Muzaffarabad as specified station in the best interest of justice.
 - iv) Declaration may kindly be issued to the extent that Muzaffarabad is a specified station in terms of Rule 2 sub Rule (r) Accommodation Allocation Rules, 2002.
- Any other relief which the petitioners be deemed entitled may kindly be granted in the interest of justice.”

Brief facts of the instant writ petition are that petitioners are serving in Pakistan Post Office and performing their duties in circle office Muzaffarabad, which is entity of Federal Government Pakistan. It is contended that the Federation of Pakistan introduced Accommodation Allocation Rules in year 2002. Initially employees working in six stations i.e. Islamabad, Rawalpindi, Lahore, Karachi, Peshawar and Queta (declared as specified stations) were entitled to acquire house

hiring facility on prescribed rates. It is averred that vide notification dated 13.06.2019 amendments in Accommodation Allocation Rules, 2002 was introduced, whereby in Rule 2 after sub rule (q), sub rule (r) was inserted. It is further averred that after amendment in Rules supra and declaration of region Muzaffarabad as specified station, the employees get benefiting the said amendment, but the same was discontinued. It is maintained that vide notification dated 13.06.2019 the Government of Pakistan has introduced amendment mentioned and inserted sub rule (9r) whereby Muzaffarabad and Gilgit Baltistan have been declared as out stations. The whole process was conducted in the light of amendment supra, but the official respondents astonishingly after the period of almost one year issued impugned letter, whereby it has been ordered for discontinuing and recovery of self hiring dully approved by the competent authority after completion of due process. It is claimed that the official respondents are going to snatch the already guaranteed right of house hiring by keeping petitioners deprived from the facility.

Comments have been filed on behalf of respondent No.7 wherein preliminary objections have been raised that the instant matter relates to the terms and conditions of a civil servant which falls within the exclusive jurisdiction of the Service

Tribunal as per Service Tribunal Act, 1973 and in light of Article 212(2) of the Constitution of Islamic Republic of Pakistan, 1973.

It has been further contended in the comments that the amendment in Accommodation Allocation Rules, 2002 was made, whereby Muzaffarabad and Gilgit were included as out station and the intention of the said amendment was to retain the hiring of employees at the time their transfer to newly added cities, i.e. Muzaffarabad and Gilgit was not allowed. It is further contended that the employees of six specified stations i.e. Islamabad, Rawalpindi, Lahore, Karachi, Peshawar and Quetta, which were already availing hiring facility at their transfer to Muzaffarabad and Gilgit can retain their previous hired houses and fresh hiring at Gilgit and Muzaffarabad were not allowed. Finally, it is prayed that the instant writ petition may be dismissed.

Separate comments have also been filed on behalf of respondents No.5 and 6, wherein the claim of the petitioners have been negated in toto. It is contended that letter for allowing hiring to employees of AJK Region was written to DG PPO Islamabad in the light of Federal Service Tribunal decision but no reply was received. The letter of DG PPO dated 31.03.2020 pertains only to the order passed in appeal No.5059(R) CS-2018.

The learned counsel for the petitioners reiterated the facts and grounds narrated in the petition and prayed for acceptance of the writ petition by referring the following case law:-

1. 2021 SCR 629.
2. PLD 1993 AJ&K 153.
3. 2020 SCR 659.

The learned counsel for appearing on behalf of respondents and learned A.A.G opposed the contention of the learned counsel for the petitioners and prayed for dismissal of the writ petition.

Preliminary arguments heard. Record perused.

Be that as it may we deem it expedient to address the question of maintainability of the instant constitutional petition preferred under Article 44 of the Interim Constitution, 1974 prior to resolve the factual controversy.

Article 19 of the Interim Constitution, 1974 envisages the Executive Authority of the Government. It is useful to reproduce Article 19 as infra:-

19. Extent of executive authority of Government.-

- (1) The executive authority of the Government shall extend to the matters with respect to which the Assembly has power to make laws including Part-B of Third Schedule and shall be so exercised as,-
- (a) not to impede or prejudice the responsibilities of Government of Pakistan in relation to the matters specified in sub-Article (3) of Article 31; and
 - (b) to secure compliance with the laws made in relation to matters specified in Third Schedule as set out under sub-Article (3) of Article 31.

(2) The Government, if deems necessary or expedient in the public interest and to secure paramount purpose of social and economic wellbeing of the people of the State, may with the consent of the Government of Pakistan or to any of its subordinate authority including a ministry, division, organization or statutory body or entity of Pakistan, to perform any of such functions within territory of the State as may be prescribed by law.

(3) The Government of Pakistan may also entrust, either conditionally or unconditionally, any of its functions to the Government in relation to any matter specified in Part-B of the “Third Schedule” as set out under sub Article (3).

(4) the relationship between Government of Pakistan with the Government shall be such as manifested in sub-Article (3) of Article 31 and the Cabinet Division D.O. No.8/9/70-Cord-I dated the 11th May, 1971 of the Government of Pakistan with respect to peculiar political status of Azad Jammu and Kashmir and shall be the guiding principles to maintain direct working relationship of Government with the Government of Pakistan.”

While in juxta-position in Article 31 of the Constitution, scope and area of Legislative power of AJ&K Assembly and Government of Pakistan have been enumerated. The verbatim of the Article 31 of the Interim Constitution, 1974 is as under:-

“31. Legislative Power.- (1) Subject to sub-Article (3) the Assembly shall have the power to make laws,-

(a) for the territories of Azad Jammu & Kashmir;

(b) for all state subjects, wherever they may be; and

(c) for all persons in the Service of Azad Jammu & Kashmir, wherever they may be.

(2) The Assembly shall have exclusive power to make laws on any matter not enumerated in Part-A of the Third Schedule.

(3) The Government of Pakistan shall have exclusive power to make laws with respect to any matter enumerated in 'Part-A' of the Third Schedule.

(4) The Assembly shall, with the consent of Government of Pakistan, make laws with respect to any matters enumerated in "Part-B" of the Third Schedule.

(5) All taxes including the income tax shall be levied for the purposes of the territories of Azad Jammu & Kashmir by or under the authority of an act of the Assembly.

(6) No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah and all existing laws shall be brought in conformity with the Holy Quran and Sunnah.

Explanation.- In the application of this sub-Article to the personal law of any Muslim sect, the expression "Quran and *Sunnah*" shall mean the Quran and Sunnah as interpreted by that sect."

At the outset, it is in the fitness of things to sum up the proposition qua maintainability of the petition against the Post Office Authorities in view of the roadmap envisaged in the Constitution.

It is abundantly clear from Article 19 (1) of the Constitution that Executive Authority of the Government shall extend to the matter with respect to which the Assembly has power to make laws including Part-B of Third Schedule and shall be so exercised. While in juxta-position under Article 31(3), the Government of Pakistan shall have exclusive powers to make laws with respect to any matter enumerated in Part-A of Third Schedule, viz a viz in item No.5 of the Third Schedule of Part-A,

Post Office is including in the matter coming under legislative ambit of the Government of Pakistan.

Now coming back to the scheme of Article 44 of the Interim Constitution, 1974, which confers the power to this Court quo issuance of writ, original diction of the Article 44 seems proper to be reproduced as infra:-

44. Jurisdiction of High Court.-(1) The High Court shall have such jurisdiction as is conferred on it by the Constitution or by any other law.

(2) Subject to the Constitution, the High Court, [may] if it is satisfied that no other adequate remedy is provided by law,-

(a) on the application of any aggrieved party, make an order,-

(i) directing a person performing functions in connection with the affairs of Azad Jammu & Kashmir or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do; or

(ii) declaring that any act done or proceedings taken by a person performing functions in connection with the affairs of the State or a local authority has been done or taken without lawful authority, and is of no legal effect; or

(b) on the application of any person, make an order,-

(i) directing that a person in custody in Azad Jammu & Kashmir be brought before the High Court so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(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; or

(c) on the application of any aggrieved person, make an order giving such directions to the person

or authority, including the Council and the Government, exercising any power or performing any function in, or in relation to, Azad Jammu & Kashmir as may be appropriate for the enforcement of any of the fundamental rights conferred by the Constitution.

(3) An order shall not be made under sub-Article (2) of this Article on application made by or in relation to a person in the Defence Service in respect of his terms and conditions of service, in respect of any matter arising out of his service or in respect of any action in relation to him as a member of the Defence Services.

(4) where,-

(a) application is made to the High Court for an order under clause (a) or clause (c) of sub Article (2); and

(b) the Court has reason to believe that the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or otherwise being harmful to the public interest, the Court shall not make an interim order unless the Advocate General has been given notice of the application and the Court, after the Advocate General or any officer authorized by him in this behalf has been given an opportunity of being heard, is satisfied that the making of the interim order would not have the effect referred to in clause (b) of this sub-Article.

(5) In this Article, unless the context otherwise requires, 'person' includes anybody politic or corporate, any authority of or under control of the Council or the Government and any court or tribunal other than the Supreme Court of Azad Jammu & Kashmir, the High Court or a Court or Tribunal established under a law relating to the Defence Services.

44-A. Rules of procedure.- Subject to the Constitution and law, the High Court may, in consultation with the Government, make rules regulating the practice and procedure of the Court or of any Court subordinate to it.

44-B. Decision of High Court binding on subordinate Court.- Subject to Article 42-B, any decision of the High Court shall, to the extent that it decides a

question of law or is based upon or enunciates a principle of law, be binding on all courts subordinate to it.

44-C. Seat of the High Court.- (1) The permanent seat of the High Court shall be at Muzaffarabad.

(2) The High Court may, from time to time, sit at such other places as the Chief Justice of the High Court, with the approval of the President, may appoint.”

Survey of the abovementioned commanding Article 44 of Interim Constitution, reveals that direction can only be given by this Court to a person who is performing functions in connections with the affairs of Azad Jammu & Kashmir or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do.

Thus, we have no hesitation in holding that the above test is not satisfied quo maintainability of the instant writ constitutional petition and we are persuaded to hold that the answering respondents (Post Office Authority) against which the relief is claimed is not performing its functions in connection with the affairs of Azad Jammu & Kashmir. The Hon’ble Supreme Court while dealing with the similar proposition in the case titled “Raja Muhammad Arif Khan and other vs. Regional HR Chief NBP and 3 others” reported as **2014 SCR 564**, held that:-

“It is considered view of this Court that National Bank of Pakistan is not performing the functions in connection with the affairs of the Azad Jammu & Kashmir. Under section 44(2) of the Interim Constitution Act, 1974 the

High Court has power to issue a writ on the application of any aggrieved party by directing a person performing functions in connection with the affairs of Azad Jammu & Kashmir or local authority to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do or declare that any act done or proceedings taken by a person performing functions in connection with the affairs of the State or a local authority has been done or taken without lawful authority and is of no legal effect. The appellants by filing writ petition against the respondents sought a direction for writing off the House Building Advance/allowances and refund of the amount of house building advance, illegally deducted in installments by the Bank after the earthquake of 2005. As discussed above, the National Bank of Pakistan is not performing the functions in connection with the affairs of Azad Jammu & Kashmir Government or State, therefore the writ petition was not maintainable.”

The same view has been reiterated by resolving the identical propositions in the case titled “Commissioner Income Tax Muzaffarabad Vs. Altaf Ahmed Mir” reported as [PLD 2002 SC AJ&K 101]; and United Bank Ltd. Employees Union through its President and General Secretary Muzaffarabad and 4 others vs. United Bank Ltd. through its President etc. [PLJ 2000 SC (AJK) 181].

Crux of the ratio and rationale above case law and roadmap indicated by the AJ&K Interim Constitution, 1974 it transpires that the Post Office authorities are neither acting in connection with the affairs of the State of Azad Jammu &

Kashmir nor same are the authorities under the control of Azad Jammu & Kashmir Government or the Council, therefore, no writ can be issued against the establishment/management of the Post Office.

The petitioners have opted/selected a wrong forum for redressal of their grievance. As per doctrine of selection of forum no litigant can be compelled quo selection of fora, however, the petitioners are at liberty to seek redressal of their grievance before the competent forum, if so advised keeping in view codal scheme of law of limitation.

Nub of above discussion is that the writ petition in hand is not maintainable, hence, stands dismissed in limine under the doctrine of limine control.

Muzaffarabad,
12.11.2022.^{AR}

**-Sd-
JUDGE**

**-Sd-
JUDGE**

Approved for reporting.