

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.2471/2021.
Date of Institution 20.07.2021.
Date of Decision 19.01.2022.

Javaid Anwar Abbasi Assistant Engineer
Public Works Department Highways Sub
Division Dhirkot Tehsil Dhirkot District Bagh,
Azad Jammu and Kashmir.

Petitioner

VERSUS

1. Azad Government of the State of Jammu and Kashmir, through Chief Secretary, Azad Government of the State of Jammu & Kashmir, having his office at New secretariat Muzaffarabad;
2. Secretary Communication & Works Department Azad Government of the State of Jammu & Kashmir, having his office at New secretariat Muzaffarabad;
3. Chief Engineer Public Works Department Highways(north) having his office at New District Complex Muzaffarabad;
4. Superintending Engineer (SE) Highways Circle Rawalakot, having his office at New District Headquarter Rawalakot;
5. Superintending Engineer Public Works Department Highways Circle Kotli, Azad Jammu and Kashmir;
6. Accountant General of Azad Jammu and Kashmir, having his office at Sathra Hills Muzaffarabad.

Respondents

**WRIT PETITION UNDER ARTICLE 44 OF
AJ&K INTERIM CONSTITUTION 1974**

Before:- Justice Sardar Muhammad Ejaz Khan. J.

PRESENT:

Nemo for the petitioner.

Legal Advisor Public Works Department.

JUDGMENT:

Through this writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, following relief has been sought by the petitioner:-

“In view of the above, it is therefore, very humbly prayed that by accepting the writ petition on behalf of the petitioners kindly an appropriate writ may be issued against the respondents as under:-

(i) That the inquiry report dated 15.06.2021 through which the petitioner was held responsible for delivering the judgment of Additional District Judge Dhirkot, dated 27.03.2018 against the Department by declaring the same as null and void, against the facts, record and may be aside to the extent of petitioner in the interest of justice.

(ii). That the notification dated 14.07.2021, whereby the petitioner herein has been suspended in the garb of false and fabricated allegation same

has been issued without perusing the facts and record without law backing, capricious, by declaring the same null and void and may be set aside for the safe administration of justice to the extent of the petitioner.

(iii) That the order dated 14.07.2021 through which the proceeding initiate under Efficiency and Disciplinary Rules, 1977 against the petitioner as well as initiated inquiry against the petitioner in the garb of false and fabricated allegations, without following the prescribe procedure of law and rules and same may also be set aside to the extent of petitioner.

(iv). Any other relief which deemed to be fit may also be granted in favour of petitioner.”

2. Precise facts as per version of the petitioner of the instant case are that the petitioner is First Class state subject of Azad Jammu and Kashmir and hails from District Muzaffarabad, presently serving as Assistant Engineer Public Works Department at Sub Division Dhirkot District Bagh. It has been further stated that a reference-application titled

Muhammad Amin Khan & others Vs. Azad Govt. and others has been filed for the enhancement of compensation amount pertaining to the construction of bypass road Dhirkot before the learned Referee Court/Additional District Judge, Dhirkot, on 09.10.2012. It has been stated that the petitioner has neither been arrayed as party nor has any interest in the reference application. It has been stated that the said reference-application was accepted by the concerned Court vide its judgment and decree dated 27.03.2018, while the concerned quarter did not file appeal against the said judgment and when the Collector Land Acquisition Dhirkot sent a copy of the decree to Executive Engineer (X-EN) Highways Division on 10.03.2020 for execution of the same and later on during the execution proceedings of the said decree, the concerned Court initiated the proceedings against the department by seizing the Govt. vehicle No.833 then respondent No.3 appointed respondent No.2 as Inquiry Officer to probe the matter vide its letter dated 24.03.2021.

It has been alleged that Inquiry Officer, respondent No.2, herein, by misusing powers made responsible the petitioner along-with other employees of the department in its report dated 15.06.2021 upon which respondent No. 2 in light of said so-called inquiry report suspended the petitioner along-with other employees and ordered to have appointed Inquiry Officer to proceed further under the Civil Servants (Efficiency and Disciplinary) Rules 1977 and sent the inquiry report within 60 days. Feeling aggrieved, from the above mentioned proceedings so-called proceedings, the petitioner filed the instant writ petition for redressal of his grievance.

3. On pre-admission notices, the respondents were summoned to file parawise comments vide order dated 26.07.2021 and the needful was done by respondents No.2 to 5 accordingly wherein they categorically refuted the stance of the petitioner on the ground that petitioner filed the instant writ petition with *mala-fide* intention whereas through the impugned

notification and order dated 14.07.2021 disciplinary proceedings under Civil Servants (Efficiency and Discipline) Rules, 1977 have been initiated, therefore, the petitioner will be provided a fair opportunity to prove his innocence before the Inquiry Officer, hence, it has been prayed that the writ petition having no legal backing may be dismissed in *limine*.

4. The case is fixed for preliminary arguments but despite repeated calls nobody appeared on behalf of the petitioner and learned legal advisor humbly submitted that the case is an of urgent nature, therefore, the same may be decided on the basis of available record.

5. I have perused the assertions made by the petitioner in writ petition and gone through record with my utmost care.

6. The stance of the petitioner is that he is performing his duties as Assistant Engineer in Public Works Department Highways since long and now his present assignment is as

Assistant Engineer Public Works Department at Dhirkot. It has been stated that a reference-application titled *Muhammad Amin and others Vs. Azad Govt. and others* was filed for enhancement of compensation amount before Referee Court/Additional District Judge, Dhirkot in which he was neither party nor responsible to defend the reference on behalf of the Department and thereafter the same was decided against the Department through which the compensation amount was enhanced from Rs.3,50,000/- per Kanal besides C.A.C to Rs.8,00,000/- per Kanal along with 15% C.A.C vide judgment & decree dated 27.03.2018 against which no appeal was filed by the department within time for which the petitioner was wrongly determined as responsible and on account of which, Inquiry Officer, Superintending Engineer Public Works Department Circle Poonch, Rawalakot, was

appointed Inquiry Officer who submitted the preliminary report to Chief Engineer Public Works Department Highways (North), Muzaffarabad, and wrongly determined the petitioner as responsible, hence, in consequence of the said inquiry, the impugned order annexure "PD" and notification dated 14.07.2021 may be *set-aside*.

7. The point is as to whether disciplinary proceedings, which were ordered against the petitioner on the basis of preliminary inquiry report dated 15.06.2021 (*annexure "PB"*) under Civil Servants (Efficiency and Discipline) Rules, 1977 through the impugned notification dated 14.07.2021 (*annexure "PC"*) and order annexure "PD" can be stopped in writ jurisdiction or not? It is relevant to mention here that the points, which were brought before the Court can only be determined after thorough probe of the matter and the

discussion, on those points, without recording evidence is just to pre-empt the jurisdiction of competent authority. As authorized officer has ordered to have appointed Inquiry Officer in pursuance of notification dated 14.07.2021 and the petitioner was charge-sheeted where the petitioner has an alternate and efficacious remedy to put his grievance before the Inquiry Officer.

8. It is settled proposition of law that the Government is entitled to constitute inquiry committee or Inquiry Officer to remove anomalies and it is an administrative matter falling within the exclusive domain and policy decision of the Government or competent authority. Creating obstacle in such like matters, by this Court, in exercise of Constitutional jurisdiction is not warranted by law and for this Court it is not appropriate by means of writ to strike it down. The Inquiry

Officer has been appointed just to dig out truth on the surface and the responsible persons who remained negligent and casual in filing of appeal within the prescribed period of limitation against the judgment & decree of the learned Referee Court dated 27.03.2018 may be identified. At this stage the Inquiry Officer has no powers to pass final order, except to send the recommendations collected during the inquiry to the competent authority. Creating obstacle by this Court in administrative matters would be an abuse of the process of the Court and will create hindrances, hence, it cannot be said at this juncture that the impugned notification dated 14.07.2021 and order *annexure "PD"* have been issued with *mala-fide* intention. My this view finds support from a case titled *Azad Govt. & 04 others vs. Arshad Khan & 03 others* [2019 SCR 226] wherein it has been observed as under:-

“We are of the view that in presence of the notification dated 21.12.2012, it is difficult to proceed against the accused civil servants. Besides above, the notification sought to be quashed was issued after proper appreciation of law and the High Court has no jurisdiction to give findings on the inquiry report regarding which the authority has prerogative to take a proper decision. In this perspective of the matter, the learned High Court has shifted the proceedings pending before the competent authority before it while pre-empting the jurisdiction of the competent authority which is illegal.”

Similar proposition has been resolved in a case titled *Syed Khalid Mehmood Bukhari Vs. G.M. (HRO) PTCL and others* [2012 PLC (C.S.) 1366 wherein it has been held that:-

“Interference in the interlocutory orders such as charge-sheet/show-cause notice and putting an end to them at its inception, unless same is shown to be without jurisdiction, would amount to stifling of disciplinary proceedings. In view of above, this is not the stage at which this Court should entertain the petitions filed by the delinquent employee challenging and for quashing the show cause notice and appropriate course for the petitioner to adopt is to file his

reply to the impugned show-cause notice and invite the decision of the disciplinary authority thereon. Prior to that stage, any petition for quashing the charge sheet or show cause notice is premature.”

Reliance can also be placed on a case titled *Muhammad Rauf Patwari Vs. District Collector/DCO, Toba Tek Singh and 6 others* [2014 PLC (C.S.) 386] by which it has been observed as under:-

“After hearing the arguments which have been advanced at the limine stage and going through the documents which have been appended with this petition it is clear that no final order has been passed against the petitioner. On receipt of a complaint, respondent No.2 being the competent authority under Punjab Employees Efficiency, Discipline and Accountability Act, 2006 appointed General Assistant (Revenue), Toba Tek Singh as an Inquiry Officer and directed the petitioner to file his reply. Without waiting for the result of the inquiry, the petitioner has filed the instant petition.

In the instant case, a notice has been issued to the petitioner

indicating therein an inquiry is being initiated against him wherein he has also been directed to file a reply. It is thus clear that only a reply has been sought from the petitioner and no final order has been passed.”

9. The logical inference of the forgoing reasons is that the petitioner has failed to make out his case for admission, therefore, the instant writ petition, having no statutory backing, stands dismissed in *limine*.

Muzaffarabad.
19.01.2022(ZEB)

-Sd-
JUDGE

Approved for reporting

-Sd-
JUDGE