

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No.1607/2022
Date of Insti. 18.04.2022
Date of Decision 11.11.2022

Mir Altaf Hussain Advocate High Court of Azad Jammu & Kashmir Member Central Bar Association Old Secretariat Muzaffarabad.

Petitioner

VERSUS

1. Azad Govt. of the State of Azad Jammu & Kashmir through its Chief Secretary having office at New Secretariat Muzaffarabad Azad Jammu & Kashmir;
2. Chairman Azad Jammu & Kashmir Council through Secretary Azad Jammu & Kashmir Council, having office at Azad Jammu & Kashmir Council Secretariat Sector F-5/2, Islamabad;
3. Azad Jammu & Kashmir Council through its Secretary having office at Azad Jammu & Kashmir Council Secretariat, Sector F-5/2, Islamabad;
4. Secretary Azad Jammu & Kashmir Council Secretariat, having office at Azad Jammu & Kashmir Council Secretariat Sector F-5/2, Islamabad;
5. Joint Secretary Azad Jammu & Kashmir Council Secretariat, having office at Azad Jammu & Kashmir Council Secretariat, Sector F-5/2, Islamabad;
6. Minister for Kashmir Affairs & Gilgit-Baltistan, Red Zone, Islamabad;
7. President of Azad Jammu & Kashmir through Secretary to President, having office at President Secretariat, Muzaffarabad;
8. Department of Law, Justice, Parliamentary Affairs and Human Rights through its Secretary, having office at Lower Chatter Muzaffarabad;
9. Secretary Law, Justice, Parliamentary Affairs and Parliamentary Rights, having office at New Secretariat Complex, Muzaffarabad;
10. Registrar High Court/Shariat Appellate Bench of Azad Jammu & Kashmir High Court having his office at High Court Building Muzaffarabad AJ&K;
11. Registrar Supreme Court/Shariat Appellate Bench of Azad Jammu & Kashmir Supreme Court having his office at Supreme Court Building Muzaffarabad AJ&K;

12. Mr. Muhammad Ejaz Khan, Judge of High Court but *illegally appointed under Notification Number LD/AD/ 66-85/2022 dated 07th of January, 2022;*
13. Syed Shahid Bahar, Judge of High Court but *illegally appointed under Notification Number LD/AD/ 66-85/2022 dated 07th of January, 2022;*
14. Chaudhry Khalid Rasheed, Judge of High Court but *illegally appointed under Notification Number LD/AD/ 66-85/2022 dated 07th of January, 2022;*
15. Mr. Muhammad Habib Zia, Judge of High Court but *illegally appointed under Notification Number LD/AD/ 66-85/2022 dated 07th of January, 2022;*
16. Sardar Liaqat Hussain, Judge of High Court but *illegally appointed under Notification Number LD/AD/ 66-85/2022 dated 07th of January, 2022;*
17. Mian Arif Hussain, Judge of High Court but *illegally appointed under Notification Number LD/AD/ 66-85/2022 dated 07th of January, 2022;*
18. Accountant General of Azad Jammu & Kashmir Sathra Hills Muzaffarabad.

Real Respondents

19. Azad Jammu & Kashmir Bar Council through its Vice Chairman having his office at Old Kacheri Muzaffarabad;
20. Supreme Court Bar, through its President Supreme Court Bar having his office at Supreme Court Building Muzaffarabad;
21. High Court Bar, through its President having his office at High Court Muzaffarabad;
22. Central Bar Association Old Secretariat Muzaffarabad.

Proforma Respondents

2. Writ petition No.1952/2022
Date of Insti. 16.05.2022

Sardar Javaid Sharif, Advocate High Court (President District Bar Association, Rawalakot).

Petitioner

VERSUS

1. Govt. of Azad Jammu & Kashmir through its Chief Secretary having office at Lower Chatter Muzaffarabad;

2. Chairman Azad Jammu & Kashmir Council through Secretary Azad Jammu & Kashmir Council, having office at Azad Jammu & Kashmir Council Secretariat Sector F-5/2, Islamabad;
3. Azad Jammu & Kashmir Council through its Secretary having office at Azad Jammu & Kashmir Council Secretariat, Sector F-5/2, Islamabad;
4. Secretary Azad Jammu & Kashmir Council Secretariat, having office at Azad Jammu & Kashmir Council Secretariat Sector F-5/2, Islamabad;
5. Joint Secretary Azad Jammu & Kashmir Council Secretariat, having office at Azad Jammu & Kashmir Council Secretariat, Sector F-5/2, Islamabad;
6. Minister for Kashmir Affairs & Gilgit-Baltistan, Red Zone, Islamabad;
7. President of Azad Jammu & Kashmir through Secretary to President, having office at President Secretariat, Muzaffarabad;
8. Department of Law, Justice, Parliamentary Affairs and Human Rights through its Secretary, having office at Lower Chatter Muzaffarabad;
9. Secretary Law, Justice, Parliamentary Affairs and Parliamentary Rights, having office at New Secretariat Complex, Muzaffarabad;
10. Registrar Azad Jammu & Kashmir High Court having his office at High Court Building Muzaffarabad Azad Jammu & Kashmir;
11. Registrar Azad Jammu & Kashmir Supreme Court having his office at Supreme Court Building Muzaffarabad Azad Jammu & Kashmir;
12. Mr. Muhammad Ejaz Khan, Judge of High Court (under the impugned Notification), High Court, Muzaffarabad;
13. Syed Shahid Bahar, Judge of High Court (under the impugned Notification), High Court, Muzaffarabad;
14. Chaudhry Khalid Rasheed, Judge of High Court (under the impugned Notification), High Court, Muzaffarabad;
15. Mr. Muhammad Habib Zia, Judge of High Court (under the impugned Notification), High Court, Muzaffarabad;
16. Sardar Liaqat Hussain, Judge of High Court (under the impugned Notification), High Court, Muzaffarabad;
17. Mian Arif Hussain, Judge of High Court (under the impugned Notification), High Court, Muzaffarabad.

Respondents

WRIT PETITIONS

BEFORE: Justice Sadaqat Hussain Raja, C.J.

PRESENT:

Mir Altaf Hussain, Advocate/petitioner in person in Writ Petition No.1607/22.

Nemo for the petitioner in Writ Petition No.1952/22.

Nemo for the respondents.

JUDGMENT

Through this single judgment, I propose to dispose of Writ Petition No.1607/22 as well as connected Writ Petition No.1952/22 as common question of law and facts are involved.

2. Both the writ petitions in the nature of quo-warranto have been filed by the petitioners being Advocates of High Court of Azad Jammu & Kashmir against Judges of this Court.

3. The following relief has been claimed by the petitioner in Writ Petition No.1607/22:-

“It is, therefore, very humbly prayed on behalf of the petitioner 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 respondents are holding the public office as Judges of the Hon’ble High Court;

(ii) It is, further prayed that the Notification Number LD/AD/66-85/2022 dated 07th of January of 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.”

4. While in Writ Petition No.1952/22, following relief is implored by the petitioner:-

“Therefore, it is most respectfully prayed that this writ petition may graciously be accepted and;

i. the advice of respondent No.2 and Notification No.LD/AD/66-85/2022 dated 07.01.2022

issued on the basis of illegal advice, kindly be declared, being issued in violation of the mandatory provisions of the Constitution, hence, the same is void, ineffective and of no legal effect. Consequently, the posts be declared vacant and;

- ii. the respondents No. 12-17 may kindly be asked under what authority of law they are holding the offices of Judge High Court and;
- iii. the respondent No.2 kindly be directed to take necessary steps and issue advice according to the mandatory Constitutional consultation after due process of law;
- iv. Any other relief which this Hon'ble Court deems appropriate may also be awarded."

5. In both the writ petitions, the appointments of Judges of this Court have been called in question and being a participant of the process of appointments of Judges, previously I refused to hear these writ petitions vide orders dated 18.04.2022 and 16.05.2022. These orders have been assailed before the Apex Court of Azad Jammu & Kashmir and the Apex Court accepted the appeals vide judgment dated 07.10.2022, whereby direction was issued for disposal of the writ petitions by me. It will be advantageous to reproduce relevant paragraph of the judgment of the Apex Court as under:-

"8. In our opinion, the case in hand is at better footing for the reason that the learned Chief Justice of the High Court has no personal benefit or conflict of interest, even otherwise, he is under oath and supposed to decide the cases according to law and the Constitution, therefore, we have no hesitation to hold that the Hon'ble Chief Justice is not debarred to hear the cases.

For the foregoing reasons, while accepting the appeals, the impugned orders dated 18.04.2022 and 16.05.2022 passed by the High Court are set

aside with a direction to the learned Chief Justice of the High Court to hear the writ petitions and decide the same in accordance with law.”

6. In compliance of order of the Apex Court dated 07.10.2022, notices were issued to the petitioners for personal appearance, which were duly served upon the petitioners. In Writ Petition No.1607/22, the petitioner along with counsel appeared before the Court, whereas no one appeared in Writ Petition No.1952/22, which shows lack of interest on behalf of the petitioner in the aforesaid writ petition.

7. In the light of contents of the writ petitions, the following points are formulated for disposal of the writ petitions:-

1. Whether the writ petitions are maintainable in present form?
2. Whether the consultation has been made properly and procedurally according to the Constitution and pronouncement of Superior Courts?
3. Whether the President is bound to seek a panel of three or more nominees against one vacant post from the judicial of consultees?

8. Before dilating upon the merits of the case, it is more apt to resolve the question of maintainability of writ petitions. It is appropriate to mention here that Writ Petition No.1952/22 was drafted against the norms of pleadings and in contemptuous manner. In Writ Petition No.1607/22, the Judges of this Court are declared “*illegal*” by the petitioner

himself before decision of this Court, whereas in connected writ petition, contemptuous wording has also been used, hence, both the writ petitions are not maintainable in the light of dictum laid down by the Hon'ble Supreme Court reported as [2020 SCR 676]. The relevant portion of the aforesaid judgment is reproduced as under:-

“10. Undisputedly, in the light of principle of law laid down in the above referred judgments, while exercising the right of freedom and expression, which also includes the pleadings, and objectionable, scandalous and contemptuous language is not permissible and the same falls within the sphere of contempt of Court. In this regard, this Court has already held in the case reported as “*Robkar-e-Adalat Vs. Sardar Khalid Ibrahim* [2019 SCR 17].”

9. The 2nd question which requires deliberation is as to whether the President is bound to seek penal of three or more nominees against one vacant post? This point came under consideration before this Court in a case titled as “*Barrister Adnan Nawaz Khan Vs. Govt. of Azad Jammu & Kashmir and 11 others*” in *Writ Petition 1954/22* decided on **16.06.2022** reported as [*PLD 2022 High Court AJ&K 33*], where it was held that the law does not provide that the judicial consultees shall recommend at least three candidates for each post. Opinion of the Hon'ble Chief Justice of Azad Jammu & Kashmir and Chief Justice of High Court of Azad Jammu & Kashmir as to the fitness and suitability of a candidate for judgeship is entitled to be accepted in absence of

very strong reasons to be recorded by the President. Even under Article 175-A of Constitution of Islamic Republic of Pakistan provided in Article 175-A (8) that the judicial commission is provided for one candidate for one vacancy. The record also shows that against the judgment of this Court, the appellants Leave to Appeal before the Apex Court of Azad Jammu & Kashmir, which was refused, hence, the contention of the petitioner is hereby repelled.

10. The last question which needs resolution is that whether the consultation has been made properly or not? The aforesaid writ petitions have been filed in nature of quo-warranto. There is no bar or restriction on filing of such petition. Any person can file a writ petition of quo-warranto where any fundamental right is being infringed. The application should be bona fide and should not be made for sake of certain hidden benefits. Bona fide is a basic requirement for filing a writ of quo-warranto. The petitioners claimed to be the **CHAMPIONS** of the Rule of law and claimed that writ petitions were filed for independence of judiciary and Rule of law with bona fide intention. The petitioners were summoned and it has already been mentioned that no one appeared in Writ Petition No.1952/22, whereas in Writ Petition No.1607/22, the petitioner appeared in person before the Court. To test the bona fide of the petitioner, it was

asked by the Court that under what law the appointments of the Judges of this Court are made? It was very astonishing and shocking for me that the petitioner is an Advocate of High Court and has challenged the appointments of all the Judges of this Court was unaware of the relevant law. The petitioner replied in the open Court that the Judges of the High Court are appointed according to the policy of the Supreme Court. It is sufficient to prove that the petitioner is not real petitioner and the petition was filed on instigation of his counsel or some others behind the scene and it was a serious attempt to dispute the integrity and dignity of the Court. Being petitioner, an Advocate should be well aware of what law has been violated.

11. By conduct of the petitioners, it appears that the petitioners have no relevancy with the cases in hand and they are proxy litigants. It is a settled principle of law that no one can file writ petition on behalf of third party. In other words proxy litigation is not allowed as held in a case titled ***“Raja Tahir Majeed Khan and 7 others Vs. Azad Govt. and 06 others” [2014 SCR 272]***, wherein it has been held as under:-

“7. So far as the question of petitioner’s locus standi is concerned, although this point has been raised in pleadings and argued but the High Court has not recorded any specific finding in this regard. Be that as it may, however, only an aggrieved person can be heard by this Court. In the present case, the head of the department, Chief Conservator Forest and the Additional Secretary of the Forests Department appeared before the Court. Their statements have been recorded. They have categorically stated that no

action has been proposed or initiated on the part of the department in the matter in issue. In presence of well organized and fully functional department, no outsider or Stranger has got locus standi to approach the Courts for protection of the department's interests. No doubt there is concept of probono publico litigation but the law does not recognize proxy litigation. The High Court while dealing with the question of aggrieved person for the purpose of filing of writ petition in the case reported as “Jammu and Kashmir Council for Human Rights through Secretary, Rawalpindi & another Vs. Secretary Azad Jammu & Kashmir Legislative Assembly Muzaffarabad and 4 others” 1994 CLC 1108], has observed as under:-

“5...Therefore, when a party who was actually aggrieved in the eye of law, has not come forward to invoke the jurisdiction of this Court, prima-facie, it appears unwarranted to allow the relief on the petition of a person who has got remote academic interest in the matter.”

(Underlining is mine)

12. An identical view has been taken by the Hon'ble apex Court in a case reported as “**Javed Ibrahim Paracha Vs. Federation of Pakistan and others**” [PLJ 2004 SC 824], wherein it has been held as under:-

“No doubt with the development of new concept of public interest litigation in the recent years, a person can invoke the constitutional jurisdiction of the Superior Courts as probono publico but while exercising this jurisdiction, he has to show that he is litigating, firstly in the public interest and secondly, for the public good or for the welfare of the general public.”

13. The same principle has been laid down in the cases titled “**Col. (Retd.) Muhammad Akram Vs. Federation of Pakistan through Secretary, Ministry of Defence and**

others [1998 SCMR 2073] and Ghiasul Haq and others Vs. Azad Government of the State of Jammu & Kashmir etc. [PLD 1980 SC AJ&K 5].

14. In this view of the matter, random approach in guise of Rule of law particularly as a proxy march merely built upon edifice of intellectual kite-flying has repeatedly been discarded by the Superior Courts. In this regard, a precedent is noteworthy to refer the case of “*Muhammad Hanif Abbasi Vs. Jahangir Khan Tareen and others*” reported as [PLD 2018 SC 114] as under:-

“Remedy of quo-warranto should not be allowed to be a tool in the hands of the petitioner, who approach the Court with mala-fide intentions and either had their own personal grudges and scores to settle with the holder of a public office or are a proxy for someone else who has a similar object or motive.”

15. The appointments of the Judges of this Court have been assailed on the ground that proper procedure has not been adopted by the appointing authority according to the procedure as provided by the Constitution and pronouncements of the Superior Courts. As already it has been mentioned that I have been a participant of the proceeding for appointments of Judges of this Court, hence, all the proceedings are in my judicial notice. I also examined the record to refresh my memory at the time of dictating judgment. It is sufficient to mention here that proper

procedure has been adopted by the President of Azad Jammu & Kashmir and no law or provision of Constitution has been violated while making impugned appointments. The writ petitions are based totally on the information of social media and no record has been appended with the writ petitions to strengthen the claim of the petitioners.

16. At present, there is a marked difference between mode of appointments of Judges in Supreme Courts in Pakistan and Azad Jammu & Kashmir, as in Pakistan, by way of bringing certain amendments in its Constitution entire procedure and limbs of consultation have stood modified by assigning the powers to the Judicial Commission while in juxtaposition, Azad Jammu & Kashmir scheme of Constitution is totally different and appointments in the High Court are to be made by the President of Azad Jammu & Kashmir on the advice of Chairman Azad Jammu & Kashmir Council after consultation with the Chief Justice of Azad Jammu & Kashmir and Chief Justice of Azad Jammu & Kashmir High Court. The basic question in both the writ petitions is whether there is any flaw, loophole or for that matter dent in the process of appointment or in consultation? The answer is very simple. The process for appointment of the Judges in the High Court (impugned herein) is completely in accordance with the Constitution, purposive, meaningful and

consensus oriented consultation (leaving no room for complaint of arbitrariness or unfair play) has been carried out and adhered to which is clearly evident from the record and any argument against the official record without cogent proof based upon hypothesis cannot be entertained. Numbers of meetings of both judicial consultees with the President of Azad Jammu & Kashmir were held simultaneously to make the consultation process more objective, purposive, meaningful and consensus oriented consultation and finally the consensus nominees by both the judicial consultees were forwarded by the President of Azad Jammu & Kashmir to the Chairman Azad Jammu & Kashmir Council for issuance of advise as stipulated by the relevant provision of the Constitution. Thus, it can safely be held that process of appointment of Judges in the High Court (impugned herein) is transparent, outcome of full consultation of both the Judicial consultees and with endorsement/advice of the competent authority i.e Chairman AJ&K Council which cannot be called in question on the basis of mere apprehensions, mala fide or for that matter by attributing bald allegations in this regard, leaving aside the other aspects of the case. Hence, the stance of the petitioners is also liable to be discarded on merits.

17. With heavily heart, it is mentioned that the conduct of the petitioner in both the writ petitions is highly

objectionable based on mala fide, therefore, to discourage such type of legal proceedings, Writ Petition No.1607/22 is dismissed with a cost of Rs.1,00,000/- payable by each i.e the petitioner and his counsel. They are directed to deposit the said amount in the account of AJ&K Bar Council Lawyers Foundation within a period of 07 days and to submit the receipt to the Registrar of this Court. In case of non-compliance, the practice of the defaulter shall remain suspended till implementation of this order.

18. The petitioner in other Writ Petition No1952/22, showed lack of interest and did not come forward to press his writ petition, hence, lenient view is adopted and he is warned to be careful in future.

The net consequence of the above detailed discussion is that finding no force in the instant writ petitions, therefore, the same stand dismissed in limine.

Muzaffarabad,
11.11.2022

-Sd-
CHIEF JUSTICE

Note:- Judgment is written and duly signed. The office is directed to intimate the parties or their counsel through notices.

-Sd-
CHIEF JUSTICE