

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ petition No.506/2020;
Date of institution 17.03.2020;
Date of hearing. 16.02.2024;
Date of decision. 23.02.2024.

Muhammad Idrees Khan, Assistant B-16 (On Officiating Basis) in the office of Mohtasib (Ombudsman) Azad Jammu & Kashmir, Muzaffarabad.

....Petitioner

VERSUS

1. Mohtasib (Ombudsman) Azad Jammu & Kashmir through its Secretary, Muzaffarabad;
2. Honourable President of Azad Jammu & Kashmir through Secretary Presidential Affairs Azad Jammu & Kashmir, Muzaffarabad;
3. Muhammad Mubarik Director Research (ii) Mohtasib (Ombudsman) Secretariat (Inquiry Officer) Azad Jammu & Kashmir, Muzaffarabad;
4. Secretary Ombudsman Secretariat Azad Jammu & Kashmir, Muzaffarabad;
5. Accountant General of Azad Jammu & Kashmir, Muzaffarabad.

..... Respondents

WRIT PETITION

Before:- Justice Chaudhary Khalid Rasheed, J.

PRESENT:

Sardar Abdul Sami Khan, Advocate for the petitioner.
Mr. Haider Rasheed Mughal, AAG for the respondents.

JUDGMENT:

The captioned writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby impugned inquiry report dated 28.06.2019,

impugned order dated 29.07.2019 and partly impugned order dated 04.03.2020 to the extent of imposing penalty for halting promotion for three years period alongwith impugned order passed in review petition dated 23.04.2020 have been assailed.

The learned counsel for the petitioner reiterated the facts and grounds already taken in the writ petition by submitted that no misconduct has been substantiated against the petitioner rather he acted in good faith sine any ill-gotten gain, thus petitioner has erroneously been convicted, so the impugned orders are not sustainable.

The learned counsel for respondents strenuously held that the allegation of facilitating the main accused against petitioner has been exhibited in a formal legal fashion, therefore, he has rightly been sentenced.

I have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

A perusal of record reveals that allegation against the accused/petitioner was that he has facilitated the main accused Khurram Riaz for submission of false applications for withdrawal of complaints filed on behalf of complainants by putting forged signatures and stamp of one Zaheer Ahmed

Lecturer Degree College Fatehpur. After inquiry, the inquiry officer opined that one Khurram Riaz Line Superintendant sub Division Nakyal Fatehpur District Kotli was guilty of filing forged applications on behalf of complainants while Muhammad Idrees petitioner herein performed the role of his facilitator by putting signatures and stamp of Zaheer Ahmed, Lecturer Political Science Government Boys Degree College Fatehpur Thakyal, however there is nothing on record to prove that petitioner has filed said applications on behalf of complainants for ill gotten gains, hence in absence of malice, it may be assumed that stance taken by the petitioner that he was handed over envelope to submit in the office of Ombudsman and he submitted the same without any unlawful gains, particularly in a situation when the said matter was already resolved. As the petitioner was handed over envelope by one Babar Bashir and petitioner submitted the same in the office of Ombudsman, thus putting signatures and stamp of Zaheer Ahmed, Lecturer by the petitioner is illogical because it is not evident from the inquiry report that how and from where petitioner has obtained the stamp of lecturer Zaheer Ahmed or whether he stamped it or not, so it may safely be considered that the signatures and stamp were put on the documents by the person who handed over the said documents

to the petitioner because benefit of every doubt has to be resolved in favour of accused and in such case conviction is not warranted. Khurram Riaz, Line Superintendant accepted in his statement that an envelope was handed over to the petitioner by him through Tahir Mehmood, Assistant Lineman, thus merely the fact that the petitioner took correspondence from Khurram Riaz Line Superintendant for submitting the same in the office of Ombudsman does not fall within the definition of misconduct. The word misconduct has been defined by Supreme Court of Pakistan in 2005 PLC (CS) para 67 and observed that the omission to do an act or not to do an act is negligence which would not constitute misconduct and every act of negligence cannot be termed as misconduct. The relevant observations recorded at page 1376 of the judgment are reproduced as under:

“Misconduct and negligence are different notions and sometime negligence may also amount to misconduct but every act of negligence cannot be treated as misconduct. It may be seen that misconduct, it is the conduct which is inconsistent with the normal rules required to be observed whereas the absence of required care and diligence in respect of the performance of duty is negligence. The omission to do an act which is a reasonable person and a prudent man would do or would not do, is negligence. The appellants in the present case, although proceeded in accordance with the law to give effect to the decree of Court but lack of proper care and vigilance on their part to bring the matter to the

notice of concerned Authorities, was an omission as a result of which loss could be caused to the Government, thus, it was an act of negligence which would not constitute 'misconduct'."

The word misconduct can be defined as a prejudicial conduct and a person who receives a letter and submits it in the relevant office without any malice or ill will cannot be termed as a misconduct and even the same cannot be termed as negligence, thus in my considered view, the impugned sentence lacks legal efficacy.

It is also relevant to mark that in the order dated 04.03.2020, the President of the State of Jammu & Kashmir while deciding the appeal filed by the petitioner herein has observed that the allegation of mala fide and putting forged signatures and stamp has not been endorsed, thus after excluding these allegations, it cannot be held from any stretch of imagination that the petitioner has performed as a facilitator of main accused Khurram Riaz rather it may prudently be considered that he received envelope from Khurram Riaz and submitted the same in the office of Ombudsman in a good faith just to save Khurram Riaz to travel from Fatehpur to Muzaffarabad because it is a bedrock precept of justice that conviction can neither be imposed on presumption nor sine cogent and concrete evidence, hence on this ground too, the

order passed by Ombudsman/competent authority is not sustainable.

The sum and epitome of the above discussion is, the instant writ petition is hereby accepted and order dated 29.07.2019 passed by Azad Jammu & Kashmir Ombudsman Muzaffarabad is extinguished.

Muzaffarabad;
23.02.2024.

JUSTICE

Approved for reporting.

JUSTICE