

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ petition No.2874/2021.

Date of inst.09.09.2021.

Date of decision 07.03.2022.

Muhammad Tahir S/o Muhammad Sadiq R/o Tehsil Hajeer  
District Poonch Azad Jammu & Kashmir.

Petitioner

VERSUS

1. Chairman Board of Governor P.M. Azad Jammu & Kashmir.
2. Azad Govt. through Chief Secretary Muzaffarabad Azad Jammu & Kashmir.
3. Secretary Higher Education Azad Jammu & Kashmir.
4. Director Public Instruction Colleges (Male) Azad Jammu & Kashmir Muzaffarabad.
5. Manzoor Ahmed Abbasi S/o Sher Zaman Abbasi, Principal Cadet College Muzaffarabad Azad Jammu & Kashmir.

Respondents

WRIT PETITION

Before:- **Justice Syed Shahid Bahar, J.**

PRESENT:

Kh. Tariq Sammad, Advocate for the petitioner.

AAG for official respondents.

Raja Fareed Khan, Advocate for the respondent No.5.

ORDER:-

The titled writ petition has been addressed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, in the nature of quo warranto by seeking a specific relief reproduced herein below:-

*“It is, therefore, very humbly prayed that the Hon’ble Court may kindly be accepting the instant writ petition to ask from respondent No.5, under what authority he is holding the said post of Principal Cadet College Muzaffarabad and also set aside the order of respondent No.5, dated 19.02.2021.”*

BREIEF FACTS:-

As per averments made in the writ petition the petitioner challenged the appointment order of respondent

No.5, as Principal Cadet College Muzaffarabad Azad Jammu & Kashmir. As per stance of the petitioner the respondent No.5, was not eligible and qualified to be appointed against the post of Principal Cadet College, on account of crossing the upper age limit in essence; 45-56 years prescribed by the law. Therefore, his appointment as Principal Cadet College Muzaffarabad is violative law of the land and *contra jus*.

At the outset the petitioner challenged the advertisement (Annexure "A") appended with the writ petition and drawn attention of this Court towards upper age limit for applying against the post in question which is reaching over their as 45 to 56 years. Learned counsel further argued that notification of appointment of respondent No.5, dated 19.02.2021, is unlawful as the petitioner was not eligible and qualified to be appointed as such, hence, warrant of this Court is liable to issued in shape of quo warranto.

Preliminary arguments heard from both the sides and record appended with the pleadings has also been perused with care and caution.

**PETITIONER'S SUBMISSION:-**

Kh. Tariq Sammad, learned counsel for the petitioner based his stance on the ground that the respondent No.5, was over aged at the eve of his appointment as Principal Cadet College Muzaffarabad, which is reflecting from the record. Learned counsel for the petitioner on Court's query replied

and argued that in fact he was ousted from the service of Cadet College Muzaffarabad, on direction of respondent No.5 and thereafter he continuously pursued and endeavored for appointment in the Cadet College Muzaffarabad but in vain. The respondent No.5 even did not allow the petitioner to enter from the threshold of College, hence, this was the reason on account of which the petitioner could not file the instant writ petition well within time, therefore, the delay in filing writ petition is explained in this way.

**SUBMISSIONS OF RESPONDENT No.5:-**

While on the other hand the learned counsel for the respondent No.5, Raja Fareed Khan, while controverting the arguments of learned counsel for the petitioner contended that the petitioner is a retired soldier of Pak Army who rendered his services in the Cadet College Muzaffarabad on temporary basis for two years. He maintained that petitioner habitually remained absent from his duties resultant of which he was warned and asked to become punctual, this was the reason on account of which he himself quit the service and on this grievance became revengeful to the petitioner and resultantly he filed the instant writ petition. He maintained that the appointment of respondent No.5 was made by the Competent Authority in accordance with scheme of law and after obtaining relaxation in the upper age limit. He further argued that the instant writ petition is actuated with malice

and mala-fide coupled with hit by doctrine of laches. By elaborating this argument, he further contended that the petitioner was temporary employee of the College and he got ousted from the service. The respondent No.5, at the eve of appointment fulfilled all the requisite conditions including upper age limit prescribed in the advertisement that too the appointment of the petitioner was made by the Competent Authority by taking into consideration his meritorious record quo administrative affairs and teaching. The learned counsel for the respondent No.5, further argued that at the time of appointment of his client the Competent Authority has already granted sanction quo his appointment on 02.01.2021 which is reflecting from the record. Petitioner having personal grudge with the respondent No.5, has filed the instant writ petition, therefore, the same is not maintainable and is liable to be dismissed in limine.

**OFFICIAL RESPONDENTS' SUBMISSIONS:-**

Learned AAG owned the arguments of the learned counsel for respondent No.5, and craved for dismissal of writ petition as such.

**DETERMINATION BY THE COURT:-**

As adumbrated from the facts and trend of the arguments of the parties that the petitioner has not approached this Court with clean hands and it is an admitted fact on the part of petitioner that he has been ousted from the

service who got revengeful from non-petitioner No. 5 as he was not allowed by the petitioner to enter from the threshold of college, resultantly he opted to file the instant writ petition. Therefore, keeping in view this aspect of the matter, in my estimation the instant writ petition has been filed with malice, mala-fide coupled with hit by principle of laches.

At this juncture the question which emerges for consideration is whether in such like eventuality high prerogative writ of Quo Warranto can be issued in favor of the petitioner when malice/mala-fide coupled with laches are oozing from the surface of record that too trend of arguments and admission on behalf of the petitioner as well is suffice to strengthen the factum of mala-fide?

I am fortified to follow the dictum of the Hon'ble Supreme Court laid down in the reported case titled Syed Manzoor Gillani Vs. Sain Mullah, Advocate & 20 others [PLD 1993 SC AJ&K 12]. Relevant portions of the same are reproduced below:-

*"It may be observed that the principle of laches is not strictly applicable to a case of quo warranto but it is definitely a relevant consideration in case of a quo warranto if mala fides is pleaded in defence....."*

*.....it is evident in the case of quo warranto the question of laches is relevant to test the bona fides of the relator.....*

*..... It may be stated that delay in a case of quo warranto is considered as an important piece of evidence in support of plea of mala fides of the relator. It is specially so when the relator was not an aspirant to the office which he intends to get*

*vacated. It is settled principle of law that in absence of bona fides a writ of quo warranto must be refused on this sole ground.....*

*.....A writ of quo warranto in particular is not to be issued as a doctrinaire approach.....*

*....So much so that in some cases of writ of quo warranto, the Courts even insisted that relator must show the invasion of his personal right where there is a plea of mala fide, despite the fact that a writ of quo warranto may be sought even by a person who has no personal interest in the matter.....”*

Same view has been taken in the other precedents from Pakistan Jurisdiction i.e. [PLD 1969 SC 42] & [PLD 1991 Lah. 420]. I am also fortified to follow the dicta of the Hon’ble Supreme Court laid down in case titled Ahmed Nawaz Tanoli Vs. Chairman AJ&K Council and others. Reported in [2016 SCR 960], wherein it has been observed as under:-

” (ث) تاخیر۔۔۔

عرضی احراء پر وائے استفسار۔۔۔ تاخیر۔۔۔ وجہ استرداد عرضی۔۔۔ سائلان کا یہ استدلال کہ عرضی احراء پر وائے استفسار کے لیے تاخیر کوئی وجہ استرداد نہ ہے، مسلمہ قانون اور اصول وضع کردہ عدالت ہا سے مطابقت نہ رکھتا ہے۔ اعلیٰ عدالتوں کے متعدد فیصلہ جات ہیں جن کی رو سے عرضی پر وائے استفسار میں تاخیر کو زیر غور لاتے ہوئے مسترد کیا گیا جن میں سے اس مطبوعہ فیصلہ عنوانی ”محمد رفیق وغیرہ بنام محمد یونس وغیرہ“ (2005 SCMR 1229) ہے۔ اس میں صرف تاخیر کی بناء پر عرضی احراء پر وائے استفسار کو ناقابل پذیرائی قرار دیا گیا ہے۔“

As adumbrated the instant petition seems to be outcome of personal grudges. In case of Quo Warranto the question of laches is relevant to check the bona fide of the relator/petitioner and his prayed relief is liable to be filtered through the lens of bona-fide. Writ in the form of Quo Warranto cannot be issued in routine. Litmus test for issuance of writ is bona fide conduct of the person who comes

forward and challenges the occupation of some office. Thus the instant writ petition entails dismissal on the sole ground of mala-fide coupled with laches. Consequently the writ petition in hand stands dismissed having devoid of merits.

Muzaffarabad,  
03.03.2022 (MM)

-Sd-  
JUDGE

***APPROVED FOR REPORTING***

-Sd-  
JUDGE