

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No. 264/2022

Date of institution 26.08.2022

Date of decision 05.09.2022

Rashid Afraz S/o Muhammad Afraz Khan, caste Sudhan R/o
Dehra Kharick, Tehsil Rawalakot, District Poonch.

Petitioner

VERSUS

1. Azad Govt. of the State of Jammu & Kashmir through Chief Secretary Muzaffarabad having his office at New Secretariat Muzaffarabad;
2. Secretary Services and General Administration of State of Jammu & Kashmir having his office at New Secretariat Muzaffarabad;
3. Accountant General of Azad Jammu & Kashmir having his office at Chatter Muzaffarabad;
4. Sardar Amir Jameel, Chairman Pearl Development Authority Rawalakot.

Respondents

WRIT PETITION

BEFORE:- **Justice Sadaqat Hussain Raja,** **CJ.**
 Justice Sardar Muhammad Ejaz Khan, J.

PRESENT:

Ch. Amjad Ali, Advocate for the petitioner.

AAG for respondents No. 1 to 3.

Barrister Humayun Nawaz Khan, Advocate for respondent No.4.

JUDGMENT:

(Justice Sadaqat Hussain Raja, C.J) The above titled writ petition has been filed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, whereby appointment Notification of respondent No.4 dated 16.08.2022

as Chairman Pearl Development Authority Rawalakot has been challenged for having been issued without lawful authority.

It is in our judicial notice that previously, two writ petitions titled as “*Sardar Kashif Saleem & another Vs. Azad Govt. & others* and *Arshad Niazi Vs. Azad Govt. & others*” were filed before this Court. Arshad Niazi petitioner, therein, resigned from his office during the pendency of the writ petition and arguments were heard and the petitioner withdrew the writ petition before announcement of the judgment. After resignation of Arshad Niazi, respondent No.4 was appointed as Chairman Pearl Development Authority against the law and rules as alleged in the writ petition. The case was fixed for arguments. At the time of arguments, the learned counsel for respondent No.4 placed a facsimile of Notification dated 01.09.2022, wherein the impugned Notification dated 16.08.2022 has been cancelled by the competent authority. The learned counsel for respondent No.4 submitted that the instant writ petition has become infructuous. He further submitted that in Azad Jammu & Kashmir, six Development Authorities are functioning and the law regulating the appointment of Chairman Pearl Development Authority Rawalakot is quite different from other Development Authorities, hence, the official respondents are going to amend the law in accordance with the laws of other Development Authorities.

In the light of submission made by the learned counsel for respondent No.4, it deems appropriate to examine the laws regulating the appointment of Chairman/Director General of the Development Authorities in Azad Jammu & Kashmir i.e Development Authority Muzaffarabad, Development Authority Mirpur, Development Authority Kotli, Development Authority Bagh and Development Board Neelum. The learned counsel for the petitioner frankly conceded that there is anomaly in the laws and this anomaly should be removed and uniform law should be adopted as the Development Authorities/Board having common objectives and purposes. Otherwise, to avoid further litigation, we deem it appropriate to decide the case on merit.

We have carefully examined the laws, Acts, Rules and regulations of Development Authorities and it is very clear from these laws that the main objectives and purposes for creation of Development Authorities are to prepare Housing Schemes, Town Planning and development of new Towns in their respective areas. It is worthwhile to mention here that in all these cities, Municipal Corporations have already been functioning under the Local Government Act. It is also pertinent to mention here that the Development Authorities are statutory bodies constituted under the Act of Development Authority concerned. The appointment of Chairman/DG of any

Development Authority must be regulated under the guidelines of the Hon'ble Supreme Court of Pakistan for appointment of statutory bodies in a case titled as "*Khawaja Muhammad Asif Vs. Federation of Pakistan and others*" [2013 SCMR 1205].

The aforesaid guidelines are reproduced as under:-

“(1) **Integrity:**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties;

(2) **Objectivity:**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choice solely on merit;

(3) **Accountability:**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;

(4) **Openness:**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands;

(5) **Honesty:**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest;

(6) **Leadership:**

Holders of public office should promote and support these principles by leadership and example.”

It is in our judicial notice that these Development Authorities are not performing their functions as provided in law due to lack of qualification of their Chief Executives in the

relevant field, hence, causing loss to the public exchequer. It is the duty of the appointing authority to examine whether the person appointed on discretionary basis against a post and receiving salary from the public exchequer is a fit and proper person to hold the said post. It is regrettable that for the appointment of such reasonable position, no basic qualification has been mentioned in the law of any Development Authority except in the Rules of pearl Development Authority and these Rules are also going to be amended to make them uniform with those Rules which are also against the objectivity of the Development Authorities. It is very clear from the guidelines of the Hon'ble Supreme Court of Pakistan that while making appointments in the statutory bodies, the Government must consider these guidelines but unfortunately, in Azad Jammu & Kashmir, the appointments are made purely on political basis just to accommodate their blue eyed resultantly, the basic objective of creation of Development Authorities/Development Board become fragile. The objectivity is the basic ingredient of creation of any post or any institution. As the basic objective of creation of Development Authorities has been mentioned above, hence, the qualification for the post of Chief Executive (Chairman and Director General) of any Development Authority should be in accordance with the objectivity of creation of the said Development Authority. In our considered

view, no one can be appointed as Head of any Department/Institution without any professional qualification in the relevant field. Similarly, no one should be appointed as Chief Executive (Chairman and Director General) of any Development Authority without professional qualification for development, construction and town planning in order to meet the basic purpose of law. There should be uniform Rules and laws for appointment of Chief Executive (Chairman and Director General) of any Development Authority throughout in Azad Jammu & Kashmir and in these Rules, qualification must be mentioned keeping in view the objectivity of Development Authorities and in our view, the relevant qualification for the position of the Chief Executive of the Authority (Chairman and Director General) is Civil Engineer or Town Planner. It is also worthwhile to mention here that this Court is duty bound to follow the principles laid down by the Hon'ble Supreme Court of Pakistan in a case titled as "*Khawaja Muhammad Asif Vs. Federation of Pakistan and others*" [2013 SCMR 1205].

Thus, this Court has left with no option except to issue direction to the concerned authorities to follow the guidelines laid down by the Hon'ble Supreme Court of Pakistan in the preceding paragraphs and to frame the Rules accordingly. A copy of this order shall be sent to the Chief Secretary of Azad Jammu & Kashmir for implementation

within a period of two months after receipt of this judgment and to appoint the Chief Executive (Chairman and Director General) of all the Development Authorities after framing of the Rules mentioned above. As without reshaping the law in the above stated manner, functionary of special institutions cannot achieve the objective and purposes of the law. After expiry of the above-mentioned period, if the official respondents fail to amend the law accordingly to all the Laws, Rules, Regulations up to the extent of appointment of Chairman and Director General of all Development Authorities/Board shall deem to be repealed and the concerned positions shall become vacant.

The crux of the above discussion is that the instant writ petition is hereby disposed of in the manner as indicated above.

Muzaffarabad
05.09.2022

-Sd-
CHIEF JUSTICE

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JUDGE

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

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CHIEF JUSTICE

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JUDGE