

## **HIGH COURT OF AZAD JAMMU & KASHMIR**

Writ petition 1935/2019.  
Date of institution 03.12.2019.  
Date of decision 25.05.2022.

1. Usman Ali Malik s/o Zaffar Ali Malik r/o Jhelum Valley at present Dispatcher B-02 Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
2. Munir Qureshi presently Dispatcher B-02, Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
3. Malik Tahir, Plate Greener B-03, Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
4. Syed Tahir Hussain Shah, Plate Greener B-07, Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
5. Nehmat Awan Book Binder B-03, Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
6. Syed Khadim Hussain Shah, Supervisor Workshop B-09, Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
7. Zahid Iqbal s/o Mohammad Iqbal r/o Muzaffarabad at present Naib Qasid B-01, Govt. Printing Press, Printing & Stationary Department, Muzaffarabad.

Petitioners

VERSUS

1. Controller Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
2. Chairman Selection Committee through Controller Govt. Printing & Stationary Department Muzaffarabad;
3. Senior Manager, Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
4. Minister Social Welfare, TEVTA & IT Azad Govt. of the State of Jammu & Kashmir, Muzaffarabad;

5. Manager/Admin Officer, Govt. Printing Press, Printing & Stationary Department, Muzaffarabad;
6. Department of Industry, Mineral and Labour through Secretary, office situated at new Secretariat Chatter Muzaffarabad;
7. Secretary to department of Industry and Labour through Secretary office situated at new Secretariat Chatter Muzaffarabad;
8. Syed Tassarwar Gardezi, Binder (BPS-03) Printing and Stationary Department Govt. of Azad Jammu & Kashmir;
9. Kh. Mohammad Supervisor Workshop (BPS-09) Printing and Stationary Department Govt. of Azad Jammu & Kashmir.

Respondents

### **WRIT PETITION (1)**

Writ petition 93/2020.

Date of institution 14.01.2020.

Majid Rafique s/o Mohammad Rafique r/o Kandar Tehsil & District Muzaffarabad, Azad Jammu & Kashmir.

Petitioner

VERSUS

1. Controller Printing and Stationary Department Azad Jammu & Kashmir Muzaffarabad, office situated near Neelum Bridge CMH Road Muzaffarabad;
2. Selection Committee through its Chairman Controller Printing & Stationary Department, Azad Govt. of the State of Jammu & Kashmir Muzaffarabad;
3. Sales Manager, Chairman Examination Committee, Printing & Stationary Department Muzaffarabad;
4. Superintendent Budget and Accounts Printing and Stationary Department, Azad Govt. of the State of Jammu & Kashmir Muzaffarabad;
5. Accountant General of Azad Jammu & Kashmir Muzaffarabad;

6. Zahid Iqbal s/o Mohammad Iqbal r/o Tehsil & District Muzaffarabad presently illegally appointed as Naib Qasid B-01, Printing & Stationary Department, Azad Govt. of the State of Jammu & Kashmir Muzaffarabad;
7. Mohammad Nasir s/o Mohammad Bashir r/o Tehsil & District Muzaffarabad presently illegally appointed as Naib Qasid B-01, Printing and Stationary Department, Azad Govt. of the State of Jammu & Kashmir Muzaffarabad.

Respondents

### **WRIT PETITION (2)**

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

**PRESENT:**

Sardar Karam Dad Khan, Advocate for the Petitioners in writ petition No.1935/2019 and for respondents Nos. 6,7 in writ petition No.93/2020.

Mohammad Abrar, Advocate for the Petitioner in writ petition No.93/2020.

Raja Mohammad Nadeem Khan and Sh. Mushtaq Ahmed, Legal Advisor for the official Respondents.

**JUDGMENT:**

The supra titled writ petitions have been addressed under Article 44 of Azad Jammu & Kashmir Interim Constitution 1974, whereby, the petitioners have sought direction for cancellation of the directive issued by Minister Social Welfare on 25.11.2019 and order passed by respondent No.1, Controller Printing Press as well as orders dated 21.11.2019 and 31.10.2019.

2. As the common questions of law and facts are involved in the supra petitions, therefore, the same are being disposed of through this single judgment.

### **I. FACTS IN BRIEF AND THE ENSUING PROCEEDINGS:**

Petitioners Nos. 1 and 2 have been appointed in response to an advertisement published in "Daily Post international" dated 10.08.2019 through order dated 21.11.2019 and petitioners Nos. 3 to 7 have been promoted by the Selection Committee vide order dated 21.11.2019. It has been stated that Minister Social Welfare intervened in the matter and issued a directive on 25.11.2019, whereby, a direction has been given to the Controller Printing Press to probe into all the appointments made in the Govt. Printing Press and thereafter respondent No.1, Controller Printing Press issued an order for strict action on 28.11.2019, hence, the petitioners prayed for setting aside the aforesaid directive/order. In the writ petition titled Majid Rafique Vs. Controller Printing press & others, the petitioner's stance is that the Govt. Printing Press, Printing and Stationary Department advertised one post of Peon and he applied against the said post and secured the 2<sup>nd</sup> position in the merit list but the official respondents by using colorable exercise of powers appointed private respondents Nos. 6 and 7 by abrogating the merit list, hence, their appointments orders dated 21.11.2019 and 31.10.2019 being unlawful are liable to be set at naught.

3. Both the writ petitions were admitted for regular hearing and the respondents after admission of the petitions filed written statement, whereby, the claim raised in the petitions was refuted and the respondents prayed for dismissal of the writ petitions. The parties were directed to submit written arguments and in compliance of the Court order respondents filed written arguments whereby, it has been stated that the petitioners attributed a fake letter to the Minister Social Welfare which has no legal validity and the department has no such record and the Controller Printing Press while disobeying the orders of Secretary Industry and Mineral Resources constituted a fake Committee and forcibly/compulsorily issued retirement orders of two employees from their services, appointed/promoted the petitioners and the inquiry regarding the matter was pending at secretariat level due to issuance of status-quo order by this Court. It has further been craved that the post against which the petitioner Usman Ali Malik was appointed, the same was not advertised and on 21.11.2019 while promoting Malik Tahir, Usman Ali Malik was promoted as Dispatcher B-02 on the same day hastily and hurriedly and no fresh appointment of petitioner No.2 has been shown in the record but he was

shown to have been promoted as Dispatcher, so, all the selection process seems to be ambiguous.

4. The petitioners Usman Ali & others filed a writ petition on the ground that they have been appointed in accordance with law but the Minister Social Welfare has illegally interfered in the matter while issuing a directive to Controller Printing Press to inquire the matter pertaining to the appointments of the petitioners on the application of Mohammad Nazir & Majid Rafique. As per stance of the official respondents, the whole process of selection of petitioners is doubtful and suspicious as the two employees of the department namely Kh. Mohammad Sharif Supervisor and Syed Tassawar Gardezi had compulsorily been retired from their services on 20.11.2019 and on the very next day i.e. 21.11.2019, the petitioners Nos. 2 to 6 were promoted and the (then) Controller Printing Press while constituting a fake and fabricated Selection Committee promoted the petitioners whereas, Secretary Industry on 31.10.2019 ordered the Controller Printing Press to stop the proceedings against the employees Kh. Sharif and Tassawar Gardezi but despite that order the petitioners were appointed/promoted. Furthermore, at secretariat level an inquiry committee was constituted by the Secretary Industry which initiated proceedings to

inquire the matter pertaining to the appointments of petitioners but while filing the writ petitions the petitioners got issued the status-quo order due to which the proceedings have been stopped.

**II. DETERMINATION BY COURT:-** As per my opinion, the matter in hand pertains to inquiry and probe of the petitioner's appointment/promotion, however, after detailed analysis, it will be proved whether the appointments and promotions were made in accordance with law or not? So, in order to adjudge the transparency and limpidity of the petitioner's appointment/promotion, an impartial inquiry and investigation should have been held and as per Article 44 of the Interim Constitution of Azad Jammu & Kashmir 1974, no writ could be issued to stop inquiry process on the basis of apprehension. In the instant case the petitioners have filed the writ petition on the basis of apprehension that the Controller Printing Press is going to probe the matter pertaining to the appointments of petitioners and if they may not be stopped then the petitioners will suffer an irreparable loss, the said stance of the petitioners has no any force in my opinion, because after detailed inquiry if it is proved that their appointments have been made in accordance with law then the petitioners will be considered as lawful appointees and they

will not be disturbed. Law is very much clear on the point that mere on the basis of apprehension, no direction could be issued to stop the inquiry process, reference in this can be placed upon 2017 PLC C.S 943. As per my estimation, the writ petition has been filed just to frustrate the inquiry proceedings, if the petitioner's appointments have been made after due course of law then they should not have the fear of anything and law does not allow any authority to cancel the lawful appointment of any employee. It is worthwhile to reproduce para (iv) written arguments offered by the official respondents as infra:-

iv. یہ کہ پیٹنٹرز 1 تا 7 کی تقرری و پیٹنٹرز 2 تا 6 کی ترقیاہیوں پر جملہ پراسیس مشکوک اور بد نتیجی پڑنی ہے چونکہ کنٹرولر پرنٹنگ پریس وقت نے دو ملازمین محکمہ پرنٹنگ پریس 1. خواجہ محمد شریف سپروائزر روک شاپ B-9 (نشان A) اور سید تصور گردیزی جلد ساز B-3 (نشان B) کو مورخہ 20.11.2019 کو جبری ریٹائر کر دیا اور دوسرے دن مورخہ 21.11.2019 (نشان C) کو پیٹنٹرز 2 تا 6 کو ترقیاہ کر دیا گیا۔ کنٹرولر پرنٹنگ پریس وقت نے فرضی خود ساختہ سلیکشن کمیٹی کے ذریعے ترقیاہی باکیں جبکہ سیکرٹری صنعت و تجارت نے مورخہ 31.10.2019 (نشان D) کو کنٹرولر پرنٹنگ پریس کو ملازمین خواجہ شریف اور تصور گردیزی کے خلاف تا حکم ثانی کارروائی روکنے اور رپورٹ پیش کرنے کا حکم صادر فرمایا جس کے باوجود پیٹنٹرز کی تقرریاں اور ترقیاہیاں کی گئیں جس کا اختیار کنٹرولر کو حاصل نہ تھا نیز جملہ معاملات کی نسبت سیکرٹریٹ کی سطح پر سیکرٹری صنعت و تجارت نے انکوائری کمیٹی تشکیل دی جسکی کارروائی رواں تھی کہ پیٹنٹرز نے آ کر عدالت العالیہ میں رٹ دائر کر کے حکم امتناعی حاصل کر لیا۔ حکم امتناعی کے باعث انکوائری کمیٹی نے اپنا کام روک دیا عدالت گرامی سے استدعا ہے کہ رٹ با کا فیصلہ کرنے سے قبل اگر بہتر سمجھیں تو سیکرٹری صنعت و تجارت کو انکوائری مختصر مدت میں مکمل کر کے پیش کرنے کا حکم صادر فرمائیں تاکہ دوران تقرریاں و ترقیاہیاں کی گئی غیر قانونی افعال میں ملوث کرداروں کا تعین ہو سکے۔

5. It transpires that entire process of selection regarding appointments and promotions in Printing Press quo slots in question is not free from doubt. As the matter is yet to be probed by the relevant quarters, thus, in such like eventuality, how can we pre-empt and place barrier in order to stop the competent authority to probe the matter in accordance with law. The respondents in the written arguments offered forcefully and staunchly reiterated and



voiced against maintainability of the writ petitions by alleging that as the petitioners had procured the job in illegal manner and as the entire process of selection is dubious, hence, such like ill-gotten gain cannot be protected in exercise of extraordinary writ jurisdiction. In this connection they further alleged that concealment of facts on part of the petitioner is also reflecting from record, inquiry proceedings are underway, service appeal on part of the employees who have compulsorily retired from service is also pending adjudication before the Service Tribunal. The official respondents have categorically denied the allegation of indulgence of the Minister Social Welfare Department behind the inquiry proceedings. Moreover, it has also been averred that the letter attributed to the Minister Social Welfare Department is fake.

6. As adumbrated domestic probe is underway, parameters for issuance of writ are well settled as enshrined and entrenched in Article 44 of the Azad Jammu & Kashmir Interim Constitution 1974. Certain guiding principles quo indicating road-map for exercise of jurisdiction in this regard are beacon of light, for example writ cannot be issued for protection of ill-gotten gains, disputed question of facts normally cannot be resolved in

writ jurisdiction, he who seeks equity (equitable relief) must come with clean hands.

7. Majesty of law demands performance of official acts as per language of law, no rigmarole is allowed, thus, it is expected that all proceedings will be initiated and carried out in purely legal fashion and in accordance with the relevant laws.

8. In the writ petition titled "Majid Rafique Vs. Controller Printing Press & others" the petitioners prayed that while setting aside the orders dated 21.11.2019 and 31.10.2019, he may be appointed as Peon. The compulsory retirement orders of Kh. Mohammad Sharif and Syed Tasawar Gardaizi have been challenged before the learned Service Tribunal by way of filing an appeal and if the appeal is decided in favor of appellant therein, then the appointments of the petitioners would automatically be cancelled, so, till final adjudication of the appeal pending before the learned Service Tribunal no decision could be made. Furthermore, the petitioner Majid Rafique appeared into the selection process and got 2<sup>nd</sup> position in the merit list and there was only one post which was advertised, so, against one post only one candidate can be appointed, therefore, the claim of the petitioner that a direction may

be given to the respondents to issue his appointment order  
has no substance, which is hereby repelled.

For the above multiple reasons, both the above  
titled writ petitions are hereby dismissed

Muzaffarabad.  
25.05.2022 (Saleem)

-Sd-  
JUDGE

**Note:-** Judgement is written  
and duly signed. The office is  
directed to announce the  
judgment in presence of the  
parties or their counsel  
accordingly

-Sd-  
JUDGE