

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No. 2979/2023.

Date of institution. 27.10.2023.

Date of hearing. 16.12.2025.

Date of decision. 24.12.2025.

1. Sardar Hamid Raza Khan, Advocate, Supreme Court of Azad Jammu and Kashmir.
2. Ch. Muhammad Yousaf, Advocate.
3. Ch. Muhammad Younas, Advocate, having offices at District Court Premises near SSP office Mirpur.

Petitioners

VERSUS

1. Government of Azad Jammu and Kashmir through Chief Secretary Azad Govt. having its office new Secretariat Muzaffarabad.
2. Department of Law, Justice and parliamentary Affairs through Secretary Law having its office at new Secretariat Muzaffarabad.
3. Accountant General of Azad Jammu and Kashmir having his office at new Secretariat Muzaffarabad.
4. Syed Manzoor Hussain Gillani (R) Judge Supreme Court AJ&K.
5. Additional Registrar Supreme Court of Azad Jammu and Kashmir.
6. Registrar Supreme Court of Azad Jammu and Kashmir.

Real Respondents

7. Azad Jammu and Kashmir Bar Council through its Vice Chairman having his office at AJ&K Bar Council office Muzaffarabad.

8. Azad Jammu and Kashmir Supreme Court Bar Association through its president having its office at Mirpur.
9. Azad Jammu and Kashmir High Court Bar Association through its Secretary General having office at Muzaffarabad.

Proforma Respondents

WRIT PETITION

**Before:- Justice Sardar Liaqat Hussain, C.J.
Justice Sardar Muhammad Ejaz Khan, J.
Justice Chaudhary Khalid Rasheed, J.**

PRESENT:

Mr. Muhammad Nadeem Khan, Advocate, for petitioners.

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

Mr. Muhammad Saeed Khan, Additional Advocate General on behalf of the official respondents.

JUDGMENT:

(Justice Sardar Liaqat Hussain, C.J.) The captioned writ petition has been filed under Article 44 of Azad Jammu & Kashmir Interim Constitution, 1974, the petitioners have prayed the following relief:-

“In view of the above made submissions the petitioners humbly prayed that an appropriate writ may kindly be issued and:

- a. The notification through which respondents approved the pension, perks and privileges of respondent No.4, as Chief Justice of Azad Jammu

and Kashmir by declaring same as illegal, against law, against rules and without lawful authority, further,

- b. The extra pension, perks and privileges received by the respondent No.4 in access of his actual service benefits may also be recovered.
- c. Any other writ, direction or declaration this Hon'ble Court deems fit may also be advanced in favor of the petitioners."

2. The facts of the case, as narrated in the writ petition are that the petitioners claiming themselves as whistle blowers/informers, have filed the instant writ petition in order to get reduced and recovered the perks and privileges approved in favour of respondent No.4, herein and received by him since his retirement. As per the claim of the petitioners, at the time of resignation of respondent No.4, he was not serving as the acting Chief Justice of Azad Jammu and Kashmir rather he was serving as Senior Judge of the Supreme Court. It is claimed that after resignation of the former Chief Justice of Azad Jammu and Kashmir Mr. Justice (R) Riaz Akhter Chaudhary, late on 06.05.2010, neither any notification regarding appointment of respondent No.4 as

acting Chief Justice was issued nor Oath for the office of Chief Justice of Azad Jammu and Kashmir was sworn by respondent No.4. It is submitted that respondent No.4 also tendered his resignation on 11.05.2010. The claim of the petitioners is that both the judges submitted their resignation simultaneously hence, there was no position available for respondent No.4 to act as acting Chief Justice and he submitted his resignation as Senior Judge of Supreme Court. It is alleged that respondent No.4 has been awarded perks, privileges of acting chief Justice vide PPO dated 15.06.2010, which is illegal and against the provisions of Interim Constitution, 1974, therefore, by accepting the writ petition, the respondent No.4 be declared entitled to the perks and privileges as Judge of Supreme Court instead of Acting Chief Justice.

3. Respondents were directed to file written statement and the needful has been done by both the sets of respondents, separately.

4. In both the written statements, almost common stand has been taken, therefore, this

Court would like to bring into black and white, the gist of plea of respondents. In both the written statements, the question of laches has been raised, by submitting that the PPO, sought to be amended was issued in the year, 2010, and the instant writ petition has been filed in the year, 2023, which is hopelessly hit by laches. The question of res judicata has also been raised and it is submitted that the petition is liable to be dismissed because the controversy in hand has already been resolved by a larger bench of this Court vide judgment dated 28.03.2012, which has attained finality for remaining unchallenged, and, the same matter cannot be re-opened through the instant writ petition. The respondents have also contended that the petitioners are not entitled to file the instant writ petition under the principle of acquiescence and estoppels because they have been appearing before respondent No.4 during his judicial career as acting Chief Justice of Azad Jammu and Kashmir. It is alleged that the petitioners do not fall within the definition of aggrieved persons therefore, they are not entitled to file the instant writ petition.

5. On facts, it is stated that respondent No.4, herein, was appointed as Acting chief Justice of Azad Jammu and Kashmir vide notification dated 03.04.2010 and he submitted his resignation on 11.05.2010. It is stated by the respondents that the perks and privileges, awarded to respondent No.4 were earlier stopped/reduced by the official respondents vide scripts dated 08.09.2010 and 11.11.2010, which were challenged by respondent No.4, herein, before this Court through filing writ petition and a Larger Bench of this Court after due appreciation of the material brought before it finally vacated the letters dated 08.09.2010 and 11.11.2010, impugned therein, as null and void and declared the respondent No.4 entitled to receive his pension etc. as Acting Chief Justice of Azad Jammu and Kashmir vide judgment dated 28.03.2012. It is claimed that the said judgment of this Court remained unchallenged within the prescribed period of limitation, has attained finality, hence, the matter cannot be re agitated under the principle of res judicata, therefore, the writ petition is liable to be dismissed with cost.

6. Muhammad Nadeem Khan, Advocate, representing the petitioners while reiterating the facts and grounds narrated in the writ petition, vehemently contended that former chief Justice Mr. Riaz Akhter Chaudhary, late, under certain circumstances submitted his resignation on 06.05.2010, however, no notification regarding appointment of respondent No.4, as acting Chief Justice was issued by the official respondents nor any oath in this behalf was conducted. The learned counsel while referring Article 42(4) and 42(8) of Interim Constitution, 1974, attacked upon the judgment of this Court dated 28.03.2012 with the stance that under the constitutional provisions, when a judgment contravenes the constitution, then, preference lies in favour of the constitution and the same has to prevail. Learned counsel submitted that no judgment in conflict with the constitutional provisions could be rendered, however, the learned Larger Bench of this Court fell in error while passing judgment dated 28.03.2012, which is liable to be vacated/modified by accepting the writ petition in hand. In support of his submissions, the learned counsel

for the petitioners referred to and relied upon the following case law;

1. PLJ 2019 S.C AJ&K 97.
2. 2021 SCR 58.
3. 2022 SCR 01,
4. 2007 CLC 184 (NACA),
5. 1994 SCR 341 and a case from Indian jurisdiction decided 06 September, 2019.

In Syed Masoom Ali Shah's case reported as PLJ 2019 S.C AJ&K 97, the Hon'ble Apex Court of Azad Jammu and Kashmir while dealing with the matter of dismissal of writ petition on technical grounds held that when averments made by petitioner in writ petition and documents relied upon by him are admitted from opposite side, then situation will be otherwise and writ petition cannot be dismissed on technical grounds.

In case reported as 2021 SCR 58, the Hon'ble Supreme Court of Azad Jammu and Kashmir, while dealing with the controversy regarding amendment of notification as Chief Justice has observed that the High Court has granted the relief to the private respondent without existence of any lis in this regard.

In a case reported as 2022 SCR 01, the Hon'ble Apex Court has held that if the appointment of the judge of the high Court is defective then consequently his elevation to the office of Chief Justice also becomes faulty as every structure has to stand on its foundation and when the foundation is vanished no superstructure can exist.

In case reported as 2007 CLC 184, Powers of the Court to add or strike down names of a party either on request of party or otherwise have been discussed.

In case reported as 1994 SCR 341, the Hon'ble Apex Court of Azad Jammu and Kashmir, while dealing with the question of right to invoke the constitutional jurisdiction of High Court has observed that "the right necessary to invoke the constitutional jurisdiction may not necessarily be a right in strict sense and it is sufficient for that purpose that petitioner shows that he has an interest that the respondents should act in accordance with law".

7. Barrister Humayun Nawaz Khan, Advocate, the learned counsel for respondent No.4, on the contrary, while raising serious preliminary objections, i.e. principle of laches, res judicata, on merits submitted that the petitioners have not come to the Court with clean hands. They have suppressed the real and material facts while drafting the instant writ petition, whereas, the fact of the matter is that respondent No.4, herein, (during suspension of former Chief Justice of Azad Jammu and Kashmir Mr. Riaz Akhter Chaudhary (late), as a result of presidential reference) was appointed as acting chief justice of Azad Jammu and Kashmir vide notification dated 03.04.2010, and the said respondent sworn upon him, the oath of his office on the same date and remained performing his duties as acting Chief Justice till his resignation, i.e 11.05.2010. The learned counsel pressed into service the point that the said notification was not issued for certain time period rather the same was valid till disposal of dispute by the Supreme Judicial Council, and, meanwhile, Mr. Justice Riaz Akhter Chaudhary, (late) submitted his resignation on 06.05.2010,

hence, respondent No.4 continued his services as Acting Chief Justice of Azad Jammu and Kashmir till submission of his resignation on 11.05.2010. The learned counsel submitted that in presence of valid notification regarding appointment of acting Chief Justice and having taken oath of said office, there was no mandatory requirement for issuance of subsequent notification or taking new oath. The learned counsel claimed that in prayer clause of the writ petition, the petitioners have not sought } vacation or cancellation of any particular notification or order or pension payment order, rather an ambiguous relief has been prayed, and, even if the relief prayed by the petitioners is granted, even then, the judgment/order shall operate prospectively and not retrospectively as the matter in hand being a past and close transaction does not suffer from pronouncement of subsequent judgment. The learned counsel submitted that respondent No.4 being an honorable citizen of the State has got his retirement as Acting Chief Justice of Azad Jammu and Kashmir, and filing of instant writ petition is nothing more than a tactic to lower down his

dignity and respect in the society, therefore, the writ petition is liable to be dismissed with exemplary costs. The learned counsel, in support of his submissions, referred to and relied upon the following cases and craved for dismissal of writ petition:-

1. PLJ 2012 AJ&K 113,
2. PLD 2002 S.C (AJ&K) 01,
3. PLD 1987 S.C 145 (relevant page, 168)
4. PLD 1998 S.C 161 (relevant page, 345) and
5. PLD 2013 S.C 829 (relevant page, 1012).

8. Mr. Muhammad Saeed, Additional Advocate General, appearing on behalf of the official respondents, owned and adopted the arguments advanced on behalf of respondent No.4, herein, also raised the similar objections on the maintainability of the writ petition and contended that the pensionary benefits in favor of respondent have been approved by the Government after due deliberation and obtaining guidance of the Law Department, hence no illegality has been committed by the official respondents. The learned AAG also craved for dismissal of the writ petition.

9. In rebuttal, learned counsel for the petitioners submitted that the stance, admitted by

the opposite party needs not to be proved in strict sense, however, the learned counsel for the petitioners was confronted regarding the point, as to whether, a judgment rendered by a three members Larger Bench of this Court, can be adjudicated, revisited or rescinded by a larger Bench consisting of equal number of Judges, but, he remained silent and requested that the case may be left sine die till elevation of new Judges.

10. Having heard the learned counsel for the parties at length, we have scanned the relevant record made available with the file with the assistance of both the learned Advocates and have considered the controversy with utmost care and caution.

11. Before discussing the merits of the case, it deems appropriate to mention here that through the captioned writ petition, petitioners have sought nullification of notification regarding payment of pension and reduction of perks, privileges and extra pension of respondent No.4 as being Acting Chief Justice of Azad Jammu and Kashmir, however, in the prayer clause

reproduced above, have not mentioned as to which notification, order etc. is sought to be set aside. During the course of arguments the query was made by a learned member of the Bench regarding the point, but the learned counsel for the petitioners remained silent and could not be able to explain the actual relief prayed for. Under rule 32(2) of the Azad Jammu and Kashmir High Court Procedure Rules, 1984, mentioning of exact relief and grounds thereof is mandatory, and no relief can be granted without a clear and unambiguous prayer.

12. A glance perusal of record reveals that respondent No.4, herein, was appointed as Acting Chief Justice of Azad Jammu and Kashmir vide notification dated 03.04.2010, who, performed his duties till 11.05.2010 and he was granted pension vide PPO No. 13327/C dated 15.06.2010. The claim of the petitioners is that Mr. Justice Riaz Akhter Chaudhary, late, submitted his resignation from the office of Chief Justice of Azad Jammu and Kashmir on 06.05.2010 and respondent No.4, herein, also resigned on 11.05.2010, and from

06.05.2010 to 11.05.2010, neither any notification regarding appointment of acting chief Justice of Azad Jammu and Kashmir was issued nor oath of respondent No.4 was conducted, hence, two persons could not enjoy the perks and privileges of chief Justice simultaneously. The point in question came under consideration before the Government of Pakistan in case of Mr. Justice (Rtd.) Saad Saood Jan. It appears that after considering law laid down in Al-Jehad Trust's case, notification dated 21.06.1999 was issued and on the basis of notification dated 21.06.1999 pensionary benefits were given to Mr. Justice (R) Saad Saood Jan as Chief Justice although he had served as Acting Chief Justice.

13. The claim of the petitioners is that after resignation of Mr. Justice Riaz Akhter Chaudhary, late, on 06.05.2010 neither any notification for appointment of Acting Chief Justice in favour of respondent No.4 was issued nor the said respondent had taken oath of his office. A perusal of the record reveals that the appointment of private respondent No.4 was made vide

notification dated 03.04.2010 during proceedings of Supreme Judicial Council on a Presidential reference against Mr. Riaz Akhter Chaudhary, late. For proper appreciation of the matter, we would like to reproduce relevant portion of the notification, supra which reads as under:

"2. Therefore, in exercise of the powers conferred by Section 42(8) of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President of Azad Jammu and Kashmir has been pleased to appoint Mr. Justice Syed Manzoor Hussain Gillani, most senior Judge of the Supreme Court of Azad Jammu and Kashmir as Acting Chief Justice of Supreme Court of the Azad Jammu and Kashmir.

3. This notification shall take effect on and from the date, Mr. Justice Syed Manzoor Hussain Gillani, takes upon himself the oath of his office as Acting Chief Justice of Supreme Court of Azad Jammu and Kashmir."

14. A bare reading of the above reproduced notification makes it clear that the appointment of respondent No.4, herein, as Acting Chief Justice was made during reference proceedings which impliedly had to come to an end on decision of the reference by the Supreme Judicial Council. Admittedly, the proceedings against the former

Chief Justice ended on tendering his resignation from the office of chief Justice of Azad Jammu and Kashmir on 06.05.2010 hence, the notification dated 03.04.2010, did not necessitate its renewal as it was supposed to continue till completion of reference proceedings, therefore, it cannot be said that after resignation of Mr. Riaz Akhter Chaudhary, late, the former Chief Justice new notification has not been issued.

15. So far the question of taking oath of the office of Acting Chief Justice of Azad Jammu and Kashmir by respondent No.4, herein, is concerned, it may be observed that respondent No.4 in pursuance of notification dated 03.04.2010 had already taken oath of the office of Acting Chief Justice on the same day, hence, there was no need to reconduct the oath ceremony.

16. Admittedly, the law of the land provides mode of appointment of Chief Justice and Acting Chief Justice of Azad Jammu and Kashmir, under Article 42(8) of the Interim Constitution, 1974. For proper appreciation the relevant constitutional provision is reproduced, which reads as under:-

“At any time when the office of Chief Justice of Azad Jammu and Kashmir is vacant, or the Chief Justice is absent or unable to perform the functions of his office due to any other cause, the President shall appoint the most senior of the other Judges of the Supreme Court of Azad Jammu and Kashmir to act as Chief Justice of Azad Jammu and Kashmir.”

17. A bare reading of the above constitutional provision speaks volume that any time, when, the office of the Chief Justice is vacant or the Chief Justice is absent or is unable to perform functions of his office due to any other cause, the President shall appoint the senior most judge as Acting Chief Justice.

18. The petitioners have not assailed the appointment of respondent No.4, however, they have prayed that being Acting Chief Justice, he was not entitled to receive his pensionary benefits as Chief Justice of Azad Jammu and Kashmir, rather he was entitled to receive his pension and other perks and privileges as senior judge of the Supreme Court. This very point, earlier came under the consideration of Government of Pakistan, wherein, Mr. Justice (R) Saad Saood

Jan, (who stood retired as acting Chief Justice of Pakistan) was granted his pensionary benefits as Chief Justice of Pakistan, vide notification dated 21.06.1999 in-spite of the fact that Mr. Justice (R) Saad Saood Jan had served as acting Chief Justice.

19. Admittedly, the Judges of superior Courts of Azad Jammu and Kashmir are enjoying parity with their counterparts in Pakistan, hence, they are entitled to the same privileges under the 4th and 5th Schedules of the Azad Jammu and Kashmir Interim Constitution, 1974. The said schedules are reproduced below for convenience, which read as follows:-

“FOURTH SCHEDULE:

The Chief Justice and the Judge of the Supreme Court of Azad Jammu and Kashmir shall be entitled to the same salary, allowances, privileges and pension as are admissible to the Chief Justice and the judges of the Supreme Court of Pakistan.

FIFTH SCHEDULE.

The Chief Justice and the Judges of the High Court of Azad Jammu and Kashmir shall be entitled to the same salary, allowances, privileges and pension as are admissible to

the Chief Justice and the judges of the High Court of Pakistan.”

20. A combined reading of the above schedules makes it crystal clear that the Chief Justices and Judges of the Supreme Court and High Court of Azad Jammu and Kashmir are entitled to the same perks and privileges as admissible to their counterparts in Pakistan.

21. We have no quarrel with the contention of the learned counsel for the petitioners that when a judgment contravenes the constitutional provisions, preference lies in favour of the constitution but in case in hand, the petitioners, even in the memo of writ petition and during the course of arguments, as well, have not pointed out and established that which part of the judgment of this Court contravenes the constitutional provisions, therefore, this argument being distinguishable from the facts of the case in hand stands repelled.

22. As far the question of the status of acting Chief Justice and Chief Justice, and the question of pensionary benefits is concerned, the

controversy has been resolved by the Government of Pakistan in Mr. Justice (R) Saad Saood Jan's case, whereby, on the basis of notification dated 21.06.1999, the petitioner was awarded pensionary benefits as Chief Justice, although, he had served as acting Chief Justice and this Court also, while relying upon the abovementioned case, accepted the writ petitions filed on behalf of respondent No.4, herein, (Acting Chief Justices of Supreme Court) and Mr. Justice (R) Sardar Muhammad Nawaz Khan, (Acting Chief Justice of High Court of AJ&K), vide judgment dated 28.03.2012.

23. The learned counsel for the respondent No.4 has raised serious objections regarding maintainability of the instant writ petition on the ground of res-judicata and laches. In this regard, it is pertinent to mention that respondent No.4, herein, and another Hon'ble Acting Chief Justice of High Court of Azad Jammu and Kashmir, Mr. Justice (R) Sardar Muhammad Nawaz Khan, (Late) stood retired as Acting Chief Justice of Azad Jammu and Kashmir and High Court of Azad

Jammu and Kashmir, and were granted pensionary benefits as Chief Justices, after due process of law, however, later on their pension was reduced on the pretext that they have retired as Judges of the Supreme Court and High Court, respectively. The controversy regarding payment of their pension and privileges against the post of Chief Justice of Azad Jammu and Kashmir and Chief Justice of High Court was brought before this Court through filing writ petitions, which were decided by a Larger Bench of this Court vide judgment dated 22.03.2018, whereby, the notifications dated 08.09.2010 and 11.11.2010 (regarding reduction of pensionary benefits in favour of petitioners, therein), were declared null and void and the petitioners, therein, were held entitled to receive their pensionary benefits as Chief Justice of Supreme Court and High Court of Azad Jammu and Kashmir. Paragraph 11 of the judgment of this Court dated 28.03.2012, is usefully reproduced, hereunder:-

“11. As stated above both the petitioners were admittedly granted pension and retiring benefits as Chief Justices of the Supreme Court and High Court of Azad Jammu and Kashmir by Accountant

General-respondent after due process of law and the same were also received by the petitioners, which fact was not denied in written statement/arguments. A perusal of record also reveals that petitioners were neither issued any show cause nor opportunity of hearing was provided for re-fixing their pension, therefore, the impugned letters issued by Accountant General- respondent are contrary to principle of locus poenitentiae as was held by the Hon'ble Supreme Court of Azad Jammu and Kashmir in case titled "Malik Zaffar Ali vs. Inspector General Police [1995 SCR 324]."

24. After discussing and considering plethora of judgments, a larger bench of this Court accepted both the petitions, in the following words:-

"For the foregoing reasons we are constrained to hold that the impugned letters dated 11.11.2010, 08.09.2010 and 29.11.2010 are without lawful authority, arbitrary and capricious, therefore, the same are hereby set aside by accepting the writ petitions with no order as to costs."

25. The above judgment has attained finality for having not been challenged before the proper forum within the prescribed period therefore, the writ petition in hand, having been filed to re-agitate a past and closed transaction is seriously hit by the principle of res-judicata.

26. We are also in agreement with the contention of the learned counsel for the respondent No.4 regarding the plea of laches as through the instant writ petition, the petitioners have opted to get reduced the pensionary benefits approved in favour of respondent No.4 herein, after a considerable period of more than 11 years, which being hit by principle of laches, merits dismissal on this sole ground.

27. Although the writ petition in hand was liable to be buried on the ground of res-judicata and laches, however, in order to administer fair and transparent Justice and resolve the controversy once for all, we have opted to decide writ petition in hand on merits, which in view of afore-narrated facts and circumstances also fails to succeed.

28. As far the case law, referred to and relied upon by the learned counsel for the petitioners is concerned, the same having no nexus with the case in hand, due to its peculiar facts and circumstances, need not to be discussed in detail.

29. The net consequence of the above detailed discussion is, the instant writ petition, being without substance, stands dismissed, however, the parties are left to bear their own costs.

Writ petition dismissed.

Muzaffarabad;

24.12.2025. CHIEF JUSTICE JUDGE JUDGE