

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.633/2016.
Date of Institution.07.03.2016.
Date of Decision 20.07.2017.

1. Imran Khurshid Awan, President Non-Gazetted Employees Association, Azad Jammu and Kashmir, Muzaffarabad.
2. Abdul Waheed, Secretary General Non-Gazetted Employees Association, Azad Jammu and Kashmir, Muzaffarabad.
3. Raja Awais, President, Non-Gazetted Employees Association, District Muzaffarabad.
4. Syed Siddique Hussain Shah, President All Pakistan Clerks Association (APCA) Azad Jammu and Kashmir, Muzaffarabad.
5. Muhammad Maroof Mughal, Vice President All Pakistan Clerks Association (APCA) Azad Jammu and Kashmir, Muzaffarabad.
6. Irshad Mughal, President, All Pakistan Clerks Association (APCA), District Muzaffarabad.

...Petitioners.

VERSUS

1. Govt. of Azad Jammu and Kashmir through its Chief Secretary having his office at new Secretariat Complex, Muzaffarabad.
2. Law, Justice, Parliamentary Affairs and Human Rights Department through its Secretary having his office at New Secretariat Complex, Muzaffarabad.
3. Services & General Administration Department, Azad Government of the State of Jammu and Kashmir, through its Secretary having his office at New Secretariat, Muzaffarabad.
4. Legislative Assembly through its Speaker having his office at Assembly Secretariat, Muzaffarabad.
5. President of the State of Azad Jammu and Kashmir through Secretary Presidential Affairs having his office at Presidential Secretariat, Muzaffarabad.

...Respondents.

**Writ Petition No.332/2017.
Date of Institution.24.02.2017.**

1. Tariq Javid Chaudhary, Chairman Paramedical Staff Association/Health Employees Organization, Azad Jammu and Kashmir, Muzaffarabad.

2. Sardar Muhammad Afzil Shaheen, Paramedical Staff Association/Health Employees Organization, Muzaffarabad.
3. Mir Muhammad Arif, Secretary General Paramedical Staff Association/Health Employees Organization, Azad Jammu and Kashmir, Muzaffarabad.
4. Malik Ashraf, Member Paramedical Staff Association/Health Employees Organization, Azad Jammu and Kashmir, Muzaffarabad.
5. Abdul Hafeez Awan, Representative Paramedical Staff Association/Health Employees Organization Azad Jammu and Kashmir, Muzaffarabad.

...Petitioners.

VERSUS

1. Govt. of Azad Jammu and Kashmir through its Chief Secretary having his office at new Secretariat Complex, Muzaffarabad.
2. Law, Justice, Parliamentary Affairs and Human Rights Department through its Secretary having his office at New Secretariat Complex, Muzaffarabad.
3. Services & General Administration Department, Azad Government of the State of Jammu and Kashmir, through its Secretary having his office at New Secretariat Complex, Muzaffarabad.
4. Legislative Assembly through its Speaker having his office at Assembly Secretariat, Muzaffarabad.
5. President of the State of Azad Jammu and Kashmir through Secretary Presidential Affairs, having his office at Presidential Secretariat, Muzaffarabad.

...Respondents.

WRIT PETITIONS

Before:- **Justice M. Tabassum Aftab Alvi, C.J.**
Justice Sadaqat Hussain Raja, J.

DIVISION BENCH

PRESENT:

M/s. Mushtaq Ahmed Janjua and Sheikh Mushtaq Ahmed,
 Advocates for Petitioners.

Mr. Ikhlaq Hussain Kiani, AAG for Respondents.

JUDGMENT:

(Justice M. Tabassum Aftab Alvi, C.J.) The captioned writ petitions have been addressed under Section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974.

2. As common questions of facts and law are involved in both the writ petitions, therefore, we proposed to decide the same through this single judgment.

3. The precise facts of writ petition No.633/2016, are that petitioners Nos.1 to 3, Imran Khurshid Awan and others are representatives of Azad Jammu and Kashmir Non-Gazetted Employees Association, registered with council Order No.309/56, dated 30.08.1956. Likewise, petitioners Nos.4 to 6, claimed to be representatives of All Pakistan Clerks Employees Association Azad Jammu & Kashmir, registered with Services and General Administration Department through Govt. notification dated 21.01.1987. It is averred that Government-respondent has promulgated the impugned Act known as “The AJ&K Employees Service Associations (Registration and Regulation) Act, 2016” dated 10.02.2016. The petitioners challenged legality and propriety of the aforesaid Act to the extent of imposing ban on strike, lock-out and go-slow including provisions of disciplinary action and registration as violative of sections 4(5), 4(6), 4(7) and 4(9) of the Interim Constitution Act, 1974, through the instant constitution petition.

4. The writ petition has been resisted by respondents through written statement, wherein, it is stated that petitioners are not aggrieved persons because purpose of the said law is not against fundamental rights guaranteed by the Interim Constitution Act, 1974, however, it provides procedure, certain terms and conditions for registration of services Associations of Government employees. It is pleaded that petitioners failed to point out that how the concerned provisions of the impugned Act are against fundamental rights, therefore, they have got no locus standi to file the instant writ petition. It is stated that for Govt. employees right to form an association is not an accrued right, hence, restrictions can be imposed under authority of an Act of Assembly. The other contents of writ petition have also been refuted.

5. The brief facts of petition No.332/2017, are that petitioners Tariq Javaid Chaudhry and others, are permanent employees of Health Department and claimed to be representatives of the Azad Jammu and Kashmir Paramedical Staff Association/Health Employees Organization, registered vide Govt. notifications dated 26.03.1988 and 30.12.1993, respectively. It is averred that respondents through the impugned legislation bearing No.LD/Legis-Act/2015 /2016, namely the AJ&K Employees Service Associations (Registration and Regulation) Act, 2016, dated 10.02.2016, has imposed ban on Civil Servants Associations regarding strike, lock-out,

go-slow and to instigate strike and also made re-registration of the Unions/Associations as compulsory under Section 22 of the said Act, which are against fundamental rights of petitioners' Associations guaranteed by the Azad Jammu and Kashmir Interim Constitution Act, 1974, hence, the instant constitution petition.

6. The contest of written statement filed by respondents are similar to writ petition No.633/2016, therefore, need not to be reiterated here for the sake of brevity and convenience.

7. Mr. Mushtaq Ahmed Janjua, the learned counsel for petitioners strenuously argued that the impugned legislation to the extent of postulating provisions regarding ban upon strike, lock-out and go-slow in sections 2(X), 7(2) and 17 of the AJ&K Employees Service Associations (Registration and Regulations) Act, 2016, are violative of Section 4(7) of the Interim Constitution Act, 1974, hence, the same are liable to be struck down. He further argued that provisions regarding re-registration of existing Associations as per Section 22 are also against law, as Associations of petitioners had already been registered, therefore, the aforesaid provisions are liable to be declared as prospective. The learned counsel pressed into service that provisions regarding sanction of Associations were already available as per rule 32 of the AJ&K Civil Servants (Conduct) Rules, 1981, therefore, the impugned Act, to the extent of registration of Associations is perverse. The learned

counsel, however, admitted at Bar that no provisions pertaining to registration of Associations were previously available in field through any Statute, however, submitted for acceptance of writ petitions. He in support of his contentions referred to and relied upon the following case law:-

- i. Syed Imdad Ali Shah and 59 others Vs. Azad Government and 8 others [2003 SCR 95];
- ii. Hussain Ahmed Islahi Vs. Azad Government & 2 others [2009 SCR 116];
- iii. Abdul Razzak Khan Lodhi and 14 others Vs. Sindh Labour Appellate Tribunal, Karachi and 2 others [1993 P L C 308].

In case of Syed Imdad Ali Shah, supra, it was held by the Apex Court that there must be consistency in the policies of the Government. The Govt. cannot penalized any person for the blunder committed by it.

In case of Hussain Ahmed Islahi, ibid, it was held by the Hon'ble Supreme Court that it was duty of the authority to spell out that the association was a political association which acted in aid of or assisted in any way or any member of any political movement of AJK or Pakistan. It was further held that it is the political activities of a Govt. servant undertaken through any political association, which are prohibited under the rules.

In case of Abdul Razzak Khan Lodhi, supra, it was held by the Karachi High Court, that if action taken by employer was found to be mala-fide or otherwise unjustified by Court, suitable relief could be provided to employees by ordering their reinstatement in service.

8. Sheikh Mushtaq Ahmed, the learned counsel for petitioners owned the arguments of Mr. Mushtaq Ahmed Janjua, Advocate, and prayed for acceptance of writ petitions.

9. Mr. Ikhlaq Hussain Kiani, the learned Additional Advocate General, appeared on behalf of respondents vehemently argued that the Azad Jammu & Kashmir Legislative Assembly has the sole power to legislate on all matters except those which are listed in Council legislative list or mentioned in Section 31(3) of the Interim Constitution Act, therefore, both the petitions are bad in law. The learned AAG contended that there is nothing in the impugned Act against fundamental rights of petitioners to form Associations, hence, craved for dismissal of writ petitions.

10. We have heard the learned counsel for parties at great length, examined the appended documents made available and have given our earnest thought to the points raised by the learned Advocates for parties.

11. The petitioners Imran Khurshid Awan and Abdul Waheed, are President and Secretary General of Non-Gazetted Employees Association of Azad Jammu & Kashmir, whereas, Raja Awais, is President of Non-Gazetted Employees Association of District Muzaffarabad. Similarly, Syed Siddique Hussain Shah and Muhammad Maroof Mughal, are President and Vice President of All Pakistan Clerks Association (APCA) respectively. However, petitioners Tariq Javaid Chaudhary, Sardar Muhammad Afzal Shaheen, Mir Muhammad Arif and

Malik Ashraf, of Writ Petition No.332/2017, are Chairman, President, Secretary General and Member of Paramedical Staff Association/Health Employees Organization, respectively. Likewise, petitioner Abdul Hafeez Awan, claimed to be representative of the aforesaid Association. The stance of petitioners, is that provisions of strike, lock-out and go-slow postulated in Sections 2(X), 7(2) and 17 of the impugned Registration and Regulation Act, 2016, are violative of section 4(7) of the Interim Constitution Act, 1974. Through section 2(X) in the term misconduct, inter-alia, strike, lock-out or go-slow have been postulated. As per Section 7, requirements for Constitution of an Association have been enacted. According to last part of sub-section (2) of section 7, prohibition has also been provided upon the service Associations to declare or instigate strike, lock-out or go-slow. As per Section 9 registration of Service Associations is declared as compulsory. A separate section 17, has also been enacted through which prohibition of strike, lock-out and go-slow, have been inserted. As per section 22 existing Associations, which have already been registered under prevailing law, shall continue to exist for a period of one month in order to get registration under the aforesaid Act. The argument of the learned counsel for petitioners is that the impugned legislation to the extent of inserting ban on strike, lock-out and go-slow, are against basic provisions of Section 4(7) of Interim Constitution Act, which speaks as follows:-

“7. Freedom of association.- (1) *Subject to this Act, every State Subject shall have the right to form association or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order.*

(2) *No person or political party in Azad Jammu & Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of the State’s accession to Pakistan.”*

A reading of the aforesaid constitutional provisions makes it abundantly clear that every state subject shall have right to form association or unions subject to any reasonable restrictions imposed by law in the interest of morality or public order. The provisions of “subject to any reasonable restrictions imposed by law,” makes it crystal clear that constitution allowed restrictions to be imposed by law. As per our considered view, Government employees cannot be allowed to claim that they can take the society at ransom by going on strike, lock-out and go-slow. Even if, there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike, lock-out and go-slow, as a weapon are mostly misused, which results in chaos, and total mal-administration. Strike affects the society as a whole and particularly when large number of employees go on strike the entire administrations comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many

students are prevented from appearing in their exams which ultimately affect their whole carrier. In case of strike by Doctors and Paramedical Staff, innocent patients suffer; in case of strike by employees of transport service entire movement of the society comes to a standstill; business is adversely affected and number of persons find it difficult to attend to their work to move from one place to another or one city to another. On various occasions public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

12. The pari-materia provisions were inserted in Rule 4-A of Bihar Government Servants' Conduct Rules, 1956, which postulated that "No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service". The aforesaid provisions were challenged by various Indian civil servants Kameshwar Prasad and others before the Patna High Court. The learned Judges of the Patna High Court, who heard writ petition, were of opinion that Art.19(1)(a) and 19(1)(c) of the Constitution of India did not include a right to resort to a strike or the right to demonstrate so far as servants of Government were concerned. It was therefore, held that the rule impugned was saved as being reasonable restraints on these guaranteed freedoms. The learned Judges, therefore, directed the petition to be dismissed. Against the aforesaid judgment, the Government

employees filed a certificated Appeal titled “*Kameshwar Prasad and others Vs. State of Bihar and another*” [AIR 1962 Supreme Court 1166]. The Indian Apex Court while speaking against the strike and demonstrations opined in paragraph 20 of the report, as follows:-

“20. We would therefore allow the appeal in part and grant the appellants a declaration that R.4-A in the form in which it now stands prohibiting “any form of demonstration” is violative of the appellants’ rights under Art. 19(1)(a) and (b) & should therefore be struck down. It is only necessary to add that the rule in so far as it prohibits a strike, cannot be struck down since there is no fundamental right to resort to a strike. As the appellants have succeeded only in part, there will be no order as to costs in the appeal.”

The similar provisions were inserted in Indian Government Servants Conduct Rules, 1973. The Tamil Nadu Government, terminated the services of two lac employees who were resorted to strike for their demands. The learned single Judge of Madras High Court through interim order, inter alia, directed the state Government, that suspension and dismissal of employees without conducting any inquiry be kept in abeyance and such employees be directed to resume duty. The aforesaid interim order was challenged by the State Government before the Apex Court of India in case titled “*T.K. Rangarajan Vs. Government of Tamil Nado and others*” [AIR 2003 3032]. As per paragraphs 12 and 13 of the report, it was held as follows:-

“12. Now coming to the question of right to strike – whether Fundamental, Statutory or Equitable Moral Right—in our view, no such right exists with the Government employees.

(A) There is no fundamental right to go on strike:-

13. Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In Kameshwar Prasad and others v. State of Bihar and another [(1962) Suppl 3 SCR 369] this Court (C.B.) held that the rule insofar as it prohibited strikes was valid since there is no fundamental right to resort to strike.”

A similar proposition came under consideration before the Apex Court of Pakistan in case titled *“Civil Aviation Authority, Islamabad and others Vs. Union of Civil Aviation Employees and another”* [PLD 1997 Supreme Court 781]. At page 815, of the report it was held as under:-

“It may be pointed out that there are certain rights which are inhere in a trade union on account of its formation which inter alia includes the right to act as a collective bargaining agent. However, we may point out that the right of strike or the right to go slow are not rights which can be spelt out from Article 17(1) of the constitution.”

An identical view was expressed by the Quetta High Court, in case titled *“Muhammad Afzal etc. Vs. Mushtarka Mulazmin Action Committee etc.”* [PLJ 1999 Quetta 219(DB)], wherein, at page 227, of the report, it was observed as follows:-

“Thus, a plain definition of the word ‘misconduct’ suggest that the Civil Servant is not authorized to indulge in such activities, which are prejudicial to good order or service discipline. Obviously, resorting to a Strike by the Civil servants would be prejudicial to good order or service discipline, because on having decided to resort to strike, go slow or lock out, they would not be obeying the good orders of their Superiors and while denying to perform his/their duty, they would be absenting themselves from the duty and their such conduct, would be unbecoming of an Officer and a Gentleman. Therefore, on account of such restriction Civil servants cannot be allowed to resort to Strike, go slow or lock out for pressing their demands nor they can be allowed to do agitation, in such a manner, which is not accepted from a good Officer or a Gentleman, because if such activities are allowed in Government Offices, their would be no discipline in service structure, amongst the Seniors and sub-ordinates, as in the instant case, admittedly majority of the civil servants of Secretariat and its attached departments as well as the School Teachers from Grade-7 to 16, working at different places in Government Departments, were on Strike and on account of their such activity, they have not been performing their duties, essentially in utter disregard of their responsibilities and in complete disobedience of the good order of service as well as public order and even being a Government servant, it was against morality to resort to Strike, at the cost of public, as due to their such act, the functioning of the offices as well as Schools, and other Institutions, had totally paralyzed. Thus, we are inclined to conclude that though the Civil Servants have freedom to form an

Association or Union, under Article 17(1) of the Constitution of Islamic Republic of Pakistan, but they have no legitimate right to resort to Strike, go slow or lock out, in view of the restriction imposed by Balochistan Civil Servants (Efficiency and Discipline) Rules, 1992, to press the Provincial Government for acceding to their demands. However, they can agitate their claims or grievances before legal competent forums.”

The insertion of provisions, therefore, prohibiting strike, lock-out and go-slow as per Sections 2(x), 7(2) and 17 of the Registration and Regulation Act, 2016, are not against basic provisions of Section 4(7) of the Interim Constitution Act, 1974.

12. The founder of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah, while addressing the civil officers in Peshawar on 14.04.1948, advised them as follows:-

“The services are the backbone of the State-Government are formed. Governments are defeated. Prime Ministers come and go, Ministers come and go, but you stay on. Therefore, there is a very great responsibility placed on your shoulders. You should have no hand in supporting this political party or that political party, this political leader or that political leader. This is not your business.

Whichever Government is formed according to the Constitution, and who ever happens to be the Prime Minister or Minister, coming into power in the ordinary course, your duty is only to serve that Government loyally and morally but, at the same time, fearlessly, maintaining your high reputation,

your prestige, your honour and the integrity of your service. If you start with that determination, you will make a great contribution to the building up of Pakistan of our conceptions and our dream a glorious State and one of the greatest nations in the world.

While impressing this upon you, I wish also to take the opportunity of impressing upon our leaders and politicians in the same way, that if they ever try to interfere with you and bring political pressure to bear upon you, which leads to nothing but corruption, bribery and nepotism-which is a horrible disease and for which not only your province but others too are suffering-if they try to interfere with you in this way, I say they are doing nothing but disservice to Pakistan.”

The dream of our founding father was that civil servants may work fearlessly, maintaining their high reputation prestige, honesty and the integrity of their service, therefore, all employees must fulfill the dream of founder of Pakistan.

13. The contention of the learned counsel for petitioners that section 22 pertaining to registration of Associations, which had already been registered, are not applicable is misconceived. The learned counsel for petitioners in this regard relied upon council order No.309/1956 dated 30.08.1956, which speaks as follows:-

“Office of the Secretary General,
Azad Kashmir Government,
Cabinet Secretariat”

COUNCIL ORDER No.309/56, dated 30.08.1956

The Azad Jammu & Kashmir Government is pleased to approve the formation of the Azad Jammu & Kashmir Non-

Gazetted Employees Association with its aims and objects as per appendix to this order.

Sd/-
(Muhammad Yaqub)
Deputy Secretary General,
Azad Kashmir Government. ”

A bare reading of the aforesaid council order, reveals that no provisions for registration of associations were inserted in the aforesaid council order. Even no any mechanism and conditions were provided in the said order for the purpose. As per our considered view, the registration of Paramedical Association/Health Employees Organization as per Govt. notifications dated 26.03.1988 and 30.12.1993, are without statutory backing. The learned counsel for petitioners admitted at Bar that previously neither any Statutory Rules were framed by Government-respondent nor any Act of Assembly was passed with regard to provide complete mechanism and conditions for registration of Associations, hence, contention is turned down.

14. The learned counsel for petitioners also referred to and relied upon rule 32 of the Azad Jammu & Kashmir Government Servants (Conduct) Rules, 1981. A bare reading of the aforesaid provisions makes it clear that no provision regarding mechanism and registration of Associations were postulated. The rule *ibid*, according to our considered view, cannot override “The AJ&K Employees Service Associations (Registration and Regulation) Act, 2016”. The aforesaid

provisions, of rule 32, however, shall be deemed as impliedly repealed from the Statute book.

15. After having discussed the constitutional provisions and law on the subject, the principles annunciated can be summarized as under:-

- “i. The impugned legislation as postulated under Sections 2(X), 7(2) and 17 as well as Section 22 of the AJ&K Employees Service Associations (Registration and Regulation) Act, 2016, are not violative of any provisions of the Interim Constitution Act, 1974;
- ii. The right of freedom of association is an inalienable fundamental right of every citizen of course including civil servants and employees of statutory bodies;
- iii. Like any other fundamental right, right of freedom of association is not absolute, unfettered, or uncontrolled and the same can be regulated by restrictions imposed under law in the interest of morality and public order;
- iv. Individual interest is to give way to the collective good and public interest. Observance of strike and demonstrations at public places by a number of individuals i.e. civil servants or employees of statutory bodies causes inconvenience and embarrassment to public-at-large and frustrate their pursuit of legal activities;
- v. Restrictions imposed by law on observance of strike or demonstrations by civil servants and employees of statutory bodies qualify the test of reasonableness in view of exhaustive discussion

made hereinabove, and precisely speaking for the reason, that such strike and demonstrations result in public disorder and infringement of fundamental rights of ordinary citizens;

- vi. In future, if Government/civil servants and employees of statutory bodies are found indulged in observance of strike or holding demonstrations at or by public thoroughfares, they shall not only be guilty of misconduct, but also contempt of Court liable to be proceeded against accordingly;
- vii. It shall be the duty of Secretary of the concerned Department/Statutory body to immediately initiate departmental disciplinary action against the delinquents civil servants and employees of Statutory bodies involved in the activities mentioned in preceding paragraphs;
- viii. In the event of failure of Secretary concerned/Head of Statutory body to initiate action in above terms, Chief Secretary, Azad Jammu & Kashmir Government, shall initiate disciplinary proceedings against the Secretary concerned, as well as delinquent Government/civil servants/employees of statutory bodies.
- ix. On enforcement of the AJ&K Employees Service Associations (Registration and Regulation) Act, 2016, one month period was provided to associations already registered to get registration as per section 22 of the aforesaid Act. As petitioners challenged vires of the same through the instant writ petitions, therefore, associations are provided further one month period from the date of announcement of the instant judgment.

16. Before parting, we must convey a message to public functionaries sitting at the helms of the affairs that it is their foremost duty to maintain office discipline in the public interest. Loose administration would amount to anarchy which is fatal to foundation of 'sacred land' which, in no case is tolerable. Maintenance of office discipline in all walks of activities has to be maintained otherwise law of Jungle would prevail. If they fail to take appropriate action against delinquents common people would be at their cruel mercy and there would be a grave unrest in society. Simultaneously they must bear in mind that they are also under binding duty to safeguard legal and legitimate interests of their sub-ordinates.

17. The crux of above discussion is that finding no force in the instant writ petitions, the same are hereby dismissed. The office is directed to circulate the instant judgment to Chief Secretary, as well as, all Secretaries to Government for compliance and necessary action. The costs shall follow the eventuality.

Muzaffarabad;
20.07.2017.(1)

CHIEF JUSTICE/VACATION JUDGE

JUDGE IN WAITING