

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, ACJ.

Civil PLA No.326 of 2019

(Filed on 22.11.2019)

Ashfaq Ali

.....PETITIONER

VERSUS

Ehtesab Bureau & others

....RESPONDENTS

[On appeal from the judgment of the High Court
dated 02.10.2019 in writ petition No.222 of 2019]

FOR THE PETITIONER: Mr. M. Nadeem Raja,
Advocate.

FOR THE RESPONDENTS: Sardar Amjad Aslam
Khan, Chief Prosecutor
Ehtesab Bureau.

Date of hearing: 21.05.2020

JUDGMENT

Raja Saeed Akram Khan, ACJ—The captioned
petition for leave to appeal has been filed against
the judgment of the High Court dated 02.10.2019

whereby the writ petition filed by the petitioner, herein, has been dismissed in limine.

2. The summary of the facts is that the petitioner, herein, was serving as Assistant Education Officer in the Education Department. He was arrested on 19.05.2010 in the offences under sections 109, 409, 471, 419, 420, 467 and 468, APC and 11 of the Ehtesab Bureau Act, 2001). In that case, he was granted bail vide order dated 15.06.2010 by the Ehtesab Court No.1, Muzaffarabad. After being released on bail, he filed an application in Secretariat Education, Muzaffarabad for his readjustment stating therein that he has been acquitted by the Court on 15.06.2010, therefore, he may be adjusted in service. He also produced the copy of the judgment of the Court dated 15.06.2010. The produced judgment was found bogus one, in consequence of which a reference in the offences under sections 467, 468, 471, APC and 11 of Act, 2001 was filed in the Ehtesab Court by the Director Investigation. The petitioner, herein, filed an application under

section 265-K, Cr.P.C. for dismissal of the reference. The learned Ehtesab Court vide order dated 03.10.2015 rejected the application. The petitioner filed a revision petition before the High Court which was also dismissed. Finally, he filed an appeal by leave of the Court before this Court which was accepted in the following manner:-

“In view of the above stated facts, we are constrained to accept this appeal, set-aside the impugned judgments of Courts below and hold that the reference has not been competently made by the Chairman Ehtesab Bureau or any person duly authorized by him. Therefore, all the proceedings conducted by the Ehtesab Court are against the law which are hereby quashed. However, on the basis of conducted investigation if the accused-appellant is found connected with the commission of alleged offences, the Chairman Ehtesab Bureau or any officer duly authorized by him, after appraising the material and evidence placed before him, is of the opinion that it will be proper and just to proceed against the accused-

appellant he may do so by adhering to the legal statutory provisions.”

It is the contention of the petitioner that the respondents in violation of this judgment of the apex Court, have again issued notices to the petitioner on 07.04.2019 and 19.04.2019. In this background, he filed a writ petition before the High Court for quashment of these letters. After necessary proceedings, the learned High Court dismissed the writ petition in limine through the impugned judgment, hence, this petition for leave to appeal.

3. Mr. Muhammad Nadeem Raja, Advocate, the learned counsel for the petitioner stated that the impugned judgment of the High Court is patently illegal. He submitted that previously a reference was filed against the petitioner in sequence of compliant No.503. The petitioner filed an application under section 265-K, Cr.P.C. The matter was finally adjudicated by this august Court through judgment dated 21.12.2018, wherein the proceedings conducted by the Ehtesab Bureau were

quashed on the ground that the reference was not competently made by the Chairman Ehtesab Bureau or any person duly authorized by him. He submitted that in continuation of the previous complaint the Ehtesab Bureau has once again issued the impugned letters to the petitioner in clear violation of the judgment of the High Court. This point was specifically taken before the High Court but the learned High Court has totally failed to consider the same in its true perspective. He submitted that the Ehtesab Bureau has no authority to re-investigate the matter. The respondents are bent upon to harass the petitioner. As important legal propositions are involved, hence, grant of leave is justified.

4. Sardar Amjad Aslam, the learned Chief Prosecutor submitted that the impugned judgment is in accordance with law. This Court while finally deciding the matter has authorized the Ehtesab Bureau proceed against the petitioner. The impugned letters have rightly been issued. No

ground exists for grant of leave. Therefore, this petition is liable to be dismissed.

5. I have heard the learned counsel for the parties and gone through the record. To some extent the arguments of learned counsel for the petitioner find support from the record. As some important propositions of public importance are involved, hence, leave is granted. The petitioner shall deposit security of Rs.1,000/- within a period of one month otherwise the leave granting order shall automatically stand rescinded. The office shall proceed further according to rules.

ACTING CHIEF JUSTICE

Mirpur,
21.05.2020