

**SUPREME COURT OF AZAD JAMMU & KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

Kh. Muhammad Naseem, J.

**Civil Appeal No.475 of 2020**

(Date of institution: 29.10.2020)

Mujahid Hussain Naqvi, r/o B-26, U.C.H.S. Chattar,  
Muzaffarabad (A.K.).

..... APPELLANT

*versus*

1. Registrar Azad Jammu and Kashmir Supreme Court,  
Supreme Court Building, Chattar Muzaffarabad.
2. Azad Government of the State of Jammu and  
Kashmir through its Chief Secretary, having his  
office at New Secretariat Complex, Chattar,  
Muzaffarabad.
3. Chief Secretary, Azad Government of the State of  
Jammu and Kashmir, having his office at New  
Secretariat Complex, Chattar, Muzaffarabad.
4. Secretary Services and General Administration  
Department, Azad Government of the State of  
Jammu and Kashmir, having his office at New  
Secretariat Complex, Chattar, Muzaffarabad.

..... RESPONDENTS

5. Accountant General of Azad Jammu and Kashmir,  
Sathra Hills , Old Secretariat, Muzaffarabad.

..... PROFORMA RESPONDENTS

[On appeal from the order of the Registrar,  
dated 15.10.2020, in Application for Review No.Nill/2020]

FOR THE APPELLANT: (appellant in person)

FOR THE RESPONDENTS: Nemo.

Date of hearing: 12/7/2021

**JUDGMENT:**

**Kh. Muhammad Naseem, J.**—The captioned appeal has been filed against the order passed by respondent No.1 on 15.10.2020.

2. The facts of the case, briefly stated, are that the appellant was serving as Secretary to the Government, Information Department of Azad Jammu and Kashmir. He was proceeded under the provisions of the Azad Jammu and Kashmir Civil Servants (Efficiency and Discipline) Rules, 1977, on the allegation of misconduct. After conducting the proceedings, major penalty of dismissal from service was awarded to him by the competent authority. The appellant filed a writ

petition against the abovementioned order, which was accepted by the High Court vide judgment dated 5.10.1999. The said judgment was challenged before this Court but due to the difference of opinion, the matter was referred to the third Judge. The matter remained pending for a long time due to one reason or the other. The appellant submitted an application before the learned Chief Justice of the time that as no other Judge was available to hear the appeal, therefore, under section 42(13)(c) of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the judgment of the High Court might be deemed to be the judgment of the Supreme Court. The application was accepted and it was ordered that the judgment of the High Court dated 5.10.1999 shall be deemed to be the judgment of the Supreme Court. Respondents No.2 to 4, herein, filed a review petition against the said order, which was admitted for regular hearing. After necessary proceedings, vide order dated 9.5.2011, the review petition was accepted and the appeal was restored. Thereafter, this Court accepted the

appeal and set aside the judgment of the High Court dated 5.10.1999, vide judgment dated 4.10.2012. Later on, the appellant submitted an application under section 42-A of the Azad Jammu and Kashmir Interim Constitution Act, 1974, read with order XLIII, Rule 5 of the Azad Jammu and Kashmir Supreme Court Rules, 1978, which was dismissed vide judgment dated 25.11.2015. Thereafter, the appellant filed an application for review of the above-referred judgment on 04.01.2016. The said review petition was also dismissed vide judgment dated 13.4.2018. Afterwards, the appellant again filed application for review before the Registrar, respondent No.1, herein, which was returned to the appellant. The appellant, herein, once again submitted an application for review of the judgment dated 4.10.2012. Respondent No.1 returned the said application to the appellant, vide order dated 15.10.2020, against which the instant appeal has been filed.

3. Mr. Mujahid Hussian Naqvi, appellant, while arguing the case at some length, has reiterated all the

grounds agitated in the appeal and submitted that the learned High Court accepted the writ petition filed by the appellant vide judgment dated 5.10.1999. The judgment of the High Court was challenged before this Court by filing an appeal. The appeal was heard by the division bench but due to the difference of opinion among the learned members of the bench, the matter was referred to the third Judge. The matter remained pending for a long time, however, in the meanwhile the learned Chief Justice of the time ordered that as the third Judge is not available to decide the appeal so, under section 42(13)(c) of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the judgment of the High Court might be deemed to be the judgment of the Supreme Court. According to the appellant, the above-mentioned order is intact till date. He further submitted that no review petition was submitted by the appellant against the judgment passed by this Court on 4.10.2012. Respondent No.1 was under legal obligation to provide an opportunity of hearing to the appellant before passing the impugned order but the

appellant has not been provided an opportunity of hearing. It is settled principle of law that no one should be condemned unheard and no adverse order can be passed against any person without hearing him. The impugned order passed by respondent No.1 is against law, facts and the record, hence is not sustainable in the eye of law. The appellant referred to and relied upon the following case-law in support of his version and prayed for acceptance of the appeal:-

- i) *Muhammad Rashid vs. Azad Jammu and Kashmir Government & 20 others* [PLD 1987 SC (AJ&K) 60]
- ii) *Chairman Pearl Development Authority vs. Tariq Inqalabi & 7 others* [2005 SCR 186]
- iii) *Taskeen Naz vs. Fehmida Begum & 11 others* [2016 SCR 1436]
- iv) *Mansab Ali vs. Amir & 3 others* [PLD 1971 Supreme Court 124]
- v) *Sangram Singh, Appellant vs. Election Tribunal, Kotah and another, respondents* [AIR 1955 Supreme Court 425]
- vi) *Azad Government & 4 others vs. Muhammad Siddique Haideri* [2000 SCR 554] and

vii) *Chairman AJK Council vs. Abdul Latif & 5 others* [1997 SCR 264]

4. I have heard the appellant and perused the record made available. It transpires from the grounds agitated in the review application that the appellant wants review of the judgment of this Court dated 4.10.2012, passed in the case titled *Azad Government & others vs. Mujahid Hussain Naqvi & another* (Civil Appeal No.165/2000). For the sake of convenience, it will be useful to reproduce the prayer-clause of the review application, which is as under:-

**"Prayer Clause:-**

In the circumstances enumerated above, it is humbly prayed that by accepting this application for review of judgment of Hon'ble Supreme Court dated 04/09.10.2012 (Annexure "PPA") under Article 42-D of the Azad Jammu and Kashmir Interim Constitution, 1974, and section 2 of the Supreme Court (Power of Review) Act, 1980, read with orders XLIII and XLVI of Supreme Court Rules, 1978, as well as all enabling provisions of the Interim Constitution, 1974 and the Supreme Court Rules, 1978, judgment dated 04/09.10.2012 Annexure "PPA" doth in non instituted civil appeal No.165/2000 titled "Azad

Kashmir Government & others vs. Mujahid Hussain Naqvi & another” may very graciously be ordered to be recalled, vacated, cancelled and set aside. Thereby enabling the petitioner to receive the due arrears of the salaries (including the suspension period w.e.f. the date of removal from service as admissible under rules), and full pensionery and other allied retirement benefits of service as Senior Secretary to Govt. (B-21) as per final order and judgment of Hon’ble Supreme Court in civil Misc. No.40/2002 dated 01.04.2002 and 09.09.2009, and civil appeal No.165/1999 dated 08.05.2010 passed by the Learned third (another) Judges of the time respectively. Any other relief which is found appropriate to be granted to the applicant/petitioner in law, justice and equity in the estimation of this reverend Court is also humbly solicited on his behalf.”

5. The controversy involved in the matter was finalized by this Court vide judgment dated 4.10.2012, whereby the appeal filed by the Government was accepted and the writ petition filed by the appellant, herein, before the High Court for his reinstatement into service was dismissed. Thereafter the appellant filed an application under section 42-A of the Azad Jammu and Kashmir Interim Constitution Act, 1974, read with Order



XLIII, rules 1 to 5 of the Azad Jammu and Kashmir Supreme Court Rules, 1978, and sought review of the judgment dated 4.10.2012, which was dismissed by this Court. The appellant filed another application for review of the judgment and the said application was also dismissed on 13.4.2018. Presently the appellant has filed an application for review of the judgment dated 4.10.2012 on 13.10.2020. Respondent No.1 returned the application for review to the appellant on the ground that the appellant submitted an application for review after a lapse of long time and sought review of the judgment of this Court dated 4.01.2012, which has attained finality. The appellant has agitated the same grounds in the review application, which have already been resolved by this Court in the judgment dated 4.10.2012. The appellant wants to re-open the case after pretty long time, which has attained finality. Reliance in this regard can be placed to the case reported as *the University of AJ&K Muzaffarabad & 6 others vs. Engineer Muhammad Khalid*

[2004 SCR 84], wherein, this Court has observed as under:-

"10. Before proceeding further, it appears necessary to say that any finding which has attained finality by the lapse of time or on account of conduct of the parties cannot be reopened as the finding become past and closed transaction....."

An identical proposition came under consideration before this Court in a case titled *Major (Rtd.) Rafique Ahmed Durrani vs. AJ&K University & 5 others* [2005 SCR 373], wherein, it was observed, as under:-

"5. All the points agitated in the review petition and argued before the Court are elaborately dealt with in the judgment under review. This is consistence practice of this Court that the points once decided cannot be reopened as the jurisdiction in review is not akin to appeal. Only an error apparent on the face of record can be reviewed. The advocate for the petitioner wants to substitute his point of view for the view formed by the Court after discussing all the aspects of the case. The learned Advocate for the respondents has rightly relied upon the case titled *Alam Din V. Mayor, Municipal Corporation Mirpur and 4 others* (1999 SCR 343) in this behalf."

6. The case-law referred to and relied upon by the appellant having distinguishable facts, is not applicable in the case in hand, hence, there is no need to discuss the same.

7. The appellant has also moved an application for summoning of the record. I have perused the contents of the application filed by the appellant. The appellant has annexed the whole record with the memo of the appeal, so there is no need to summon the record. Thus, the application for summoning of th record is hereby rejected.

The impugned order passed by respondent No.1 is in accordance with law calling for no interference. Resultantly, the appeal having no merits, stands dismissed.

  
**JUDGE**

Muzaffarabad  
16.7.2021