

Azad Govt. & others VS M. Ishaq & others
Raja Inamullah khan VS Azad Govt. & others

PRESENT:

Mr. Asghar Ali Mallik, Advocate for Azad Govt. & others.
Raja Muhammad Hanif Khan, Advocate for the respondents *M. Ishaq & others* and the appellants *Raja Inamullah Khan & others*.

ORDER:

Since both the appeals are interlinked, hence, we intend to dispose of the same through this consolidated short order. The appeal filed by the Azad Govt. & others is partly accepted and the impugned judgment of the High Court is modified in the following manner:-

- (i) The findings recorded by the High Court in paragraph 14 of the impugned judgment that no person shall be appointed as Advocate General without consultation with the Chief Justice of Supreme Court and High Court are set-aside being not in consonance with the relevant Constitutional provisions as well as the principle of law laid down in the case reported as *Secretary Ministry of Law & others vs. Muhammad Ashraf Khan & others* [PLD 2011 SC 7]
- (ii) Likewise, the findings recorded by the learned High Court in the impugned judgment pertaining to the principle of parity with the Punjab Government are not sustainable as this Court already dilated upon this proposition in the case reported as *Azad Govt.*

& others vs. Sardar Mukhtar Khan & others [2016 SCR 206].

- (iii) The Advocate-General, being holding the constitutional post is not supposed to be subordinate to the Secretary Law, Justice, Parliamentary Affairs and Human Rights, hence, we are constrained to hold that the Advocate-General is authorized to appear in each and every case in which the Government is party, without direction of the Secretary Law. He is also authorized to distribute the cases to other Law Officers. The findings recorded by the learned High Court in this regard are fully endorsed.
- (iv) It is also observed here that in presence of the Law Officers, being paid from the Government exchequer, there is no occasion for the Government to engage the private counsel to defend the cases in the Supreme Court and High Court, however, in exceptional cases, after consultation with the Advocate-General and prior permission of the Court, the private counsel can be engaged for assistance of the Advocate-General but it cannot be allowed to make a practice.
- (v) Furthermore, the departments in which the Legal Advisors are appointed, are not allowed to engage additional counsel. If the department is not satisfied of the performance of the Legal Advisor, he may be replaced or his terms and conditions may be altered, if so advised.

(vi) Pertaining to the appeal titled *Raja Inamullah Khan & others vs. Azad Govt. & others*, we would like to observe here that the appellants (Raja Inamullah Khan & others) were appointed in the year 2016 in the light of Azad Jammu and Kashmir Law Officers (Terms and Conditions) Act, 2014 (Act I of 2015). They accepted the terms and conditions of appointment and at the verge of change of Government, they challenged the aforesaid Act before the High Court, hence, their writ petition is badly hit by the principle of laches and they are also estopped by their own conduct, therefore, the argument of Raja Muhammad Hanif Khan, Advocate, with reference to *Tayyab Gillani's case* is repelled. Consequently, the appeal filed by him is dismissed in toto.

(vii) In the public interest, we also deem it appropriate to observe that due to non-appointment of the Advocate-General the cases at large are being delayed, hence, the concerned are directed to make appointment of the Advocate-General within a period of one month from communication of this order.

The detailed reasons shall be recorded later on.

Muzaffarabad,
03.09.2021

CHIEF JUSTICE

JUDGE

JUDGE