

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL MISC. No. 211 OF 2023

(Application for grant of
permission to represent
the petitioner in the
instant review petition)

Sana Latif d/o Abdul Latif Pervaiz c/o Parveen Latif District
Education Officer Hattian Bala, District Jehlum Valley.

...Petitioner

VERSUS

1. Mst. Sadaqat Abbasi presently posted as Ad-hoc General Line Secondary School Teacher Govt. Girls High School Hattian Bala District Neelum Valley.
2. Secretary Elementary and Secondary Education having his office at New Secretariat, Chatter Domail, Muzaffarabad.
3. AJ&k Public Service Commission through its Secretary having his office near Prime Minister House Jalalabad Muzaffarabad.
4. Chairman AJ&K PSC having his office at Jalalabad Muzaffarabad.
5. Selection Committee/ Penal through its Chairman having his office at Jalalabad Muzaffarabad.
6. Director Public Instructions Schools (Female) Azad Govt. of the State of Jammu and Kashmir having his office at New District Headquarter Complex Saehli Sardar Road Muzaffarabad.
7. District Education Officer (Female) having her office at Hattian Bala District Jehlum Valley.

8. Headmistress Govt. Girls High School Hattian Bala District Jehlum Valley.
9. Govt. of AJ&K through Secretary Elementary and Secondary Education having his office at New Secretariat Muzaffarabad.

...Respondents

Appearances:

For the Petitioner: Mr. Saqib Ahmed Abbasi,
Advocate.

For the Respondents: Nemo.

Date of hearing: 11.04.2023

ORDER:

Raza Ali Khan, J:- This application has been directed under rule 6 of the Order XLVI of the Azad Jammu and Kashmir Supreme Court Rules, 1978, for seeking permission by the learned counsel to represent the petitioner in the review petition by replacing the earlier counsel.

2. The petitioner seeks permission to draft the review petition on the ground that the matter needs judicial observance/consideration for the administration of justice. No reason whatsoever has been furnished in the application as to why the original Advocate namely Mr. *Sardar Karam Dad Khan*, cannot represent the petitioner and is being replaced.

3. While arguing the instant application, the learned counsel for the petitioner submitted that he wants to draft the review petition on behalf of the petitioner on the ground as mentioned above, however, he failed to furnish any reason/ground on which, he may be permitted.

4. We have heard the learned counsel for the petitioner and gone through the impugned judgment as well as the Azad Jammu and Kashmir Supreme Court Rules, 1978 (*hereinafter to be referred as 'Rules 1978'*). Order XLVI of the Rules, 1978, requires the same Advocate, who earlier appeared to argue the case, to draw up the review application and appear in support of it before the Court for certain reasons. It is because a review petition is not equivalent to a petition for leave to appeal or an appeal where the case is argued for the first time. The scope of review application is limited to the grounds mentioned in Order XLVI Rule 1 of the Rules 1978. The Advocate who had earlier argued the main case is perhaps the best person to evaluate whether the said grounds of review are attracted in the case. He being part of the hearing of the main case is fully aware of the proceedings that transpired in the Court leading to the judgment or order sought to be reviewed. He is the one who knows what was argued before the Court and what weighed with the Court in deciding the matter either way. It is also for the same reason that the review application is to be fixed before the same Bench that delivered the judgment or order sought to be reviewed, under Rule 8 of Order XLVI of the Rules. It is not hard to understand that the same Advocate and the same Bench can best appreciate the grounds of review. It is true that the requirement of "sufficient ground" for granting the special leave is not expressly stated in Rule 6, but this does not mean that the discretion of the Court to grant or decline the special leave is arbitrary or is mechanical on filing of an application in this regard by a petitioner. This discretion, like all other discretions, is to be exercised judiciously for valid reasons by considering the circumstances of the case. The special leave to substitute a counsel in a review petition is to be granted only when appearance of the earlier counsel is not possible due to some

unavoidable circumstances, such as the original counsel is dead or unable to appear before the Court due to some mental or physical disability but that too is subject to the permission to the Court. The practice of filing review applications by changing the counsel without justifiable reasons or unavoidable circumstances, by the parties as well as by the Advocates representing them is condemnable.

5. In the instant case, there is no ground whatsoever, mentioned in the application for a grant of special leave to argue in the review petition. The ground for permission is mentioned paras No. 1 & 2 of the application, which is reproduced: -

“1. That the humble advocate/applicant has engaged counsel in the above-mentioned review petition seeks permission to draft the review petition before this Honorable Court.

2. That the matter in hand needs the judicial observance/ consideration again for kind administration of justice, thus seeking the permission to draft the case.”

6. The only point involved in the case is the interpretation of Rule 6 of the Order XLVI of the Rules, 1978, which reads as under: -

“6. Except with the special leave of the Court, no application for review shall be entertained unless it is drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made. Nor shall any other Advocate, except such Advocate, be heard in support of the application for review, unless the Court has dispensed with the requirement aforesaid.”

7. The perusal of Order XLVI reveals that hearing of the review petition is not automatic but same is subject to various conditions. Under Rule 6 of Order XLVI, except with special leave of the Court, no application for review

shall be entertained unless it is drawn by the Advocate who appeared at the hearing of the case in which the judgment or order sought to be reviewed was made. In the light of the above-reproduced rule, the ground pleaded for permission to file and argue the case is hardly a ground for grant of permission. This Court has always discouraged substitution of another counsel at the stage of hearing of the Review Petition, definitely with a view that if such practice is adopted, there would be no end to litigation and replacement of original counsel by another counsel at the Review stage.

8. For reaching a just conclusion, we have gone through the various pronouncements of this Court as well as Supreme Court of Pakistan, wherein, the Courts have consistently formed the opinion that it has become the practice of filing frivolous review petitions that too after changing of the counsel. In the case reported as *Amjad Hussain versus Nazir Ahmad and others*¹, the Supreme Court of Pakistan observed that: -

“It is true that the requirement of “sufficient ground” for granting the special leave is not expressly stated in Rule 6, but this does not mean that the discretion of the Court to grant or decline the special leave is arbitrary or is mechanical on filing of an application in this regard by a petitioner. This discretion, like all other discretions, is to be exercised judiciously for valid reasons by considering the circumstances of the case. The special leave to substitute a counsel in a review petition is to be granted, as held by a full bench of this Court in Dr. Mubashir Hassan case, only when appearance of the earlier counsel is not possible due to some unavoidable circumstances.”

¹ [PLD 2023 Supreme Court 22]

In a case reported as *Muhammad Sabeel Khan vs. Muhammad Ayoub Khan and others*², this Court held as under: -

“The petitioner himself filed a review petition under Order XLVI, Rule 6 of the Azad Jammu and Kashmir Supreme Court Rules, 1978. It is provided that every review petition shall be filed by the advocate who appeared at the hearing of the case in which the judgment or order sought to be reviewed, was made. The rule further provides that review petition may be drawn by an advocate other than the advocate who appeared at the hearing of the case in which the judgment or order sought to be reviewed with special leave of the Court.”

In a case reported as *Muhammad Younas and others versus The State*³, we quote a paragraph from the said judgment:-

“This Court has always discouraged substitution of another counsel at the stage of hearing of the Review Petition, definitely with a view that if such practice is adopted, there would be no end to litigation and replacement of original counsel by another counsel at the Review stage for the reasons that he intends to CMA No. 649-L of 2021 4 argue a substantial question of law having public importance, would lead to no end to the litigation.”

In a case reported as *Ghulam Rasul etc. versus Settlement and Rehabilitation Commissioner, Gujranwala etc.*⁴ which reads as follows:-

“Unless circumstances be compelling or the absence unavoidable compliance with this rule has to take place.”

² [2015 SCR 1464]

³ (PLD 2005 Supreme Court 93)

⁴ (1980 SCMR 962)

The Indian Supreme Court also shares the same view, which can be read in *Tamil Nadu Electricity Board and Ors. Vs. N. Raju Reddiar and Ors*⁵:-

“Unfortunately, it has become, in recent time, a practice to file such review petitions as routine; that too, with change of counsel, without obtaining consent of the advocate on record at an earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession.”

9. In the light of the law already enunciated by this Court, neither are there in the instant case any compelling circumstances to change the counsel nor the circumstances are unavoidable as the previous counsel is also available and the ground mentioned in the application is hardly ground to allow the substitution of a counsel at the review stage. If permission is liberally granted, it would not only be against the said rules but would make the rule redundant and would further lead to endless litigation. In this view of the matter, there is no reason to allow this application, therefore, the same stands dismissed.

JUDGE

JUDGE

Muzaffarabad,
13.04.2023

Approved for reporting.

⁵ (AIR 1997 SC 1005)