

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAJA SAEED AKRAM KHAN, C.J.
MR. JUSTICE KHAWAJA M. NASIM,
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEALS NO. 144 & 145 OF 2023

(Against the judgment
dated 19.01.2023, passed
by the High Court in writ
petition No. 3060 of 2022)

Ch. Khalid Yousaf, Custodian of Evacuee Property, Azad
Jammu and Kashmir, Custodian Building Muzaffarabad.

(In civil appeal No. 144 of 2023)

Azad Jammu and Kashmir Government through its Chief
Secretary office at New Civil Secretariat Muzaffarabad, Azad
Jammu and Kashmir and 03 others.

(In civil appeal No. 144 of 2023)

...Appellants

VERSUS

Azad Jammu and Kashmir Government through its Chief
Secretary office at New Civil Secretariat Muzaffarabad, Azad
Jammu and Kashmir and 03 others.

(In civil appeal No. 145 of 2023)

Ch. Khalid Yousaf, Custodian of Evacuee Property, Azad
Jammu and Kashmir, Custodian Building Muzaffarabad.

(In civil appeal No. 145 of 2023)

...Respondents

Appearances:

For the Appellant: Raja M. Hanif Khan, Advocate.

For the Respondents: Miss Salma Tariq Khan Sudozai,
Miss Shehnaz Gillani & Raja
Ansar Khan Tahir, Advocates.

Date of hearing: 04.10.2023

JUDGMENT:

Raza Ali Khan, J:- Both of the aforementioned appeals stem from a single judgment of the High Court rendered on 19.01.2023. The impugned judgment resulted in the acceptance of the writ petition filed by the appellant in appeal No. 144 of 2023.. Since both appeals revolve around the same set of legal questions, our intention is to address them collectively in the forthcoming judgment.

2. At the very outset, a question was posed to Miss Salma Tariq Khan Saduzai counsel for the appellant in appeal No. 145 of 2023, regarding her capacity to appear before the Court. She explained that she was representing the department as its legal advisor because the case had been assigned to her by the office of the Advocate-General. We are afraid that the learned Advocate-General's authority is limited to assigning cases to the law officers, and this Court has consistently ruled in numerous decisions that legal advisors do not fall within the purview of law officers. The appeal should have been initiated by the Advocate-General or one of his law officers. Consequently, the appeal filed by the Azad Government and others is dismissed on the ground of incompetence. Reliance may be placed to the case reported

as *AJ&K Government & others vs. Muhammad Ishaq & others*¹, wherein, it has been held as under: -

“17. We have also noticed that besides Advocate-General, a large number of Law Officers are appointed by the Government. Despite the fact that they are being paid from the public exchequer, the private counsel are also engaged by the Government in several cases. In our estimation, if the government contends that none amongst its law officers is capable of handling the cases then the question would arise why incompetent persons have been appointed. In such a scenario the public suffers twice, firstly, they have to pay for incompetent law officers, and secondly, they have to pay again for the services of competent counsel the government engages. The public exchequer is not there to be squandered in this manner. The State must protect the belongings and assets of the State and its citizens from waste and malversation.

It is, therefore, observed that in presence of the Law Officers, being paid from the Government exchequer there is no occasion for the Government to engage a private counsel to defend or prosecute the cases in the Supreme Court and High Court. However, in exceptional cases having State and Government level constitutional importance or involving complex technicalities of some particular fields, after consultation with the Advocate-General and prior permission of the Court the private counsel can be engaged to assist the Advocate General but it cannot be allowed to make a practice.”

In the latest judgment of this Court titled *Secretary Finance and another vs. Masood Ahmed Khan and others*², the identical case came under the consideration of this Court, wherein, it has been held as under: -

“In view of the above, as the sanction for filing the PLAs/Appeals have been granted by the Law Department, in the name of Advocate General, whereas, appeals have been filed by the Legal Advisor of the Finance Department, who was not competent to file the same, therefore, the appeals

¹ [2021 SCR 23]

² Civil App. No. 147/2023, decided on 06.09.2023

being filed incompetently are liable to be dismissed on this sole ground.”

2. Indeed, the facts surrounding Appeal No. 144 of 2023 are that the Government of Azad Jammu and Kashmir, after consultation with the Hon'ble Chief Justice of Azad Jammu & Kashmir and the Hon'ble Chief Justice of the High Court of Azad Jammu & Kashmir, appointed the appellant as the Custodian of Evacuee Property, vide notification dated 07.03.2022. This notification stipulated that the terms and conditions of the appellant's service would be determined separately by the Government. In compliance with this notification, the appellant officially assumed the position of Custodian of Evacuee Property on 08.03.2022. Following a brief waiting period, the appellant submitted formal representations to the Secretary Board of Revenue on March 11, 2022, March 21, 2022, April 6, 2022, and June 27, 2022. These representations specifically requested that the terms and conditions of service for the Custodian of Evacuee Property in Azad Jammu and Kashmir be established in compliance with the judgments of the High Court and the AJ&K Supreme Court. In response, the Government issued a notification on August 2022, specifying that the appellant would be entitled to receive pay, allowances, and privileges equivalent to an officer of scale B-20 of the Government of Azad Jammu & Kashmir. Additionally, the notification stated that the appellant's tenure in office would be at the discretion of the Government. The appellant, feeling aggrieved by this notification, filed constitutional petition under Article 44 of Azad Jammu and Kashmir Interim Constitution, 1974 before the High Court. In the petition, it was stated that the appellant's appointment to the position of Custodian of Evacuee Property had been made after consulting with the Hon'ble Chief Justice of Azad Jammu & Kashmir and the Chief Justice of the High Court of Azad Jammu & Kashmir.

Furthermore, the appellant contended that the office of Custodian of Evacuee Property is a judicial office. The Government's determination of the terms and conditions of the appellant's service through the notification dated 03.08.2022 was seen as a violation of a previous judgment by this Court titled *Ahmed Saeed Khan vs. Azad Govt. & other*³. It was also alleged that the appellant's representation had been rejected without providing him opportunity of hearing and the Government decided the terms and conditions of the appellant's service. The other side submitted a written statement in response to the writ petition, refuting the appellant's claims. Following due legal proceedings, the learned High Court, in its judgment dated 19.01.2023, ultimately accepted the writ petition, and the decision was rendered as follows.

“In the light of what has been stated above, by accepting writ petition, the Azad Jammu & Kashmir Custodian of Evacuee Property (Appointment, Terms and Conditions of Service), Rules, 2021 promulgated through Govt. notification dated 30.11.2021, to the extent of sub rule 3 of Rule 3 are hereby struck down alongwith the impugned notification dated 03.08.2022. The Government-respondent is directed to insert the term and conditions of Custodian of Evacuee Property for pay and other emoluments in the Azad Jammu & Kashmir Custodian of Evacuee Property (Terms and Conditions of Service), Rules, 2021 as provided in the Azad Jammu & Kashmir Custodian of Evacuee Property (Terms and Conditions of Service), Rules, 1992 and thereafter notification for term and conditions of service, salary and other emoluments of petitioner shall be issued with effect from the date of joining i.e. 8th March, 2022.

In view of above, by accepting the writ petition, the Azad Jammu & Kashmir Custodian of Evacuee Property (Appointment, Terms and

³ Civil App. No. 99/2021, decided on 21.12.2021

Conditions of Service) Rules, 2021 promulgated through notification dated 30.11.2021 are hereby set-aside to the extent of sub-rule (3) of Rule 3 of Rules, Ibid, along-with notification dated 03.08.2022, hence, the Government-respondents are directed to incorporate terms & conditions of service of Custodian Evacuee Property in the existing Rules, 2021 as defined in rules 4 to 9 & 11 of the Azad Jammu & Kashmir Custodian of Evacuee Property (Terms & Conditions of Service) Rules, 1992 amendments, with which certain deem modifications necessary in and the present scenario not contrary to scheme and wisdom of the judgment of the Hon'ble Supreme Court and after doing the needful a formal notification to that effect shall be issued while the petitioner is entitled to receive the perks and privileges as defined in the Azad Jammu & Kashmir Custodian of Evacuee Property (Terms & Conditions of Service) Rules, 1992 from the date of assuming charge of his assignment as Custodian of Evacuee Property, Azad Jammu & Kashmir. The respondents are further directed to do the needful within a period of two months from the date of receipt of this judgment positively and in this regard a compliance report shall be submitted to Registrar of this Court.”

3. Raja Muhammad Hanif Khan, the learned counsel for the appellant submitted that both the learned Judges of the High Court accepted the case of the appellant, however, Mr. Justice Sardar Muhammad Ejaz Khan, the other learned member of the bench, recorded certain observations in a separate note in the manner that *“with certain modifications and amendments, which deem necessary in the present scenario not contrary to scheme and wisdom of the judgment of the Hon’ble Supreme Court and after doing the needful a formal notification to the effect shall be issued”* which adversely affected the terms and conditions of the service of the appellant. He added that when both the learned Judges of the High Court were of the view that the writ petition filed by the appellant merits acceptance, then there was no occasion for one of the learned members of the

bench to record additional note which adversely effected the terms and conditions of the appellant, therefore, the judgment of the High Court is liable to be set-aside to this extent.

4. Contrarily, Syeda Shahnaz Gillani, Raja Ansar Khan Tahir and Miss Salma Tariq, learned counsel for the respondents submitted that the judgment of the High Court is based upon misconception of law and the facts of the case which is liable to be set-aside. They added that the learned High Court has not taken into account the fact that the Custodian of Evacuee Property is like a head of a Tribunal and no perks and privileges equal to the Judge of the High Court can be extended to him. Even the rules prevailing at the moment do not warrant such perks and privileges to the Custodian of Evacuee Property.

5. We have thoroughly examined the arguments presented by the learned counsel for both parties and meticulously reviewed the case record. The subject matter in hand revolves around the entitlements and privileges bestowed upon the Custodian of Evacuee Property. The Government of Azad Jammu and Kashmir appointed him as the Custodian of Evacuee Property, following the due legal process. This involved obtaining consultations from both the Chief Justice of the Supreme Court and the Chief Justice of the High Court, as per the requirement of Rule 3(1) of the Azad Jammu and Kashmir Custodian of Evacuee Property (Appointment, Terms and Conditions of Service) Rules, 2021, stipulated in a notification dated 07.03.2023. Notably, this notification specified that the terms and conditions of the appellant's service as the Custodian of Evacuee Property would be determined separately by the Government. In compliance with that notification, the appellant assumed the responsibilities of the Custodian of Evacuee Property on

March 8, 2022. The appellant waited for the Government's determination of the conditions of his service, however, when no action was taken in this regard, the appellant submitted his first representation on March 11, 2022. In this representation, he emphasized that the terms and conditions of his service should be established in accordance with the judgments rendered by the Superior Courts. Unfortunately, this representation did not receive a response from the respondents. Consequently, as a continuation of his earlier representation, the appellant submitted a second representation on March 21, 2022. Ultimately, the Government, by means of the notification dated August 3, 2022, determined the terms and conditions of the appellant's service. According to that notification, the appellant was declared entitled to receive pay, allowances, and privileges equivalent to those of officers holding the rank of BS-20, in the Government of Azad Jammu and Kashmir. Furthermore, it was specified that the term of the appellant's office would be at the discretion of the Government. Expressing dissatisfaction with these terms, the appellant sought redressal of his grievances by invoking the Constitutional jurisdiction of the High Court. Subsequently, the learned High Court, through its judgment dated January 19, 2023, accepted the writ petition, however one of the members of the learned bench in his additional note observed as under: -

“In view of above, by accepting the writ petition, the Azad Jammu & Kashmir Custodian of Evacuee Property (Appointment, Terms and Conditions of Service) Rules, 2021 promulgated through notification dated 30.11.2021 are hereby set-aside to the extent of sub-rule (3) of Rule 3 of Rules, Ibid, along-with notification dated 03.08.2022, hence, the Government-respondents are directed to incorporate terms & conditions of service of Custodian Evacuee Property in the existing Rules, 2021 as defined in rules 4 to 9 & 11 of the Azad Jammu & Kashmir Custodian of

Evacuee Property (Terms & Conditions of Service) Rules, 1992 amendments, with which certain deem modifications necessary in and the present scenario not contrary to scheme and wisdom of the judgment of the Hon'ble Supreme Court and after doing the needful a formal notification to that effect shall be issued”

6. To arrive at a fair and equitable resolution of the case, it is imperative to delve into the background of the matter. The establishment of the office of the Custodian Evacuee Property office finds its origin in the Pakistan Administration Evacuee Property Act of 1957, as adopted in Azad Jammu and Kashmir. Its primary role is to wield authority as per the provisions of this legislation for the administration of Evacuee Properties in Azad Jammu and Kashmir. This entails the resolution of legal disputes arising under the Administration of Evacuee Property Act of 1957 and the Pakistan Rehabilitation Act of 1956, as applied in Azad Jammu and Kashmir. The Custodian's office holds powers of Original Revisional Jurisdiction, as stipulated by the aforementioned legal provisions. The Custodian's functions in regards to Appeals and Revisions are executed in accordance with the procedures and principles that are typically applicable to the judiciary. Specifically, the Custodian is tasked with determining matters related to ownership and other rights concerning evacuee property, all of which are vested in the Custodian by operation of the law. Notably, the Custodian, in these proceedings, assumes a role akin to a Judge, and this position is tantamount to holding a judicial office in Azad Jammu and Kashmir. To facilitate these proceedings, Section 30 of the Administration of Evacuee Property Act of 1957, has been enacted. This section outlines the applicability of the procedural guidelines found in the Code of Civil Procedure when the Custodian conducts inquiries into pending matters within his purview. For the

reference, Section 30 of the Administration of Evacuee Property Act, has been enacted which is reproduced hereunder: -

“30. (1) When holding an enquiry under this Act the Custodian shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:-

- a. enforcing the attendance of any person and examining him on oath or affirmation.
- b. compelling the discovery and production of documents, articles and things;
- c. issuing a commission for the examination of witnesses;
- d. any prescribed matter.

(2) Every proceeding before the Custodian under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purposes of section 196 of the Pakistan Penal Code and the Custodian shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.”

7. Furthermore, the statute, specifically under Section 35 and Section 36, furnishes provisions that stipulate penalties for two distinct circumstances: first, for failing to adhere to the directives issued by the Custodian, and second, for contravening the various provisions encapsulated within the Administration of Evacuee Property Act. To simplify matters, the complete texts of Section 35 and Section 36 are presented below for reference: -

“35. If any person fails to comply with a direction issued by the Custodian in exercise of powers conferred by clause (h) or clause (i) of section 25 or refuse to allow access to any land or premises in accordance with the provisions of clause (c) thereof he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

36. Save as provided in section 31 to 35 whoever contravenes any of the provisions of this Act or of any rule or order made there-under or obstructs the lawful exercise of any power conferred thereby shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.”

8. In the past, the learned Chief Justice and the Judges of the High Court were carrying the charge of the Custodian, however, owing to the escalating workload related to the office of the Custodian Evacuee Property and the unavailability of the learned Judges of the High Court to simultaneously handle these responsibilities, the Government took a significant step by establishing a distinct position of Custodian Evacuee Property. Individuals appointed to this role were entitled to receive pay, privileges, and allowances equivalent to those accorded to High Court Judges. This initiative moved forward with the appointment of Raja Muhammad Azad Khan, an Advocate, to the position of Custodian Evacuee Property, as evidenced by the official Notification dated 31.03.1986. Following Raja Muhammad Azad Khan's passing, Muhammad Siddique Farooqi, Advocate (late), succeeded him, and was officially appointed through a Notification dated 03.09.1990, with terms and conditions aligned with those of a High Court Judge. Subsequently, Khawaja Shahad Ahmed assumed the role of Custodian Evacuee Property, as per the Notification dated 02.10.1990. Similarly, Raja Abdul Majeed Khan (late) took on the office of Custodian, as per the Notification dated 12.11.1991, with his terms and conditions specified in the Notification dated 22.10.1992. Continuing this statutory requisit, Khawaja Nazeer Ahmed Qadri (late) was appointed as Custodian Evacuee Property, with terms and conditions equivalent to those of a High Court Judge, upon the retirement of his predecessor. During his tenure, Khawaja

Nazeer Ahmed Qadri faced removal from service, leading to a legal challenge in the High Court. Ultimately, the High Court overturned his removal, with the wisdom that the position of Custodian Evacuee Property is equivalent to the Judge High Court and the decision was upheld by this Court. The sequence of events detailed above serves as compelling evidence that the position of Custodian Evacuee Property has consistently been regarded at par with that of a High Court Judge.

9. It is noteworthy to mention here that, in order to govern the services of the Custodian of Evacuee Property, the Government initially formulated the "Azad Jammu and Kashmir Custodian of Evacuee Property (Terms and Conditions of Service) Rules 1992." However, subsequent to this, the Government repealed the aforementioned 1992 Rules and introduced the "Azad Jammu and Kashmir Custodian of Evacuee Property (Appointment, Conditions of Service) Rules 2017." These rules, dated 27.02.2017, were challenged through Writ Petition No. 999/2017, and the Court, in a judgment rendered on 18.02.2021, declared them ultra vires.

10. Unfortunately, the judgment issued by this Court was not implemented, leading to another appeal filed before the High Court. In the appeal, it was stated that the rule of law established in the case of *Azad Jammu and Kashmir Government and others vs. Syed Khalid Hussain Gillani*⁴ be fully enforced. While this appeal was pending, the Government introduced the "Azad Jammu and Kashmir Custodian of Evacuee Property (Appointment, Terms and Conditions of Service) Rules 2021". These new rules were presented before this Court, and subsequently, the Court

⁴ [2016 SCR 228]

disposed of the appeal through its judgment dated 21.12.2021. A careful examination of the rules established by the government reveals that they outline the procedure for recruitment. Specifically, they stipulate that the appointment of the Custodian of Evacuee Property shall be made in consultation with the Chief Justice of Azad Jammu and Kashmir and the Chief Justice of the High Court of Azad Jammu and Kashmir, selecting an individual who is state subject and eligible for appointment as Judge of the High Court of Azad Jammu and Kashmir. However, it's noteworthy that these rules did not provide a comprehensive process for the removal of the Custodian of Evacuee Property. In response, this Court, in its judgment dated 21.12.2021, directed that since the method of appointment of the Custodian of Evacuee Property involves consultation with the Chief Justices of both Azad Jammu and Kashmir and the High Court of Azad Jammu and Kashmir, there is no need for further deliberation regarding the applicability of the rule of law established in the case of *Syed Khalid Gillani*, supra. Concurrently, this Court directed that a provision be added to the rules to outline the process for the removal of the Custodian of Evacuee Property, specifying that such inquiries shall be conducted by a Judge of the High Court when the need for removal arises.

11. In light of the principles of law established by this Court in its judgments dated 18.02.2021 and 21.12.2021, coupled with the Government's stipulated method for appointing the Custodian of Evacuee Property, a process that mandates consultation with the Chief Justice of Azad Jammu and Kashmir and the Chief Justice of the High Court of Azad Jammu and Kashmir, there arises unequivocal clarity. The position of the Custodian of Evacuee Property in Azad Jammu and Kashmir is unequivocally equivalent to that of a

Judge of the High Court. Consequently, the incumbent appointed to this role rightfully merits the same entitlements, encompassing pay, allowances, and privileges equivalent to those of a High Court Judge. Regrettably, the Government, with visible mala fide intent and an objective to diminish the Custodian of Evacuee Property's status, opted to define the appellant's terms and conditions of service as equal to Officer of BPS-20 and left the appellant's service at the discretion of the Government. This approach, as duly noted by the learned High Court, was rightly deemed an attempt to lower the status of Custodian of Evacuee Property. In these developments and the aforementioned legal precedents, the learned High Court correctly affirmed that the post of Custodian of Evacuee Property holds parity with the post of a High Court Judge, therefore, the learned High Court has not committed any illegality while accepting the writ petition filed by the appellant.

12. Additionally, the Government, while formulating the terms and conditions of the appellant vide notification dated 03.08.2022, exhibited a discriminatory approach towards the appellant, creating an unjustifiable classification. It is crucial to underscore that the powers and functions exercised by the appellant closely align with those of previous Custodians, some of them were, in fact, former Judges of the High Court. These individuals simultaneously held the additional responsibility of the Custodian's office, and subsequently, various incumbents were appointed to the same office with terms and conditions equivalent to those of a High Court Judge. In this context, the appellant was subjected to discriminatory treatment, as the Government failed to provide any valid justification for this differentiation in treatment. In this regard, this Court has also laid down the principle of law regarding equal treatment and

classification, in the case reported as *Muhammad Bashir Khan's case*⁵, wherein, it has been held as under: -

“30. It may be stated that as a cannot be laid down that in no case a general proposition it specified date can be made basis for classification. It will depend on the facts of each case and if the specification of a particular date is based on an intelligible differentia which in turn has nexus to the object for which the relevant statue has been enacted, such classification will be legal and valid but if the specification of a date is arbitrary or whimsical, it cannot be made basis for classification as has been held in the above case of D.S Nakara and others Vs. Union of India (supra) by the Indian Supreme Court, furthermore, a distinction is to be drawn between a case in which a date if specified for the purpose of qualifying for certain benefit under certain enactment/scheme and a date which may be specified for the enforcement of a particular Taxing Statue or a notification granting certain concession from payment of taxes and excise duty. In our view, the former category should pass the test of reasonable classification, whereas for the latter category, there is no such requirement as the Legislature or the Government has the discretion/power to fix a date for the enforcement of a particular statute or for granting certain concession in respect of tax or exercise duty, and for that purpose, there cannot be any mathematical or logical way of fixing a date except that the Legislature or the Government may fix the same according to its own need and convenience.”

Similarly, in the case reported as *Abdul Samad and others vs. Federation of Pakistan and others*⁶, it has been observed as under: -

“12. Further, in Engineer Naraindas (supra) this Court has already held that the respondent-Company "... can ill-afford to mete out different treatment between two groups of persons similarly placed and that too when the dictates of law, justice and equity require exercise of power by all concerned to advance the cause of justice and not to thwart the same. We are not inclined to agree with Mr. Fakhuruddin G. Ebrahim that the case of Saleem Mustafa Sheikh and others was different from those of the Appellants". The above excerpt reiterated in this cause as well". Equality before law - Employer could not mete out different treatment to two groups of its employees, as

⁵ [2019 SCR 697]

⁶ [2002 SCMR 71]

dictates of law, justice and equity required exercise of power by all concerned to advance the cause of justice and not to thwart it.”

Likewise in *Raja Shahnawaz Khan's case*⁷, the full bench of this Court upheld the principle of equality before law as well as the discrimination. The relevant portion of the judgment is reproduced hereunder for better appreciation: -

“Thus, now it is almost settled that among equals, the constitution does not allow any discrimination whether it is in shape of executive order or a Legislative Act. In the instant case, as in the light of hereinabove stated facts, it is ex-facie clear that in the matter of terms and conditions among equal State Subjects, the only appellant has been discriminately treated which cannot be authenticated or allowed, therefore, we have no hesitation to hold that the Government, although is empowered to determine the terms and conditions of the Chairman Azad Jammu & Kashmir Zakat Council under the provision of Act, 1985, but all these powers are subject to constitutionally guaranteed fundamental rights, therefore, the conduct of the Government with regard to the appellant appears to be discriminatory, hence, is without lawful authority and unconstitutional.”

13. The argument presented by the appellant's learned counsel, Raja Muhammad Hanif Khan, that *being aggrieved by the additional note of one of the learned members of the bench, he approached this Court*, carries considerable weight and warrants a more comprehensive examination. It is essential to emphasize that the appellant's contention does not challenge the entirety of the impugned judgment but rather focuses on the specific issue of the additional note penned by the learned Judge, Sardar Muhammad Ejaz Khan. Upon a closer inspection of the case, it becomes evident that the appellant's concerns have substance. The learned bench of the High Court, comprising two members, had arrived at a unanimous decision in favor of accepting the appellant's writ petition. This collective agreement signified a consensus

⁷ [PLJ 2013 SC AJK 186]

regarding the merits of the appellant's case, indicating a clear and well-reasoned judgment. However, the inclusion of an additional note by one of the members, introduces a degree of complexity to the situation. In the said note, it has been observed that:

“with certain modifications and amendments, which deem necessary in the present scenario not contrary to scheme and wisdom of the judgment of the Hon’ble Supreme Court and after doing the needful a formal notification to that effect shall be issued.”

14. In these circumstances wherein both members of the learned bench had already concurred on the acceptance of the writ petition, the inclusion of these additional observations appear superfluous. Such findings, if not carefully considered, could potentially lead to confusion and ambiguity in the implementation of the judgment. Therefore, it is deemed prudent to set aside the findings articulated in the additional note authored by one of the members, Sardar Ejaz Khan, of the bench, albeit only to the extent necessary to maintain clarity and consistency with the original decision to accept the appellant's writ petition.

15. Before concluding, it is imperative to address a clarification pertaining to the respondents' concise statement. In their submission, the respondents contended that the question of the Custodian's pay and privileges would impose a financial burden on the Government, citing the State's existing financial constraints. However, it is crucial to dispel any misconceptions in this regard. The office of the Custodian operates independently in terms of its financial resources. It is entirely self-sufficient and does not rely on government-sanctioned funds for its operations, including the remuneration, pensions, and allowances of the Custodian and other staff members. Consequently, any assertion suggesting that the Custodian's remuneration would add to

the Government's financial strain is against the facts misleading and inaccurate. In essence, it is essential to clarify that the financial dynamics of the Custodian's office are distinct from the broader financial challenges faced by the Government. The department manages its own expenses through its internal revenue resources, so could not contribute to the State's financial crunch in any way.

16. In the light of the detailed discussion, the appeal filed by the respondents/Government of Azad Jammu and Kashmir is dismissed being incompetently filed and the other appeal filed by the appellant, herein, stands partly accepted in the manner indicated above. Consequently, the Government-respondents, herein, are directed to insert the terms and conditions of Custodian of Evacuee Property for pay and other emoluments in the Azad Jammu & Kashmir Custodian of Evacuee Property (Terms and Conditions of Service), Rules 2021, as provided in the Azad Jammu and Kashmir Custodian of Evacuee Property (Terms and Conditions of Service), Rules 1992 and thereafter notification for the term and conditions of service, salary and other emoluments of the appellant shall be issued with effect from the date of joining i.e. 8th March, 2022, within one month's time. There shall be no order as to costs.

JUDGE CHIEF JUSTICE JUDGE

Muzaffarabad,
12.10.2023
Approved for Reporting.