

**THE AZAD GOVT. OF THE STATE OF JAMMU & KASHMIR,
LAW & PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.**

Dated the March, 13, 1978.

No. 918 /SL/78. The following Ordinance made by the President on the 13th day of March, 1978, is hereby published for general information:-

(ORDINANCE IX OF 1978)

**AN
ORDINANCE**

to provide for law relating to the dis-qualification for membership of the Assembly and Council

WHEREAS it is expedient to provide for law relating to the disqualification for membership of the Assembly and Council in the manner hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance:-

- 1. Short title, extent and commencement.-** (1) This Ordinance may be called the Holders of Representative Offices (Dis-qualification) Ordinance, 1978.
 - (2) It extends to the whole of Azad Jammu and Kashmir and shall apply to all State Subjects wherever they may be.
 - (3) It shall come into force at once.
2. **Definitions:-** In this Ordinance, unless there is anything repugnant in the subject or context,-
- (a) 'Assembly' means the Legislative Assembly of Azad Jammu and Kashmir;
 - (b) 'Chief Secretary' means the Chief Secretary, Azad Government of the State of Jammu and Kashmir;

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- (c) 'Council' means the Azad Jammu and Kashmir Council constituted under the Azad Jammu and Kashmir Interim Constitution Act, 1974;
 - (d) 'Chief Executive' means the Chief Executive of Azad Jammu and Kashmir;
 - (e) 'Disqualification Tribunal' means a disqualification tribunal established under this Ordinance;
 - (f) 'Government' means the Azad Government of State of Jammu and Kashmir;
 - (g) 'Holders of Representative office' means a person who is holding or has held,-
 - (i) Under the Azad Jammu and Kashmir Government Act, 1970, the office of Minister or Member of Assembly; or
 - (ii) Under the Azad Jammu and Kashmir Interim Constitution Act, 1974 the office of Prime Minister, Minister, Advisor of the Council or Member of the Assembly or of the Council;
- Provided that for the purpose of this Ordinance, any person in respect of whom a nomination paper was filed and he was a candidate for the elections to the Assembly , which were to be held at any time during the year, 1977, shall be deemed to be a holder of representative office;
- (h) 'mis-conduct' refers to conduct after December, 1970, and includes rigging of an election, bribery, corruption, Jobbery, favouritism, nepotism, wilful mal-administration, wilful misapplication or diversion of public money or moneys collected, whether by public subscription or otherwise,, and any other abuse of whatsoever kind of power or position, contravention of any of the provisions of Ordinance No. II of 1978, and any attempt at, or abetment of such mis-conduct ;
 - (i) 'respondent' means the person in respect of whom a reference is made under sub-section (2) of Section 4 ;
 - (j) 'rigging of election' includes any act or thing done by any person, either directly or indirectly with a view to seeing that an election is not conducted honestly, justly,

fairly, or in accordance with law and includes an act calculated to influence the result of an election to a seat of Assembly in a fraudulent, underhand or illegal manner; and

(k) 'Supreme Court' means the Supreme Court of Azad Jammu and Kashmir.

3. **Establishment of Disqualification Tribunals:-** (1) The Chief Executive may establish such number of disqualification tribunals as he may deem necessary.

(2) A Disqualification shall consist of a person who is or has been a Judge of Supreme Court, Judicial Board or High Court and an officer nominated by the Chief Executive.

4. **Cases to be enquired into by the Disqualification Tribunal:-**

(1) A Disqualification Tribunal shall not proceed to enquire into any charge of misconduct against a holder of representative office except on a reference in writing made to it by the Chief Secretary or an officer nominated in this behalf, by the Chief Executive.

(2) When the Chief Secretary or the officers so nominated, on the basis of the material placed before him, decides to make a reference to the Disqualification Tribunal in respect of a holder of a representative office, the Chief Secretary or the officer, as the case may be, shall notify this fact in the official Gazette.

(3) On receiving a reference under sub-section (1), the Disqualification Tribunal shall scrutinize the necessary records forwarded to it by the Chief Secretary or by the officer, nominated in this behalf, relating to the charge mentioned in the reference, and –

(a) if, as a result of such scrutiny, it is of the opinion that no charge can be established return the reference to the Chief Secretary or the officer, as the case may be, together with its opinion thereon; and

(b) in other case, issue notice to the respondent requiring him to show cause why he should not be proceeded against under this Ordinance.

5. **Powers and procedure of Disqualification Tribunal:-** (1) A Disqualification Tribunal shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :-

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- (a) Summoning and enforcing the attendance of any person and examining him on oath;
 - (b) Requiring discovery and production of any documents from any person;
 - (c) Receiving evidence on affidavits;
 - (d) Issuing commissions for the examination of witnesses or documents; and
 - (e) Requisitioning any public record or copy thereof from any court or office.
- (2) Proceedings before Disqualification Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Penal Code.
- (3) Notwithstanding anything contained in any other law for the time being in force, a Disqualification Tribunal shall have the power to conduct its proceedings and regulate its procedure in all respects in any manner it deems fit, including in particular, the power to consolidate more than one references made to it in respect of the same person or refuse to examine any witness or summon any document.
- (4) A dis-qualification tribunal shall have the powers of the High Court to punish its own contempt–
- (5) If, in the course of a hearing, a member of the Disqualification Tribunal is, for any reason, unable to attend any sitting thereof, the proceedings before a Disqualification Tribunal in question may continue before the other member of the Disqualification Tribunal.
- (6) A Disqualification Tribunal shall not, merely by reason of any change in its composition or the absence of any of its members, be bound to recall and rehear any witness who has already given any evidence and may act on the evidence already given or produced before it.
- (7) In the event of any difference of opinion among the members of a Disqualification Tribunal, the matter shall be referred by it to a judge of supreme court nominated in this behalf by the Chief Justice of Azad Jammu and Kashmir.
- (8) A Disqualification Tribunal shall expeditiously dispose off the cases referred to it and shall proceed with all

deliberate speed and shall not adjourn the proceedings unless it considers it necessary in the interest of justice to do so.

- (9) No party to the proceedings before a Disqualification Tribunal shall be entitled to be represented by a legal practitioner.

6. **Enquiry by Disqualification Tribunal:-** (1) In a case under clause (b) of subsection (2) of Section 4, the Disqualification Tribunal shall, after such further scrutiny of records and such enquiry as it thinks fit and after giving the respondent an opportunity of being heard, record its finding whether or not the respondent is guilty of misconduct and cause its finding to be published in the official Gazette soon after.

- (2) A Disqualification Tribunal may proceed against a respondent on whom a notice under clause (b) of subsection (2) of Section 4 cannot be served because his address is not ascertainable or who is absconding, in his absence.

- (3) If the Disqualification Tribunal finds a respondent guilty of misconduct, he shall stand disqualified for a period of seven years from being elected or chosen as a member of Assembly or of the Council.

- (4) No person wherever he may be, in respect of whom a notification has been issued under sub-section (2) of Section 4, shall, with effect from the date of such notification, participate in any manner whatsoever directly or indirectly in any political activity, close door or otherwise, until a Disqualification Tribunal finds him not guilty of misconduct or if he is found by the said Tribunal, guilty of misconduct a period of seven years has elapsed.

7.. **Bar of jurisdiction:-** No Court shall have any jurisdiction of any kind to question the competence of a Disqualification Tribunal or the legality or propriety of any order, finding or proceedings of a Disqualification Tribunal.

8. **Ordinance not to derogate from other laws.-** The provisions of this Ordinance shall be in addition to and not in derogation of any other law for the time being in force and nothing in this Ordinance shall prevent or prejudice the trial or punishment of any person under any other such law.

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9. **Power to make rules:-** The Chief Executive, or a person authorized by him in this behalf, may make rules for carrying out the purposes of this Ordinance.

(Sardar Muhammad Ibrahim Khan)
President
Azad Jammu and Kashmir

Sd/- (Sardar Aftab Ahmed Khan)
Secretary Law.