

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

Dated the November 14, 1978.

No. 3698/SL/78. The following Ordinance made by the President on the 12th day of November, 1978, is hereby published for general information:-

(ORDINANCE LXXXIV OF 1978)

AN

ORDINANCE

to provide for law relating to the disqualification for membership of the Assembly and Council

WHEREAS it is expedient to provide by 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 (Disqualification) 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 of the 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' a person who has held at any time during the period from the 1st December, 1970 to the 31st October, 1977,-
 - (i) Under the Azad Jammu and Kashmir Government Act, 1970, the office of President, Minister or Member of Assembly; or
 - (ii) Under the Azad Jammu and Kashmir Interim Constitution Act, 1974 the office of President, 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 held in the year, 1970, 1975 or were to be held at any time during the year 1977, shall be deemed to be a holder of representative office;
- (h) 'mis-conduct' in relation to a holder of a representative office refers to conduct after January, 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 or owning or having in his possession or under his control, directly or indirectly, either in his own name or in the name of any other person, any assets, pecuniary resources or property whether within or outside Azad Jammu and Kashmir, disproportionate to his known or disclosed sources of income, and any other abuse of whatsoever kind of power or position, contravention of

any of the provisions of the Ministers, Members of Assembly and Council (Declaration of Assets) Ordinance, 1978, and includes any attempt at, or abetment in respect thereof ;

- (i) 'respondent' means the person in respect of whom a reference is made under sub-section (I) of Section 5 ;
- (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, including utilization of Government funds and vehicles in Azad Kashmir or Pakistan or funds and vehicles obtained from any other source outside Azad Jammu and Kashmir ; 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) The Chief Executive if he so deems necessary may abolish any disqualification tribunal established under subsection (1) and any case sending before the tribunal so abolished shall be returned to the referring authority who may refer it to any other disqualification tribunal or dispense with such reference.

(3) A Disqualification Tribunal may consist of two or more members from the following:-

- (i) person who is a Judge of the Supreme Court or High Court of Azad Jammu and Kashmir ;
 - (ii) an officer of the Armed forces not below the rank of Brigadier or equivalent;
 - (iii) a person who is or has been exercising the powers of a Sessions Judge;
 - (iv) a Magistrate of the First Class.
- (4) The Chief Executive may appoint a Chairman from amongst the members.

4. **Transfer:-** (1) If the Chief Executive establishes more than one Disqualification Tribunals, he may, by notification in the official Gazette, distribute the business among such Tribunals or direct the transfer of any reference from one Tribunal to another Tribunal, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.
- (2) The Tribunal to which such reference is transferred shall deal with the same as if it had been originally referred or presented to such Tribunal.
5. **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) Nothing contained herein or in any other law for the time being in force, shall preclude the Chief Secretary or the officer so nominated from making supplementary or successive references to a Disqualification Tribunal in respect of any holder of representative office to enquire into any charge of misconduct not previously referred to it notwithstanding that on an earlier reference in respect of such holder of representative office the Disqualification Tribunal has given its findings.
- (3) 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.
- (4) 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.

6. **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 :-

- (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, office, bank or any other establishment, company or body corporate.

(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, but subject to rules made under Section 13 of this Ordinance, 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) Notwithstanding anything contained in any other law for the time being in force, a disqualification tribunal may receive in evidence –

- (a) Statement recorded and the findings arrived at in any judicial inquiry held under any law for the time being in force;
- (b) Any statement recorded by a magistrate, being a statement made by any person who, at the time of the trial, is dead, or cannot be found or whose attendance cannot be procured without any amount of delay or

expense which the disqualification tribunal considers unreasonable in the circumstance ;

- (c) Any statement or confession of an accused person recorded by a Magistrate under the Criminal Procedure Code, whether before or after the registration of a case triable by the disqualification tribunal;
- (d) No objection to any document or property seized in the course of an investigation being received or produced in evidence shall be entertained on any ground whatsoever.

(5) Where it is proved that a holder of representative office, owns or has in his possession or his control, directly or indirectly in his name or in the name of any other person assets, pecuniary resources or property, whether within or outside Azad Jammu and Kashmir, disproportionate to his known or disclosed sources of income, it shall be presumed unless the contrary is proved, that he acquired or obtained such assets, pecuniary resources or property, as the case may be, by corrupt or illegal practice or means.

(6) A Disqualification Tribunal shall have the same power to punish its own contempt as the High Court has under the Contempt of Court Act, 1926.

(7) 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.

(8) 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.

(9) In the event of any difference of opinion among the members of a Disqualification Tribunal, the matter shall be referred by it to the Chief Justice of Azad Jammu and Kashmir, whose decision shall be final.

(10) (a) 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.

(b) A Disqualification Tribunal shall not be required to write a detailed judgment, it may express its conclusions and the findings in the form of a short order.

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

Explanation:- A public Prosecutor, a Prosecuting Deputy-Superintendent of Police, a Prosecuting Inspector, shall not be deemed to be a legal practitioner, within the meaning of sub-section (11).

7. **Enquiry by Disqualification Tribunal:-** (1) In a case under clause (b) of subsection (4) of Section 5, the Disqualification Tribunal shall, after such 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 sub-section (4) of Section 5 cannot be served because his address is not ascertainable or who is absconding, in his absence.

(3) A respondent may be found guilty of misconduct by the Disqualification Tribunal on any one or more of the charges against him.

(4) 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.

8. A holder of representative office who has been on conviction for any offence by a Court of Law sentenced to imprisonment for a term not less than two years, shall stand disqualified for a period of seven years from being elected or chosen as a member of Assembly or of the Council and in respect of such person no reference to a disqualification tribunal shall be required or made.

9. (1) No person wherever he may be, in respect of whom a notification has been issued under sub-section (3) of Section 5, 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.

(2) Any person who contravenes, or abets the contravention of the provision of sub-section (1), shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine which may extend to five thousand rupees or with both.

10. **Cognizance of offence.**- (1) No Court shall take cognizance of an offence punishable under this Ordinance except upon a complaint in writing made by a Police Officer.

(2) The offences under this Ordinance shall be cognizable and non-bailable.

11. **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.

12. **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.

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

14. **Repeal.**- The Holders of Representative offices (Disqualification) (Amendment) Ordinance, 1978 (Ordinance LXIX of 1978), the Holders of Representative Offices, (Disqualification) (Amendment) Ordinance, 1978 (Ordinance LXXVII of 1978), the Holders of Representative Offices (Disqualification) (Amendment) Ordinance, 1978 (Ordinance LXXXI of 1978) and the Holders of Representative Offices (Disqualification) (Amendment) Ordinance, 1978 (Ordinance LXXX11 of 1978) are hereby repealed.

(Brigadier Mohammad Hayat Khan)
President,
Azad Jammu & Kashmir.

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