

ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
W.P. No. 5055 of 2023

Tipu Salman Makhdoom, etc. Vs. Province of Punjab, etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
	25.01.2023	M/s Ahmad Awais, Ali Awais, Moeen Ahmad, Belal Awais, Arslan Altaf, Ch. Rizwan Kashif Kalaar and Ch. Adnan Faiz Kalaar, Advocates for petitioners. Barrister Hassan Khalid Ranjha, Addl. Advocate General and Ch. Fiza Ullah, Assistant Advocate General.

Through this Constitutional Petition, petitioners have called in question order dated 24.01.2023 (Impugned Order) issued by respondent No.2 (Secretary Law and Parliamentary Affairs Department, Government of Punjab) whereby it has been conveyed that the competent authority is pleased to dispense with services of Additional Advocates General and Assistant Advocates General mentioned in the said order.

2. It is contended by learned counsel for the petitioners that caretaker Government in terms of Section 230 of the Election Act, 2017 can only perform its function to attend to day to day matters which are necessary to run the affairs of the Government and cannot make changes of permanent nature and pass order that have permanence attachment to the same. Moreover, in terms of subsection 2(e)(f) of the said Section the caretaker Government has been restrained from making promotions or major appointments of public officials, however, may make acting or short terms appointments and that too only in public interest but is not authorized to set aside the

appointments of previously appointed persons or transfer public officials unless it is considered expedient and that too after approval of the Election Commission of Pakistan, therefore, the impugned order dispensing with the services of the present petitioners is beyond the jurisdiction of caretaker Government and is not sustainable. Reliance in this behalf is placed upon judgment reported as "*Raja Muhammad Zubair and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary and others*" (**PLD 2022 Peshawar 100**) wherein the removal/dismissal/termination/reduction in rank to the extent of Additional Advocates General and Assistant Advocates General were declared as *void ab-initio* and *non est* in the eye of law. Reliance is also placed on judgments reported as "*Government of Balochistan through Secretary Services and General Administration Department and others Vs. Abdul Rauf and others*" (**PLD 2021 SC 313**) and "*Khawaja Muhammad Asif Vs. Federation of Pakistan and others*" (**2013 SCMR 1205**) to state that making decisions of permanent nature and passing orders having permanence attached to the same are not within the domain of the caretaker Government as the purpose of appointment of caretaker Government is only to facilitate the Election Commission of Pakistan to hold free and fair election and the same cannot be used for the benefit or detriment of either political party. Reliance is also placed on judgment reported as "*Messrs Mustafa Impex, Karachi and others Vs. The Government of Pakistan through Secretary Finance, Islamabad and others*" (**PLD 2016 SC**

808) to state that appointments of Additional Advocates General and Assistant Advocates General are made by the Government in terms of para No. 1.18, Chapter 1 of Law Department Manual, 1934 which means by the Cabinet and not by the Chief Minister of caretaker Government who is presently working alone and Cabinet has not yet been appointed, therefore, this dispensing with services of petitioners even otherwise was not within the sole discretionary jurisdiction of the Chief Minister, hence, the impugned order is not sustainable on that account as well. Further states that no process, whatsoever, was undertaken while passing the impugned order by just a single stroke of pen which is not justified.

3. On the other hand, learned Additional Advocate General and Assistant Advocate General, who have appeared on behalf of caretaker Government of Punjab have defended the impugned order by stating that present order has been issued for facilitating the holding of free and fair elections as the previously appointed officers in the office of Advocate General, Punjab were representatives of political parties forming the previous Government and their retention in service in the office of Advocate General would not be of any benefit to Election Commission of Pakistan to hold free and fair elections rather may be a hindrance to same. In terms of rule 14(1) of Punjab Government Rules of Business, 2011 read with Entry No.16 of its Schedule No.7, Chief Minister is fully authorized and competent to appoint and remove officers in the office of Advocate General without there being any recourse to Provincial

Cabinet which power could be exercised even when the Cabinet was not constituted. Further relies upon judgment reported as “*Imtiaz Ahmad Kaifi Vs. Government of Punjab, etc.*” (**PLD 2013 Lahore 598**) to state that this Court in the afore-referred judgment did not set aside order dispensing with services of Additional Advocates General and Assistant Advocates General on the ground that caretaker Government had no jurisdiction to dispense with their services rather the said order was set aside on the ground of discrimination as services of some of the officers of Advocate General office were retained whereas services of other officers were dispensed with and then the Advocate General could not justify before the Court the criteria employed for the purpose of retaining certain officers while dispensing with services of the others. Further states that Law Department Manual, 1934 was framed prior to creation of Pakistan, therefore, to interpret the word “Government” in the same on the principles laid down in *Mustafa Impex* case (supra) as Cabinet is not justified and the said term “Government” is to be treated as head of Government and not the Cabinet as a whole.

4. Furthermore, reliance is placed upon paragraph No.18 of the case reported as “*Agriculture Workers’ Union, Balochistan, Quetta and others Vs. The Registrar of Trade Unions, Balochistan, Quetta and others*” (**1997 SCMR 66**) to state that where Judge of this Court who rendered a judgment is elevated to Honourable Supreme Court of Pakistan then the judgment passed by the said Judge would be entitled to the

highest consideration, therefore, principles laid down in case of *Imtiaz Ahmad Kaifi* (supra) would be applicable to the case in terms whereof the order dispensing with services of Additional Advocates General and Assistant Advocates General could be set aside on the basis of discrimination only and on no other ground; as no discrimination has been done in dispensing with the services of all law officers of Advocate General office, hence, stance of the petitioners is not justified. Further states that reliance placed by the petitioners on *Khawaja Asif's* case (supra) is not justified as the said case related to public servants who held posts of permanent nature and not to the law officers of office of Advocate General who hold the office during the pleasure of the Governor who has ordered to relieve them in the public interest to facilitate the Election Commission of Pakistan in conduct of free and fair elections to provide proper mandate to the next elected Government; besides, the said order is justified in view of clauses ‘g’ and ‘i’ of notification dated 22.01.2023 of Election Commission of Pakistan which provides for immediate termination of services of all head of institutions appointed on political basis.

Further states that judgment referred by the petitioners titled as “*Government of Balochistan through Secretary Service and General Administration Department and others Vs. Abdul Rauf and others*” (**PLD 2021 SC 313**) is not relevant to the case of appointment in the office of Advocate General, therefore, same cannot be relied upon.

5. At this stage learned counsel for the petitioners have pointed out that although the petitioners and other law officers of the office of Advocate General Punjab have been relieved by treating them as representatives of previous coalition Government of Punjab but the officers who have been appointed in their place were same officers who had been previously appointed in the office of Advocate General and were representatives of political parties who had formed Government previous to the erstwhile Government, hence, the argument that petitioners being representatives of political parties had been relieved for the purpose of holding free and fair elections was without any substance.

6. In view of the pro and contra arguments of both the parties and principles of judgments referred by them (*supra*), *inter alia* following points need consideration :-

- i. Whether definition of 'Government' as mentioned in Mustafa Impex case (*supra*) would be applicable in the present case;
- ii. Whether the impugned order passed by the respondent/Province of Punjab falls within the scope of day to day affairs that are to be taken care of by the caretaker Government;
- iii. Whether the caretaker Government/ Chief Minister was vested with jurisdiction to dispense with services of law officers serving in the Advocate General's office and if yes, could he act solely without

appointment of Cabinet and pass the order to dispense with the services of the present petitioners and other law officers serving in the office of Advocate General;

- iv. Whether already appointed law officers could be treated as representatives of political parties for relieving them from the office of Advocate General for the purpose of holding free and fair elections, especially when the claim of the petitioners is that most of the respondents appointed in their places had previously been employed by the Government who had held office prior to the erstwhile Government;
- v. Whether and to what extent, the principles laid down by the judgments referred to above by the parties, are applicable to the present case.

7. Notice be issued to respondents with direction to official respondents to file report and parawise comments, for **07.02.2023**. Notice shall also be issued in terms of Order XXVII-A of C.P.C. to Advocate General Punjab as well as Attorney General for Pakistan.

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8. Notice for the aforesaid date. Till next date of hearing, operation of the impugned order only to the extent of dispensing with services of present petitioners, shall remain suspended, however, this shall not adversely affect the fresh appointments of

respondents as law officers in the office of Advocate General, Punjab.

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9. Dispensation sought for is allowed subject to all just and legal exceptions. C.M. stands disposed of.

(MUZAMIL AKHTAR SHABIR)
Judge

*MuzamilMohsin**