

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MAQBOOL BAQAR

CIVIL APPEAL NO.319 OF 2014

*(Against the judgment dated 5.12.2013 of the
Election Tribunal, Rawalpindi passed in
E.P.No.257/2013/RWP/12/2013)*

Hina Manzoor

...Appellant(s)

VERSUS

Malik Ibrar Ahmed, etc.

...Respondent(s)

For the appellant(s): Mr. Muhammad Munir Paracha, ASC

For respondent No.1: Mr. M. Rafique Rajwana, ASC

Date of hearing: 28.04.2015

...
ORDER

MIAN SAQIB NISAR, J.- Appellant and respondent No.1 contested the elections for NA-54, Rawalpindi. The appellant being the runner up filed an election petition against the said respondent (*returned candidate*) before the Election Tribunal on the ground that the verification on the election petition has not been attested by the Oath Commissioner. Learned counsel for the appellant has drawn our attention to page 27 of the paper-book that the election petition is not attested by the Oath Commissioner, however, his argument is that this is not the mandate of the provisions of Section 139 of the CPC, rather the requirement of attestation is only confined to the affidavit as per Order 19 of the CPC. In addition to the above, it is submitted that an amended election petition was filed on 8.10.2013 which was duly attested *per* the law, but the learned Tribunal has discarded this on

the ground that the attestation through the amended petition is beyond the period of limitation prescribed for filing of the election petition and this according to the learned counsel is not a valid reason for summary rejection of the election petition.

2. Heard. As far as the first argument is concerned, there are plethora of judgments starting with Engr. Iqbal Zafar Jhagra and others Vs. Khalil-ur-Rehman and 4 others (2000 SCMR 250), Sardarzada Zafar Abbas and others Vs. Syed Hassan Murtaza and others (PLD 2005 SC 600), Malik Umar Aslam Vs. Sumaira Malik and others (PLD 2007 SC 362), Maulvi Abdul Qadir and others Vs. Maulvi Abdul Wassy and others (2010 SCMR 1877) and Zia-ur-Rehman Vs. Syed Ahmed Hussain and others (2014 SCMR 1015) which require that an election petition has to be attested by the Oath Commissioner and this is mandatory, otherwise it should be dismissed as per the provisions of Section 63 of the Representation of People Act, 1976 read with Section 55(3). We are not inclined to agree with the learned counsel that the law laid down in the above-noted judgments are/is incorrect exposition or enunciation and, therefore, such judgments must be revisited, rather to the contrary appropriate valid and apt reasons have been given by this Court in the aforesaid cases to reach to the conclusion that the verification requires attestation by the Oath Commissioner is imperative and mandatory in law. As regards the question that the amended petition was duly attested and, therefore, it is this petition which should have been taken into consideration and account, suffice it to say that *per* the law laid down in Malik Umar Aslam Vs. Sumaira Malik and others (PLD 2007 SC 362), the amended election petition even if was attested by the Oath Commissioner but by the time, the time for the petition having lapsed

could not be considered to be a valid institution for the purposes of condoning the incurable defect of non-attestation of the election petition. Both the arguments have no merit, therefore, this appeal is dismissed.

JUDGE

JUDGE

Islamabad, the
28th April, 2015
Not Approved For Reporting
Waqas Naseer/*

JUDGE