

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ijaz Ahmed Chaudhry
Mr. Justice Gulzar Ahmed

Constitution Petition No.30 of 2013

Khawaja Muhammad Asif

Petitioner(s)

VERSUS

Federation of Pakistan & others

Respondent(s)

On Court's Notice : Mr. Irfan Qadir, Attorney General for Pakistan

For the Petitioner(s) : In person

For Respondents No.1-2 : NR

Date of Hearing : 22.05.2013

ORDER

This petition has been filed under Article 184 (3) of the Constitution of the Islamic Republic of Pakistan, 1973, by Khawaja Muhammad Asif, who appeared in person and argued that according to the settled and accepted norms/practice the Caretaker Government is required to dispose of day-to-day matters which are necessary for running the affairs of the State and also to watch the national interest etc., against any eventuality in absence of an elected Government but such Government is not authorized to make decisions/appointments having effect on the working policies of the future Government,

which is likely to take over after the elections. He further stated that the principle mandate of such Government is to ensure free, fair and honest elections in the country by providing executive support and administrative assistance to the Election Commission of Pakistan. However, no sooner the elections are over and the people of the country have spoken by means of vote, the decisions/appointments/postings/transfers having the future effect should not have been made. He has placed reliance on the *Australian Guidance on Caretaker Conventions* under the caption "*Significant Appointments*" which is reproduced herein below: -

"3.1 Governments defer making significant appointments during the caretaker period. When considering the advice it would give on whether an appointment qualifies as 'significant', the agency should consider not only the importance of the position, but also whether the proposed appointment would be likely to be controversial.

3.2 If deferring the appointment is impracticable, usually for reasons associated with the proper functioning of an agency, there are several options:

- the Minister could make an acting appointment where permissible;*
- the Minister could make a short term appointment until shortly after the end of the caretaker period; or*
- if those options are not practicable, the Minister could consult the relevant Opposition spokesperson regarding a full term appointment.*

2. In this behalf, he has placed reliance upon the stance taken by the learned Attorney General for Pakistan in another matter pending before this Court. The same is reproduced herein below:

12. That the federation is already on record in taking up a principled stand before this Hon'ble Court that

the care-taker government needs only to confine their work to 'day to day' routine matters and effectively maintain the status quo for the incoming elected government, while submitting the views of the federation vide a CMA filed in Constitutional Petition Nos.14, 16 to 18 of 2013. It is submitted that vide the said CMA the Attorney General submitted that the care-taker government should avoid taking and controversial step and should not commit any process that is not reversible by the incoming elected government and further that the care-taker government should restrict itself to activity that is a) routine, b) non-controversial, c) urgent and in public interest, d) reversible by the elected government; and e) any significant appointment thereby avoiding any major decisions except agreed to by the opposition.

13. *That the learned Attorney General whilst presenting the case of the federation in the aforesaid constitutional petitions also relied upon Australian Caretaker Conventions and highlighted that the key elements of the code of conduct should include: a) avoiding major policy decisions, b) avoiding any significant appointments, c) signing any major contract, d) avoiding international treaty or commitment, etc. It was in the same light that the learned Attorney General submitted before this Hon'ble Court that the care-taker government had deferred some items of the Council of Common Interests (CCI) in a recently held meeting and was not, therefore, making any binding decisions/commitments with IMF, World Bank or any other donor agency and had further decided not to enter into any binding agreement or treaty to bind the future elected government. It is submitted, therefore, that the care-taker government having earlier taken a principled stand cannot thereafter be allowed to recuse from the same".*

3. He has stated that the Caretaker Government has made *inter alia* following transfers and postings in the civil service, statutory bodies, autonomous or semi autonomous bodies, corporations and regulatory authorities :-

- a. *The Chairman of the National Highway Authority, Hamid Ali Khan was replaced, on 16.05.2013, by Sajjad Hussain Baloch;*
- b. *The Chairman NEPRA was replaced, on 16.05.2013, and Justice (R) Ahmad Khan Lashari has been appointed;*
- c) *The Managing Director SNGPL, Arif Hameed was replaced, on 15.05.2013, by Amin Tufail;*

- d) *The Managing Director SSGCL was replaced, on 15.03.2013, by Rahat Kamal Siddiqui;*
- e) *The Managing Director, Pakistan Mineral Development Corporation, Khalid Khokhar was replaced by Saifullah Khan;*
- f) *The Chairman, National Fertilizer, Rizwan Mumtaz Ali was removed on 09.05.2013;*
- g) *The Managing Director, Oil and Gas Development Corporation, Masood Siddiqui was removed on 06.05.2013;*
- h) *The Chairman, State Life Corporation was removed on 16.05.2013;*
- i) *The Chairman, Pakistan Tourism Development Corporation has reportedly been removed and another appointed in his stead;*
- j) *The Chairman, Pakistan Software Export Board has been removed and in his stead Saleem Ahmed Ranjha has been appointed who is a direct inductee of Yusuf Raza Gillani the previous Prime Minister;*
- k) *The Director General, FIA who was appointed one month back is also reportedly in the process of being replaced;*
- l) *That certain employees/officers of the Pakistan Telecommunication Authority have reportedly been removed from service without following the procedure as set out under the relevant statute;*
- m) *That reportedly many other mid – level staff of such like aforesaid corporation/bodies have been shuffled/transferred/removed”.*

4. Notice of the petition was issued to the learned Attorney General for Pakistan, who appeared and stated that as far as the stand taken by him before this Court in another petition, reference of which has been made in the paras reproduced hereinabove, is concerned, there is no cavil with the stand already taken by him therein, however, according to him the Caretaker Government is not debarred under any provision of the Constitution or the law to make the appointments, transfers

and postings subject to availability of vacancies. He further stated that the appointments, transfers and postings have to be made for the purpose of smooth running of those institutions where such indulgence/interference is shown because till the taking over of the newly elected government, the process of functioning of such corporations etc. cannot be suspended or halted for an indefinite period. He stated that as the factual controversy is involved in the matter, therefore, he has to seek instructions from the Government in respect of the appointments, transfers and postings which have been made by the Caretaker Government.

5. We have heard the petitioner and the learned Attorney General for Pakistan. It is to be noted that stand taken by the petitioner that the Caretaker Government is not to make appointments, postings and transfers against the vacancies having effect on the policies of the elected government, which is likely to take over in a short while, seems to be convincing. Inasmuch as, a Minister of the Caretaker Government has also objected to such appointments. Reference in this behalf may be made to a news item published in the daily Dawn dated 20th May, 2013, under the caption *"Minister Objects to postings and transfers"*.

6. It may not be out of place to note that Caretaker Government besides, making transfers and postings of above

noted positions, had also appointed Chairman of Anti-Dumping Tribunal without realizing that there was no urgency in making this appointment. In addition to it, there are reports that notifications of the appointment of Federal Ombudsman and Tax Ombudsman are likely to be issued and against latter position Khawaja Siddique Akbar, Principal Secretary to Prime Minister, is to be appointed.

7. We do allow the learned Attorney General for Pakistan to take instructions from the Government but in view of the importance of the issue involved in the petition, we direct that;

all the appointments, transfers and postings, which have been made by the Caretaker Government, referred to hereinabove, shall stand suspended and till pendency of this petition no further appointment, transfer and posting shall be made by the Caretaker Government including the appointment of Federal Ombudsman, Tax Ombudsman and Anti-Dumping Tribunal, except the postings and transfers, which relate to day-to-day business of the government and are required to be made in the interest of State and also to watch the interest of public, strictly following the rules and regulations on the subject, and in a transparent manner.

8. Needless to observe that any individual, whose posting, appointment or transfer has been suspended and he is aggrieved

from instant order, he/they may come forward by making application(s), which shall be dealt with after hearing him/them.

9. In the meanwhile, Secretary Establishment and Cabinet Secretary shall collect list of appointments, postings and transfers of government servants, heads of the statutory bodies, semi-statutory bodies, regulatory authorities, etc., and shall place it on record for our perusal and passing appropriate orders, if need be.

10. They are also directed to bring instant order in the notice of the persons, whose designations have been noted hereinabove, so that he/they may approach the Court, if advised, for redressal of his/their grievance if any. In absence of any objection on his/their behalf, before the next date of hearing, case shall proceed accordingly.

11. Let the case be put up on 04.06.2013, for further proceedings.

Chief Justice.

Judge

Islamabad
22.05.2013
Hashmi*

Judge