

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ijaz Ahmed Chaudhry
Mr. Justice Sh. Azmat Saeed

C.M.A. NO.3470 OF 2013 IN C.M.A. NO.1536 OF 2013
IN CIVIL APPEAL NO.191-L & 409 OF 2010.

(Action taken on News Clipping dated 4.6.2013,
published in Daily Jang, against the Parliamentarians
having fake/bogus degrees)

On Court Notice

For the ECP : Mr. Abdul Rehman Khan, DG (Law)

For the HEC : Mian Muhammad Hanif, ASC
Raja Abdul Ghafoor, AOR

For Ms. Samina : Mr. Tariq Mahmood, Sr. ASC
Khawar Hayat

Dates of Hearing : 09 and 10 July, 2013.

JUDGMENT

SH. AZMAT SAEED, J.- The matter pertaining to Ms. Samina Khawar Hayat, MPA, has a rather chequered history. She submitted her Nomination Papers on 25.11.2007 for election to the women reserved seat for the Provincial Assembly of the Punjab. She was elected to such seat in the General Elections of 2008. In her Nomination Papers, she had disclosed her educational qualification as B.Sc. (Home

Economics). Apparently, a Degree of Bachelor of Business Administration dated 22.09.2004, allegedly issued by Riphah International University, Islamabad, was appended with her Nomination Papers. On verification, the said Degree was found to be fake and the Election Commission of Pakistan (ECP) was informed accordingly by the Higher Education Commission (HEC) vide letter dated 05.08.2010. Ms. Samina Khawar Hayat was summoned by the ECP and she took up the plea in her written statement that "... I was shocked to see a degree which was appended with my documents does not belongs to me.". It is her case that she had graduated from PIMSAT in the year 2006 with a Degree of Bachelor of Business Administration. The ECP vide 3-2 majority decision, dated 14.03.2012 held that Ms. Samina Khawar Hayat had not made a mis-declaration nor filed a bogus Degree and the testimonials of PIMSAT were genuine.

2. Pursuant to the Order of this Court dated 01.04.2013, the testimonials of various Parliamentarians were subjected to verification. The matter was again taken up by the ECP, which vide unanimous Order dated 03.04.2013 held as follows:

“6. The Supreme Court in its order has made it clear that the Graduation degree or

its equivalent appended with the nomination form is the document, which has to be probed into by the Commission regarding its genuineness or otherwise through the aegis of the Higher Education Commission. The degree from Riphah International University was declared BOGUS and detailed views were given by the Vice Chancellor, Riphah International University. We have come across many cases of fake degrees where the usual stance taken by the Parliamentarians is that the degree appended with the nomination form, which subsequently is declared BOGUS through inquiry, by the concerned University does not belong to them and has been planted by their opponent in consort with the staff of the Returning Officer or the ECP after receiving their pound of flesh. Another degree/degrees from various Universities are thereafter produced. Such subsequent degrees have no weight in the eyes of law, rather compounds and cements the offence of corrupt practice. It is because of intervention of the Hon'ble Apex Court that the lady has been trapped for her dishonest and fraudulent steps precipitated by her to avoid the clutches of law. Her own doing has earned her disqualification. The office shall, therefore, de-notify her as Member Provincial Assembly on the date when she was elected. Simultaneously, Provincial Election

Commissioner, Punjab shall initiate criminal proceedings against her before the Session Judge concerned under Section 82 of ROPA, 1976 and other provisions of law. Returning Officer for Reserved Seats, who is no one else but our own Provincial Election Commissioner, Punjab, Lahore will be informed that if she is again nominated on the Reserved Seat for Women by her party the nomination be rejected.”

3. Pursuant to the said Order, a criminal complaint has been filed which is stated to be pending adjudication before the learned Sessions Judge, Lahore.

4. In the meanwhile, the General Elections were eventually held on 11th of May, 2013. Ms. Samina Khawar Hayat again submitted her Nomination Papers for the reserved seat for women of the Provincial Assembly of the Province of the Punjab and her Nomination Papers were rejected. Being aggrieved, she filed an appeal before the learned Election Tribunal, which was accepted vide its Order dated 15.04.2013 and she was permitted to participate in the electoral process. She was elected and is now a sitting Member of the Provincial Assembly of the Punjab.

5. We have heard the learned counsel for Ms. Samina Khawar Hayat as well as the learned counsel for the HEC and

the representative of the ECP and examined the record as made available.

6. Ms. Samina Khawar Hayat had filed her Nomination Papers on 25.11.2007. In support of her claim with regard to educational qualification, testimonials were submitted. The ECP through the HEC during the process of verification had declared that the Degree purportedly issued by the Riphah International University, Islamabad, was fake. On being summoned by the ECP, she filed a written statement that “... I was shocked to see a degree which was appended with my documents does not belongs to me.”. The said written statement is on record at page 14 of Civil Misc. Application No.4412 of 2013, filed by the HEC. She did not specifically deny that the said Degree of Riphah International University, Islamabad, was not appended with her Nomination Papers. The relevant portion of the said written statement has been reproduced herein above. However, she took up the plea that in fact she is a graduate from the PIMSAT. The ECP vide its Order dated 05.04.2013 concluded that she had filed a bogus Degree with her Nomination Papers and the Petitioner had indulged in unfair means to substantiate her educational qualification to contest the General Elections of 2002. And as

has been held by this Court in the case titled as Muddasar Qayyum Nahra v. Ch. Bilal Ijaz and others (2011 SCMR 80) such a person who uses unfair means in attempting to establish his educational qualification to contest the election or makes a wrong declaration cannot be considered to be an honest, righteous or ameen, hence, does not possess the qualifications prescribed under Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973, to become a Member of the Parliament or the Provincial Assembly.

7. The effect of the Order dated 05.04.2013 of the ECP and the observations made therein quoted herein above, upon the qualification or lack thereof of the Petitioner to contest the General Elections of 2013 needs to be examined. A similar issue came up before this Court in Civil Appeals No.411 to 414 of 2013, titled as Abdul Ghafoor Lehri v. The Returning Officer, PB-29, Naseerabad-II & others, wherein it was held as follows:

“12. Since the Sanad produced by the appellant while contesting election, 2002 has been declared not equivalent to B.A. degree for the reasons mentioned in the preceding paragraphs, therefore, appellant was not at all qualified to contest election. Now the question arises as to whether the appellant is disqualified to contest election, 2013 or not. In this regard it

is noticed that while producing aforesaid Sanad, the appellant sworn an affidavit to the effect that the Sanad produced by him was issued to him by a recognized institution and equivalent to a bachelor degree made false statement and submitted false or incorrect declaration in respect of his educational qualification, thus, he was not righteous, sagacious, non-profligate, honest and Ameen within the meaning of Article 62(f) of the Constitution of Islamic Republic of Pakistan, 1973, as such, was not qualified to be elected or chosen as a member of Majlis-e-Shoora.

13. ... This Court in the case of Malik Iqbal Ahmad Langrial vs. Jamshaid Alam and others (PLD 2013 SC 179) has held that a person who indulges into using unfair means in procuring his educational qualifications does not deserve to claim to be an honest, righteous or Ameen person so that he be assigned the high responsibilities of performing national functions of running the affairs of the country. ...”

14. ... For this reason alone, Article 62 does not provide any period after which a person, who was declared disqualified under the said Article, can be eligible to contest the elections of the Parliament. In such view of the matter we hold that a person who is not qualified under Article 62(1)(f) cannot become qualified by efflux of time. Reference in this regard may also be made to the case of Imtiaz Ahmed Lali v. Ghulam Muhammad Lali (PLD 2007 SC 369). In such circumstances the appellant has rightly

been disqualified to be elected as member of the Parliament by the learned Election Tribunal by allowing the election appeal filed against acceptance of his nomination papers by the Returning Officer which findings were upheld by the High Court of Balochistan. ...”

8. This Court in a case reported as Mian Najeeb-ud-Din Owasi and another v. Amir Yar Waran and others (PLD 2013 SC 482) held as follows:

“5. Notwithstanding whether the condition of being a graduate or having a degree equal to the requisite academic skill was not available subsequent to the General Election 2008, and the judgement in the case of Muhammad Nasir Mahmood and others vs. Federation of Pakistan thr. Secretary M/o Law (PLD 2009 SC 107) yet if a candidate has made a declaration in the column meant for academic qualification and declared himself to be a graduate, but subsequently, it is found that he was not a graduate then he would equally be liable to face the consequences under Articles 62 & 63 of the Constitution or the other relevant provisions of the PPC. It is further to be observed that once there is a disqualification, it is always a disqualification; therefore, while making declaration in the nomination papers, a candidate must provide, a crystal clear statement about his credentials and antecedents. There is no scope of making or providing information, which is not correct, because he is one of the

persons whom the electorate of a constituency, which may be having a strength of 50 thousand, are going to elect their representative. Therefore, whatever, he possesses in terms of academic qualification, bank credits and taxes etc. he shall have to declare each and every thing required for the qualification to contest the election.

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9. We have no objection on the decision of ECP, falling under categories A & B. but as categories C to H are concerned, we may observe that for declaring a person to be disqualified, no period of limitation, as pointed out, would be relevant because such disqualification, was suffered at the time when he filed the nomination papers by making a declaration, while having a fake degree in his hand, therefore, in such cases, no time period can be prescribed. ...

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13. Be that as it may, we are conscious that gentlemen whose names are mentioned were members of the Parliamentarians i.e. Members of the National Assembly, Provincial Assemblies and the Senate, therefore, the HEC and the ECP shall provide them another opportunity to satisfy the requirements to verify

their degrees as per the law, because if any decisive step is taken by this Court, there is every likelihood that they might lose their status retrospectively to be a Member of the National Assembly, Provincial Assembly or the Senate, notwithstanding the fact that the Assembly was dissolved after completion of 5 years. Such disqualification will commence from the date when the notification declaring them to be a successful candidate was issued by the ECP, if at that time they were not qualified as the declaration made have been found to be incorrect then they have no right to claim such status. Therefore, in the interest of justice, we allow to all of them i.e. 189 Parliamentarians, whose names have been mentioned in the list, furnished by the HEC to the ECP, to get their degrees verified on or before 5.4.2013. Their names are available with the ECP and if they have already received notice they themselves shall approach the HEC. However, the HEC may also issue them notices, intimating them about the pendency of verification of their degrees. This exercise has to be completed upto the date noted herein above. The ECP, in the meanwhile, shall inform the respective Returning Officers, before whom they may have filed the nomination papers, if they are again contesting for the General Elections to give their decision in respect of their educational qualification after receipt of the decision by the HEC. Similarly, the same exercise shall be put into effect in respect of 27 Parliamentarians, whose cases were closed.”

9. While adjudicating upon the case titled Allah Dino Khan Bhayo v. Election Commission of Pakistan, Islamabad and others in Civil Petition No.1033 of 2013, this Court vide judgment dated 09.07.2013, held as follows:

“11. In order to contest the elections of the Parliament or to the Provincial Assembly or be a Member thereof a person must possess the qualification as enumerated in Article 62 of the Constitution and not suffer from the disqualification as mentioned in Article 63 of the Constitution. The provisions of the said Articles when examined in the light of the judgment of this Court referred to and reproduced herein above reveal that certain disqualifications are removed by the efflux of time e.g. disqualification on account of conviction or removal from service. Similarly, the qualifications can be acquired by some future act of the candidate e.g. by acquiring exclusive citizenship so as to become qualified in terms of Article 62(1)(a) of the Constitution. However, with regards to a qualification in terms of Article 62(1)(f) of the Constitution, the framers of the Constitution have chosen not to prescribe any period of time through the flux whereof or any act or omission through which such qualification can be acquired if a candidate or a member has been held not to possess the same. Consequently, if a person is held not to be qualified in terms of Article

62(1)(f) of the Constitution such absence of qualification in law will haunt him forever.”

10. In the aforesaid facts and circumstances, and in view of the law laid down by this Court in various judgments referred to and reproduced herein above, it is clear and obvious that the Petitioner did not possess the qualification as set forth in Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973, to contest the Elections or to be Member of the Parliament of Provincial Assembly. Consequently, the Notification declaring Ms. Samina Khawar Hayat as a returned candidate for the reserved seat for the women in the Provincial Assembly of the Punjab being invalid is hereby set aside. The ECP shall proceed further in the matter strictly in accordance with the law to fill the resulting vacancy.

Chief Justice

Judge

Judge