

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE MAQBOOL BAQAR

CIVIL PETITION NO.3186 OF 2015

(Against the judgment dated 15.10.2015 of the Lahore High Court, Multan Bench passed in W.P. No.15116/2015)

Ghazanfar Ali

Petitioner(s)

VERSUS

Appellate Authority/Additional District
Judge, Sahiwal and others

Respondent(s)

CIVIL PETITION NO.3187 OF 2015

(Against the judgment dated 15.10.2015 of the Lahore High Court, Multan Bench passed in W.P. No.15117/2015)

Sufiyan Akram and another

Petitioner(s)

VERSUS

Appellate Authority/Additional District
Judge, Sahiwal and others

Respondent(s)

For the Petitioner(s)
(in both cases)

: Ch. Mushtaq Ahmed Khan, Sr. ASC
Syed Rifaqat Hussain Shah, AOR

For Respondent No.3
(in C.P.No.3186/2015)

: Mr. Ahmad Raza, ASC
Mr. Ahmed Nawaz Chaudhry, AOR

For Respondents No. 3-4
(in C.P.No.3187/2015)

: Mr. Ahmad Raza, ASC
Mr. Ahmed Nawaz Chaudhry, AOR

Date of Hearing

: 04.11.2015

...
JUDGMENT

MIAN SAQIB NISAR, J.- Both these petitions involve common questions of law, thus are being disposed of together. Through the impugned judgment(s) passed by the learned High Court in its constitutional jurisdiction, the order of the appellate authority which had rejected the nomination papers of the petitioners for contesting the local

bodies elections, by setting aside the order of acceptance (*of nomination papers*) by the Returning Officer, has been upheld.

2. In the context of the above-mentioned outcome, the brief facts of the case relevant for the present petitions are:- that the petitioners were Member and Chairman respectively of the Local Zakat and Ushr Committee (*Local Committee*) constituted under the provisions of Section 18 of the Zakat and Ushr Ordinance, 1980 (*the Ordinance*). After resigning from their respective posts, the petitioners filed their nomination papers to contest the elections for the local bodies (*petitioner in C.P.3186/2015 for office of General Councillor of Ward No.4, Union Council No.1 (Urban), Chak No.86-6/R, Tehsil and District Sahiwal, and petitioner in C.P.3187/2015 for office of Chairman and Vice-Chairman of Union Council No.1 (Urban), Chak No.86-6/R, Tehsil and District Sahiwal*). Objections were raised against the nominations by the respective private respondents [*the rival candidate(s)*] on the ground that the petitioners were disqualified from contesting the elections as per the bar contained in Section 27(2)(e) of the Punjab Local Government Act, 2013 (*the Act*). The thrust of the objection was that according to the noted provision a person would not be qualified (*or would be disqualified*) to contest such election if he is in the service of a statutory body etc. and a period of not less than two years has elapsed since his resignation or retirement. It was set out by the respondents that being a Member and a Chairman of the Local Committee the petitioners were in the service of the Zakat and Ushr department which undoubtedly is a body created under the statute and thus a statutory body. The appellate authority and the learned High Court have agreed with the view point set forth by the rival candidates. In the impugned judgment, the learned High Court has, on the analysis of the relevant provisions of law, categorically held that the petitioners are hit by Section 27(2)(e) of the Act *ibid* as they are in the service of the Zakat and Ushr department, a statutory body and in this context the provisions of Section 23 of the

Ordinance stipulating them (*the petitioners*) as public servants, read with Section 21 of the Pakistan Penal Code, 1860 (*the PPC*) have been heavily relied upon. Besides reliance has also been placed upon the judgments reported as **Zulikha Bibi Vs. Election Commission of Pakistan through Secretary and another** (2015 YLR 1584), **Mirza Muhammad Tufail Vs. District Returning Officer, and others** (PLD 2007 SC 16), and **Muhammad Khan Vs. Amanullah and 2 others** (PLD 2014 Balochistan 128).

3. Learned counsel for the petitioners, while arguing his case, has submitted that the view set out by the learned High Court in the impugned judgment is against the law laid down in **Shahid Nabi Malik and another Vs. Chief Election Commissioner, Islamabad and 7 others** (PLD 1997 SC 32), **Inayatullah Vs. C.C.-Cum-Chairman, District Zakat Committee and 2 others** (PLD 1993 SC 426), **Raja Bahadur K. C. Deo Bhanj Vs. Raghunath Misra and others** (AIR 1959 SC 589) and **Ch. Liaquat Ali and another Vs. Election Appellate Authority/District and Sessions Judge, Lahore/District Returning Officer, Lahore and 3 others** (2001 YLR 953). Learned counsel, for the purposes of interpreting the expression "public servant" (*see Section 23 of the Ordinance*), has relied upon the definition provided in Law Terms & Phrases by Sardar Mohammad Khan Mokal. To explain as to what is meant by such legal connotation and the effect of being a public servant upon the right of the petitioners to contest the elections, learned counsel for the petitioners drew support from the judgments reported as **Rana Muhammad Jamil Vs. The Punjab Road Transport Board, Lahore and others** (PLD 1957 (W.P.) Lah 1) and **Kalam Daraz Khan Vs. Crown** (PLD 1951 Dhaka 104). He has also categorically and vehemently submitted that as the Member and the

Chairman of the Local Committee, the petitioners were not receiving any salary, remuneration, honorarium or other monetary benefits.

4. On the other hand the submissions of the learned counsel for the respondents were based on the reasoning of the impugned judgment, and in this respect placed reliance on the judgment cited as **Sahibzada Tariqullah Vs. Haji Amanullah Khan and others (PLD 1996 SC 717)**, in addition to the cases relied upon by the learned High Court in the impugned judgment.

5. Heard. In the context of the facts of the cases, which are not disputed, we find that the following propositions need resolution through this opinion (i) the interpretation of Section 27(2)(e) of the Punjab Local Government Act, 2013; (ii) the effect of Section 23 of the Zakat and Ushr Ordinance, 1980 when read with the provisions of Section 21 of the Pakistan Penal Code, 1860; and (iii) whether in the facts and circumstances of the present case and in the letter and spirit of the Ordinance, the petitioners are “*in the service of a statutory body*”. Thus for the above purpose, it seems expedient to reproduce the relevant Sections:-

Punjab Local Government Act, 2013

“27. Qualifications and disqualifications for candidates and elected members.- (1)

(2). A person shall be disqualified from being elected or chosen as, and from being, an elected member of a local government, if he-

(a)

(b)

(c)

(d)

- (e) *is in the service of any statutory body or a body which is owned and controlled by the Government or a Provincial Government or the Federal Government or a local government or, in which any of such Government or local government has a controlling share or interest, except the holders of elected public office and part-time officials remunerated either by salary or fee; provided that in case of a person who has resigned or retired from any such service, a period of not less than two years has elapsed since his resignation or retirement.”*

23. Certain persons to be public servants.—Every person engaged in, or employed for, the administration of this Ordinance shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

Explanation.—For the purposes of this section, the Chairman and members of the District Committee and Local Committee shall be the persons engaged in the administration of this Ordinance.”

From the unambiguous language of Section 27(2)(e), there is no room for doubt that the disqualification is only in relation to a person who is “***in the service***” of any statutory body, etc. Before proceeding further it may be mentioned that it is settled law that the qualifications and disqualifications imposed by law for a candidate to contest the election and even to hold office should be construed and applied strictly (*note: we are deliberately not examining this aspect in this case on the touchstone of Article 17 of the Constitution of Islamic Republic of Pakistan, 1973*), and a person can only be debarred from contesting elections or holding an office if the case falls squarely within the strict scope of the qualifications and disqualifications stipulated by law. Be that as it may, in order to interpret and apply Section 27(2)(e) in

the context of the facts of the present case, it may be mentioned that various Councils/Committees envisaged by the Ordinance are undisputedly statutory bodies as these have been created by the statute itself (*the Ordinance*). Therefore, the pivotal question which needs consideration and resolution is that whether a person who holds a post or position in any of these Councils/Committees is in the service of a statutory body. In our view to answer this question it is expedient to understand the object and spirit of the Ordinance, in that, why this law has been enforced, what are the different levels and nature of the Councils/Committees, what functions these Councils/Committees have to perform and, obviously what are the duties/functions of the persons who are a part of these forums, holding posts/positions thereto, because this analysis and comprehension has a direct nexus with, and shall facilitate in understanding the nature of the posts/positions.

6. In elucidation of the object of the Ordinance according to its preamble Zakat and Ushr have been considered to be a fundamental pillar (*arkan*) of Islam and it has been ordained that the State, in light of the Islamic injunctions, is to collect Zakat and Ushr and to disburse it in order to assist the needy, indigent and poor. Every Muslim who is *sahib-e-nisab* has been enjoined with the duty to pay Zakat and Ushr (*as far as Ushr is concerned, subject to law*) and the State has been called upon to arrange for its proper collection, utilization and disbursement in an organized manner. To achieve the above-mentioned object, Sections 3 and 5 of the Ordinance are the main charging provisions for Zakat and Ushr respectively. Section 7 has created a Zakat Fund and Section 8 provides for utilization thereof. Section 9 pertains to “*disbursements from Zakat Funds*” and it is primarily for this purpose that forums have been constituted at the Central, Provincial, District and Local level [*see Section 9(1), (2), (3) and (4)*].

Under the provisions of Section 12, the Government shall by notification in the official gazette establish a Central Zakat Council (*Central Council*) which is meant to provide policy guidelines for, and to exercise general superintendence and control over matters relating to Zakat and Ushr, particularly the Zakat Funds and maintenance of their accounts. This Central Council has a composition of various Members which are specifically mentioned in the Ordinance [see Section 12(2)]. The mode of their appointment and nomination etc. is also stipulated therein. It may be relevant to mention here that according to Section 12(2)(j), the Administrator-General Zakat of the Central Council shall also its Secretary General.

7. Besides the Central Council, there are Provincial Zakat Councils (*Provincial Council*), District Zakat and Ushr Committees (*District Committee*) and Tehsil, Taluka and Sub-divisional Zakat and Ushr Committees (*Tehsil Committee*) which are created under the relevant provisions of the law (see Sections 14, 16 and 17 respectively) and the mechanism of filling these forums and the mode of removal of the persons from the posts/positions thereof is duly prescribed by law (*for the purposes of this opinion, it is not necessary to reproduce each and every provision*). However Section 18 of the Ordinance pertains to the constitution of Local Committees (*this section is relevant for the purposes of filling up the posts/positions of the Member and the election of the Chairman*). The relevant parts of this section are reproduced below:

“18. Local Zakat and Ushr Committee.- (1)

(2)

(3) *The Local Committee shall consist of nine members, of whom two shall be Muslim women who are not less than forty-five years of age selected by the residents of the locality in the manner specified in sub-section (4).*

(4) *The District Committee shall constitute a team of three or more persons including at least one gazetted officer, one aalim-e-deen and one member of the District Committee to organize a public gathering of the adult Muslim, teachers and ulema residents of a locality and call upon them to select, in the prescribed manner, seven adult Muslims residing in that locality who possess Secondary School Certificate and are known to be pious and who offer five times prayer daily, and have sound moral and financial integrity and not engaged in political activity:*

Provided that a person who is a member of a team constituted for the selection of members of a Local Committee shall not be eligible to be a member of such Local Committee, and except in the case of such Local Committees in the Islamabad Capital Territory as may be notified by the Administrator-General, a person who is a salaried employee of Government or of a local authority otherwise than as Pesh Imam of a local mosque or a teacher of a local school, or of a corporation set-up, owned or controlled by Government, shall not be eligible to be member of a Local Committee:

Provided further that, where in a district the number of Local Committees is so large that the members of the District Committee, cannot be put on all the teams constituted for the selection of members of Local Committees in the district, the District Committee, may, at its discretion, nominate any other non-official person of the district to represent it on the said team:

Provided further that the team constituted by the District Committee shall organize a separate gathering of the adult Muslim female residents of the locality and call upon them to select, in the prescribed manner, two Muslim women residing in that locality who are known to be pious and who enjoy their trust to be members of the Local Committee.

(5) *The members of a Local Committee shall elect one of their members, being a person who possesses*

Secondary School Certificate and who offers prayer five times during a day regularly and observes the fast throughout Ramadhan-ul-Mubarak according to the Injunctions of Islam, to be the Chairman of the Local Committee, and if two or more persons secure an equal number of votes, the result of the election shall be determined by drawing lots.

From the clear expression of the section and also keeping in view the object and spirit of the law explained above (*which as we mentioned earlier would have quite a nexus to understand whether the Members/Chairman of the Local Committee are in the service of a statutory body*) it is unmistakably manifest that a Member of the Local Committee, who may ultimately be elected as a Chairman thereof [*by following the procedure provided in Section 18(5)*] is not a person who has been appointed or even nominated by any officer of the Zakat and Ushr department or any other functionary of the State, rather the filling up of the post/position of Member is a process of **“selection”** made by a Selection Team as envisaged by Section 18(4) which (*provision*) provides the necessary details, the particulars and also the procedure thereof. This process of selection, although cannot be considered to be an election, however it is an exercise of choosing the most suitable person of a locality to be a Member of the Local Committee in an open and transparent manner in a public gathering organized by the Selection Team. According to the Oxford English Dictionary, “selection” means *“the action or fact of carefully choosing someone or something as being the best or most suitable ---- a number of carefully chosen things ---- the range of things from which a choice may be made”*. Chambers English Dictionary defines the word “select” as *“to pick out from a number by preference: to free-select ---- picked out: choice: exclusive”* and “selection” as *“the act of selecting: a thing or collection of things selected”*. As per Webster's Dictionary, “selection” is defined as *“a selecting or being selected ----a person or thing chosen ---*

- *a group or collection of these ---- a variety from which to choose*". It is, therefore, the residents of the locality who are given the privilege of selecting or choosing one amongst themselves *[subject to meeting of qualifications prescribed by Section 18(4)]* as their representative for the purposes of providing voluntary help to achieve the object of the Ordinance. It may be restated that the Members of the Local Committee are not appointed as such, as is the concept of appointment of a person in any government service, or the service of any State owned organization or even a statutory body over which the State or its extended limbs would have control and authority. Likewise a Chairman of the Local Committee is a person who has the requisite qualifications *[see Section 18(5)]* and is elected from one of the Members of the Local Committee. So a person does not become a Member and/or Chairman through a process of appointment by any official of the Zakat and Ushr department or by any other official act of the Government. It seems that in line with the object of the law highlighted above for the purposes of the disbursement of Zakat and Ushr to the truly deserving people of a locality, pious and notable persons of that area are selected as the Member and/or Chairman by the participation of the residents of the locality who, as mentioned earlier, act as their representatives by undertaking a voluntary assignment.

It may also be pertinent to mention that for this voluntary work the Member or the Chairman, as has been unequivocally avowed by the counsel for the petitioners and is not disputed by the respondents' side and even otherwise is not established from any law or the terms of assignment, do not receive any salary, honorarium or monetary benefits of any nature whatsoever.

8. Now let us analyze the process of removal of the Members or Chairman of the Local Committee. The Ordinance contains various

methods of removal of the Members or Chairman of a Local Committee, which are reproduced herein below:

“18. (9) The Chairman and members of the Local Committee shall hold office for a term of three years and shall be eligible for re-election or re-selection as the case may be:

Provided that the District Committee may, in consultation with the Federal Government, remove a Chairman or a member of the Local Committee from his office and nominate another person as Chairman or, as the case may be, a member for the unexpired term of his predecessor:

21. Power of supersession and removal.—(1) *If the Provincial Council, in the case of a District Committee, and the District Committee in the case of Local Committee, is of the opinion that a Committee constituted under this Ordinance—*

(a) is unable to discharge or persistently fails in discharging its duties, or

(b) is unable to administer its affairs, or

(c) acts in a manner contrary to public interest, or

(d) otherwise exceeds or abuses its powers, or

(e) has a majority of members who are not pious Muslims or who are engaged in political activity.

The Provincial Council or, as the case may be, the District Committee may, by a notification, declare the concerned Committee to be superseded for such period not exceeding one year as may be specified in the notification:

Provided that the period of supersession may, if the Provincial Council or the District Committee considers it necessary to do so, be extended, beyond a period of the year.

(2) When a declaration is made under sub-section (1) in respect of a Committee, -

(a) the persons holding office as Chairman and members of the Committee to which the resolution relates, shall cease to hold office;

(b) all functions of the District Committee shall, during the period of supersession, be performed by an Administrator appointed by the Provincial Council and in the case of a Local Committee such functions shall be performed by the Administrator appointed by the District Committee; and

(c) before the expiry of the period of supersession, elections shall be held and selection or nominations made in accordance with the provisions of this Ordinance to reconstitute the Committee.

(3) If Provincial Council, in the case of District Committee, and the District Committee, in the case of Local Committee is of the opinion that the Chairman or a member of a Committee constituted under this Ordinance—

(a) was at the time of his selection, election or nomination-

(i) not a pious Muslim;

(ii) not an adult;

(iii) not a resident of the area within the jurisdiction of the Committee;

(iv) an undischarged insolvent;

(v) not of sound mind; or

(vi) engaged in political activity;

(b) has been during the period of three years preceding the date of his selection, election or nomination,

(i) ordered to execute a bond under section 108, 109 or 110 of the Code of Criminal Procedure, 1898 (Act V of 1898); or

(ii) convicted for an offence involving moral turpitude; or

(iii) declared goonda under the law relating to the control of goondas;

(c) has, after his selection, election or nomination, incurred any of the disqualifications referred to in sub-clause (i), (iii), (iv), (v) or (vi) of clause (a), or sub-clause (i), (ii) or (iii) of clause (b);

(d) has, without reasonable excuse, absented himself from three consecutive meetings of the Committee;

(e) has been guilty of abuse of power or of misconduct in the discharge of his duties as Chairman or members, or been responsible for any loss, misapplication, misappropriation or misuse of any money or property of the Committee; or

(f) has become physically disabled or unable on any count from performing functions as Chairman or member,

the Central Council, in the case of a District Committee, in the case of Local Committee, may by a resolution, remove such Chairman or member from office.

21-A. Vote of no-confidence. *(1) Where in case of a Local Committee, the District Committee, after such enquiry as it may deem fit, is of the opinion that the members of that Committee no longer have confidence in the Chairman, the District Committee may in the prescribed manner remove the chairman from his office.*

(2) Where in the case of a member of a Local Committee, or of a Local Committee as a whole, the District Committee after such enquiry as it may deem fit is of the

opinion that the adult Muslim residents of the locality no longer have confidence in the member, or in the Committee as a whole, the District Committee may, in the prescribed manner, remove the member from his office or dissolve the Committee as a whole.

(3) The vacancy in the office of Chairman or member or members so caused shall notified by the District Committee and shall be filled in accordance with the provisions of this Ordinance.”

From the aforementioned provisions of the Ordinance, it is clear that there are broadly three methods in which a Member or Chairman of a Local Committee may be removed. The first is under the proviso to Section 18(9) of the Ordinance, whereby the District Committee may, in consultation with the Federal Government, remove a Chairman or a Member of the Local Committee from his office. We are of the opinion that this provision certainly does not mean that power of removal or dismissal vests with the official(s) of the Zakat and Ushr department or the State or any government official for the following reasons: (i) such removal is not by any particular Government official or State functionary, rather the District Committee (*see Section 17(3) for its constitution*); (ii) the Federal Government need only be **consulted**, which consultation shall certainly not have a binding effect; and (iii) such empowerment has only been inserted as a proviso to the provision stipulating the maximum years of a term of office of a Member or Chairman of a Local Committee, and subsequent nomination in terms of the said proviso is only for the remaining unexpired term of the predecessor Member or Chairman, thus this method is not one utilized as of course. The second method is under the provisions of Section 21 of the Ordinance whereby a Provincial Council may by resolution remove a Member or Chairman of a Local Committee from office in certain

circumstances [including misconduct, abuse of power, physical inability, etc.; see Section 21(3)]. Now although the Provincial Council contains some Government officials who are ex-officio Members and Chairman (see Section 14), the power conferred upon such Provincial Council by virtue of Section 21 can only be exercised in the circumstances for removal provided in the said section. It is not that a sweeping power or discretion of removal or dismissal has been vested with the Provincial Council. Furthermore, the fact that the Provincial Council consists of certain Government officials, should not detract us from the whole object and purpose of the Ordinance, and the fact that they too do not receive any salary, honorarium or other monetary benefits for the voluntary work that they carry out vis-à-vis Zakat and Ushr. The third method is removal by the District Committee by a vote of no-confidence in terms of the provisions of Section 21-A provided above. In light of the above, it does not seem to be the case that the power of removal lies predominantly with the State or Government officials. Thus all the three modes looked at from any angle do not fit in the legalistic and the conceptual mechanism which is provided and prescribed for the dismissal or removal of the person who is in the service of the State or a statutory body; which removal etc. is primarily and ordinarily founded upon misconduct or inefficiency as per the law and the rules prescribed for such removal etc.

9. In **Muhammad Tufail** (*supra*) the question came up before this Court as to whether the Administrator of a Market Committee was debarred from contesting the local bodies election as being in the service of a statutory body i.e. the Market Committee established under the Punjab Agricultural Produce Markets Ordinance, 1978, a five prong test was laid down in order to determine as to whether a person could be held to be in the service of a body or authority:-

“Now according to the definition described above, service means being employed to serve another, it implies the submission to the will of another as to direction and control, to do work for another. The determining factor to hold a person to be in the service of a body or authority, implies sub-ordination to that body. There are five tests for such sub-ordination, namely, the power of the authority of the appointment to the office (ii) the power of removal or dismissal of the holder from the office (iii) the payment of remuneration (iv) the nature of functions of the holder of the office, he performs (v) the nature and strength of control and supervision of the authority. The decisive test is that of appointment and removal from service while the remuneration is neutral factor and not decisive. All the aforesaid tests need not be cumulated and not necessarily must co-exist and what has to be considered is the substance of the matter which must be determined by a consideration of all the factors present in a case and whether stress will be laid on one factor or the other will depend on each particular case.”

In the case of **Raja Bahadur** (*supra*), the question which came for examination was if the Grama Panchayat and its Sarpanch being under the control and supervision of the Government, such Sarpanch was in the service of the Government or not. The ratio of the judgment is to the following effect:-

“But the mere power of control and supervision of a Grama Panchayat exercising administrative functions would not make the Grama Panchayat or any of its members a person in the service of the Government. Even if it can be said that Grama Panchayat in the exercise of its administrative functions exercises duties in the nature of governmental duties it cannot thereby be said that its Sarpanch is in the service of the Government. So far as the Sarpanch is concerned, he is merely the executive head of the Grama Panchayat which carries out its functions through him. He is

not appointed by the Government. He is not paid by the Government. He does not exercise his functions as one in the service of the Government and he can only be removed on the ground of negligence, inefficiency or mis-behaviour. There is not a single provision of the Orissa Act from which it can be said that a Sarpanch is a person in the service of the Government.”

In the judgment reported as **Shahid Nabi Malik** (*supra*), the question about the disqualification of a person to contest the election if he was in the service of Pakistan was being pondered upon and this Court came to the conclusion that:

“‘Service of Pakistan’ as defined in Article 260 of the Constitution, besides other categories of service means “any service, post or office in connection with the affairs of the Federation or of a Province”. Keeping this definition in juxtaposition with the functions and responsibilities assigned to P.I.B. by the Government, it cannot be argued that the services rendered by the P.I.B. were not in connection with the affairs of Federation. Mr. Dar who was the Chief Executive of P.I.B. and responsible for its proper functioning, therefore, in our view was undoubtedly in the service of Pakistan.

...

The evidence produced before the Tribunal only shows that during the period Mr. Dar held the office of Vice-Chairman of P.I.B., he was paid only out of his pocket-expenses which he incurred on travelling abroad. There is nothing on record to show that either the office of Vice-Chairman, P.I.B., carried any benefit by way of salary, remuneration or other fringe benefits or that Mr. Dar was paid any salary, allowances, fee, or other benefits in his capacity as the Vice-Chairman of P.I.B.. To establish that a person is ‘holding an office of profit’ two things have to be proved. Firstly, that

there is an office and secondly, the office carries with it some kind of remuneration. In the present case, the evidence on record only established that Mr. Dar was holding an office in the service of Pakistan but there is no evidence to show that the office held by Mr. Dar was an office of profit. Mere reimbursement of out of pocket expenses to Mr. Dar could not make the office held by him as an office of profit in the service of Pakistan. As we have reached the conclusion that Mr. Dar was not holding any office of profit in the service of Pakistan, he was not disqualified from being elected or being the member of National Assembly.”

Through this judgment though per its facts a person who was disqualified from contesting the elections for the National Assembly or the Provincial Assembly (*or to be a member thereof*) should not be holding an office of profit in the service of Pakistan, yet it has been held that being a Chairman of the Investment Board would not make him the holder of such an office in the service. In Inayatullah's case (*supra*) while examining the question of whether a teacher of a school is disqualified from being appointed as the Member of a Local Committee, it has been held as under:-

“After a fair amount of analysis and examination of the purposes of the law, we are inclined to adopt the second interpretation. It also affirms the intention as well as the language of the law. Salaried employees whether of Government, local authority or corporation which is under or controlled by the Government, local authority or corporation which is under or controlled by the Government, have been kept out of such representative organizations as is a Local Zakat Council. But an exception has been made regarding the Imams and teachers of local mosques and schools on account of their special qualification and position, vis-à-vis, the subject of Zakat – particularly its calculation, collection and distribution. Accordingly the appellant being the teacher of a local school would

undoubtedly be qualified to become a member; but for another element in his employment. We have gone through the record in that connection and have also perused the certificate issued by the District Education Officer which shows that although he is the teacher of a local school but he is not the employee of a local authority. He is a salaried employee of the Government. As discussed above such a teacher of local school who is salaried employee of Government cannot be a member of the Local Zakat Committee.”

In the case of **Ch. Liaqat Ali** (*supra*), while answering a question very similar to that in the instant matters was involved, in that whether Ch. Liaqat Ali, the petitioner in that case, was disqualified from contesting the local body elections, being an Administrator of the Local Zakat Committee, the learned Lahore High Court held that:

“It is true that as an Administrator the petitioner No.1 can be said to be engaged in the administration of said Ordinance and per deeming provision of section 23 he is a public servant for the purpose of section 21 of the P.P.C. Moreover, by no stretch of imagination can it be said that the said petitioner is in the service of Federal, Provincial or a local Government or a statutory body within the meaning of section 14(g) of the P.L.G.E.O., 2000. I may here refer to section 18 of the said Ordinance of 1980 which provides for the constitution of a local Zakat Committee. The proviso to subsection (4) of the said section 18 lays down that a person who is a salaried employee of Government or a local authority or of a Corporation set up, owned or controlled by the Government, shall not be eligible to be a member of Local Committee. It will thus, be seen that bar contained in section 21(2)(b) on the appointment of an official as an Administrator is relatable to the said proviso to section 18(4) of the said Ordinance, 1980. It will thus, be seen that very structure of the Committee and consequently the person who is appointed as an Administrator in case its

supersession completely ousts a person mentioned in section 14(g) of the P.L.G.E.O., 2000 from being appointed as a member or as an Administrator.

From the collective consideration of the judgments referred to above and primarily following the criteria and principles mentioned therein we are of the view that the predominate factor for being in the service of a statutory body, that the authority of appointment to the post/position of Member and Chairman should vest with the State, Government or statutory body, is conspicuously missing; likewise the authority of removal does not primarily lie with the State or Government officials as such, rather lies with the Councils/Committees in tiers higher to that of the Local Committee, to be exercised only in terms of the relevant provisions aforementioned. Above all such Members and Chairman do not receive any salary, honorarium or any other financial benefits; the nature of the functions of the Members and Chairman are also akin to noble voluntary work, which is primarily to distribute Zakat and Ushr to deserving people of the locality; the element of the nature and strength of control and supervision of the authority is also not applicable because the Members and Chairman of the Local Committee do not seem to be under the control and supervision of any other body rather are assigned to follow the guidelines in discharge of their functions (*highlighted above*). As per the principles laid down by this Court in **Muhammad Tufail** (*supra*), considering all the factors present in the instant case(s), including the functions performed by the petitioners, we do not find them to be “*in the service of*” a statutory body etc. Furthermore, and quite importantly, while taking into consideration the view point set out in the cases of **Inayatullah** (*supra*) and **Ch. Liaqat Ali** (*supra*), the proviso to Section 18(4) of the Ordinance itself precludes “*a person who is a salaried employee of*

Government or of a local authority---or of a corporation set-up, owned or controlled by Government” from being eligible to be a member of a Local Committee, hence obviously such member (*and necessarily a Chairman*) cannot logically fall within the mischief of Section 27(2)(e) of the Act which also precludes a person of similar description from contesting the local body elections.

10. Notwithstanding the above discourse, considering the concept and the purview of the term “*in the service of*” in the light of various dictionary meanings and those assigned by the Superior Court, it shall not be appropriate to read the word “*service*” in isolation, hermetically or insulated from “*in the*” and “*of*”. In *Corpus Juris Secundum* (79 CJS. P. 1139) it has been explained that the word “*service*” has a variety of meanings various connotations and significations, thus in our view the word “*service*” has to be construed along with its syntax. When considered in this perspective “*in the service of*” would mean “*in the employment of*” meaning thereby that there is a relationship of employer and employee. However because the appellants have not been taken into the employment of any statutory body (*as envisaged by law*) therefore the question of them being “*in the service of*” such statutory body does not arise. The above reason is fortified by the provisions of Section 23 of the Ordinance (*reproduced earlier in this opinion*). In the said provision, the words “*every person engaged in, or employed for, the administration of this Ordinance*” provides for two distinct categories of persons who perform functions vis-à-vis the Zakat and Ushr bodies created under the statute – one is that of persons “*engaged in*” and the second is that of persons “*employed for*”. In our candid view the appellants are part of the first category. This interpretation is also strengthened by the explanation to Section 23 in which it is clearly mentioned that the Members and the Chairman of the Local Committee are to be considered persons “*engaged in*”, and not “*employed for*” the

administration of the Ordinance. Therefore, in our opinion the Members and the Chairman of the Local Committee are persons who are engaged in the administration of and not employed in any statutory body on account of the above. The view set out by the learned High Court that the appellants are in the service of the statutory body is absolutely unfounded and is misconceived.

11. With respect to the argument that as per Section 23 of the Ordinance the petitioners are deemed to be public servants within the meaning of Section 21 of the PPC, and are thus disqualified from contesting the elections, suffice it to say that this is a deeming clause and it is only by fiction of law that for the purposes of applicability of the PPC and for the object of enabling them to perform certain functions envisaged by the PPC that a legal status has been conferred upon them and that they are considered and deemed to be public servants otherwise they are not public servants at all. In this respect reliance has been correctly placed by the learned counsel for the respondents upon **Kalam Daraz Khan**'s case, although the case of **Rana Muhammad Jamil** (*supra*) does not seem to be relevant. Besides in Section 27 of the Act, there is no bar upon a person who is ***deemed*** to be a public servant from contesting the local bodies elections, and as has been mentioned above the qualifications and disqualifications of a person have to be construed and applied strictly and, therefore, on the basis of the deeming provisions of Section 23 of the Ordinance, which is meant for other objects and purposes, a person cannot be debarred from contesting the elections for local bodies.

12. As far as the view set out by the learned High Court of Balochistan in the cases of **Zulikha Bibi** and **Muhammad Khan** is concerned, that a Member/Chairman of a District Committee is not qualified to be elected as a member of a local body as it is a political

activity which is prohibited under Section 14(4) of the Balochistan Zakat and Usher Act, 2012, suffice it to say that the said judgments held Member/Chairman of the District Committee to be “*in the service of*” a statutory body etc. and thus did not qualify for election to the local bodies by virtue of Section 24(1)(f) of the Balochistan Local Government Act, 2010 and a period of at least six months had not elapsed since such persons’ resignation/retirement from such service. In the instant matter(s), the interpretation of a very similarly worded provision of law is involved, i.e. Section 27(2)(e) of the Act which provides that a person shall be disqualified from being elected as a member of the local government if he is “*in the service of*” any statutory body etc. and a period of not less than two years has elapsed since his resignation/retirement. However as we have held above, that being a Member/Chairman of the Local Committee does not fall within the meaning of being “*in the service of*” a statutory body etc., thus the two year post-resignation/retirement bar does not apply. The prohibition against participation in political activities is only relatable to the period whilst a person holds the post/position of Member/Chairman of the District Committee, but once he resigns, such bar disappears. In this respect, the judgments of the learned High Court of Balochistan (*supra*) do not enunciate proper law and are therefore set aside to the extent of the law laid down therein.

13. In view of the foregoing, we find that being a Member and Chairman of the Local Committee, the petitioners were not “*in the service of*” a statutory body etc. within the purview of Section 27(2)(e) of the Act and therefore have a case for setting aside the order of the learned High Court which upheld the order of the Appellate Authority rejecting the nomination papers of the petitioners. The Appellate Authority and the learned Single Judge had erroneously declared the order passed by the Returning Officer

accepting the nomination papers of the petitioners as illegal by incorrectly holding that the petitioners were hit by the disqualification enumerated in the above noted section.

14. The above are the detailed reasons for the short order of even date whereby the petitioners' civil petitions were converted into appeals and allowed, which reads as:-

“For the reasons to be recorded later on, these petitions are converted into appeals and allowed. We are of the view that the petitioners are not disqualified from contesting the elections of local bodies under the provisions of Section 27(2)(e) of the Punjab Local Government Act, 2013 as they do not fall within the purview of being in the service of a statutory body i.e. Local Zakat and Ushr Committee constituted under Section 18 of the Zakat and Ushr Ordinance, 1980 (the Ordinance). They, only being defined as ‘public servants’ under Section 23 of the Ordinance read with the provisions of Section 21, PPC, can also not be disqualified on the ground that they have been declared to be ‘public servants’ which (status) shall be considered and construed in the context of the letter and spirit of the respective law and its provisions.”

JUDGE

JUDGE

JUDGE

Islamabad, the

4th November, 2015

Approved For Reporting

Waqas Naseer/*