

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE DOST MUHAMMAD KHAN

**Civil Petition No.3228 of 2015**

**a/w CP 3229 of 2015**

(On appeal from the judgment dated 15.10.2015  
passed by the Lahore High Court, Lahore in  
W.P.No.30806-30807/15)

Shakeel Sardar Awan and another

...Petitioners in both

**Versus**

Election Appellate Authority, Tehsil Gujranwala (city) & others

..Respondents

For the petitioner:

Mr. Jalees Ahmed Meer, ASC

Mr. Mehr Khan Malik, AOR

For Respondents No.3-4: Mr. Muhammad Munir Peracha, ASC  
(in CP 3229/15)

On Court Notice:

Mr. Razzaq A. Mirza, Addl. A.G. Pb.

Date of hearing:

09.11.2015

**ORDER**

**Dost Muhammad Khan, J.—** This common judgment shall also decide CPLA No.3229/15 titled Shakeel Sardar Awan v. Election Appellate Authority, Tehsil Gujranwala (City) & others.

Both the petitions have been filed against two different judgments, rendered by the Lahore High Court, Lahore in W.Ps. No.30806 and 30807 of 2015, albeit both the impugned judgments operate on similar and same legal and factual premises.

2. Arguments of the learned ASCs for the parties and Mr. Razzaq A. Mirza, learned Additional Advocate General, Punjab heard in considerable length and case file perused.

3. Learned counsel for the petitioners in both the petitions has laid considerable stress on two-fold legal points, seeking disqualification of the respondents for contesting elections on the seats of Chairman and Vice Chairman of Union Council, consisting of Wards No.9 to 16.

- (i) The first limb of his arguments was that, respondents No.3 and 4 had submitted five number of nomination papers, joining with them altogether different contestants, therefore, the same are hit by the mischief clause (6) of rule 12 of **the Punjab Local Governments (Conduct of Elections) Rules 2013** {hereinafter referred to as, the Rules, 2013} and because one of the contestants had concealed that he was holding the status of being a Chairman, District Bait-ul-Mal, Gujranwala, which was essentially required to have been disclosed in the nomination papers, therefore, he stands disqualified.
- (ii) The second part of his plea was that, being a Chairman of District Bait-ul-Mal, the contesting respondent stands disqualified in view of the law declared by this Court in the case of **Mirza Muhammad Tufail v. District Returning Officer** (PLD 2007 SC 16).

4. On the last plea, the learned ASC vehemently urged that in view of interpretation, made by this Court, of section **152(1)(g) of the Punjab Local Government Ordinance (XIII of 2001)** {hereinafter referred to as, the Ordinance, 2001} the said respondent is holding a post, which attracts disqualification.

5. Mr. Muhammad Munir Peracha, learned ASC for the respondents and the learned Additional Advocate General, Punjab supported the impugned judgment in both the cases, rendered by the Lahore High Court, Lahore dated 15.10.2015, however, Mr. Muhammad Munir Peracha, learned ASC added that there is a wider difference between the powers of the Returning Officer and the Administrative Appellate Authority vis-à-vis the Tribunals, to be constituted and established by the Election Commission of Pakistan for the purpose of trial of the petitions, seeking disqualification of Returned Candidates on the grounds enumerated by the relevant provisions of law. He explained that the scheme of the law and the rules plainly understandable, are that the Returning Officer or for that matter Administrative Appellate Authority are vested with powers to see the eligibility and disqualification of the petitioners, which are specifically provided in sub-rule (3) of rule 14 of the Rules, 2013. To understand the true intent of rule making authority, the above sub-rule is reproduced below: -

***"14. Scrutiny.—***

*(1) ...*

*(2) ...*

*(3) The Returning Officer may, either on his own accord or on any objection, conduct such summary enquiry as he may think fit and reject a nomination paper if he is satisfied that:*

*(a) the candidate is not qualified to be elected as a member, Chairman and Vice Chairman, or Mayor and Deputy Mayor;*

*(b) the proposer or the seconder is not qualified to subscribe to the nomination paper;*

- (c) *any provision of rule 12 or rule 13 has not been complied with; or*
- (d) *the signature or thumb impression of the proposer or the seconder is not genuine."*

The plea of the learned ASC is that, at pre-elections stage, the Returning Officer or the Appellate Authority have no power to travel beyond the mandate, given to them by the law and they can only look at the qualifications of the candidate and not his disqualifications because the latter pertain to post-elections stage where the Tribunal to be constituted holds a full-dress trial/inquiry.

6. So far as the second limb of the objection is concerned, it has not impressed us in any manner. Our reasons are as follows: -

- (i) Firstly, that the *ibid* judgment was rendered by this Court while interpreting erstwhile provision of section 152(1)(g) of the Ordinance, 2001, which has been repealed along with other provisions of the Ordinance by way of repealing provision of section 154 of the Punjab Local government Act, 2013 and the same has been replaced by the provision of sub-section (2) of section 27 of the *ibid* Act. Clause (e) of the same provides as follows: -

***"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 or 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."*

(ii) This provision contains exception clause, which excludes from disqualifications those candidates, holding the 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.

(iii) The exception clause undoubtedly covers the case of the contesting respondents, however, under the relevant provisions of law i.e. Pakistan Bait-ul-Mal Act, 1992 the disqualification is not attracted to him because at the Provincial level, overall controlling authority is the Provincial Bait-ul-Mal Board, which has to be constituted by the Federal Board through notification in the official gazette however, after the 18<sup>th</sup> Amendment in the Constitution, these powers are now exercisable by the Provincial Governments.

(iv) The Board is headed by the Chairman who shall be the Secretary, Government of Pakistan (now Province) Ministry of Human Development, Social Welfare and Special Education, ex-officio.

(v) The District Bait-ul-Mal has a very limited role and is under the control and management of the Provincial Bait-ul-Mal Board. All policies and conduct of business,

regulating its proceedings shall be done according to the procedure, prescribed by the Provincial Board.

(vi) The contesting respondent is a non-official Chairman of the District Board, who shall have to hold office during the pleasure of the Provincial Board.

(vii) The area of activities of the Provincial Board has been well-defined in section 4 thereof, while District Board Bait-ul-Mal has to follow the policies of the Provincial Board and has no independent power to be exercised, taking any decision whatsoever, in disregard of the policies formulated by the Provincial Board.

(viii) Now coming to the interpretation of the provision of clause (e) of sub-section (2) of section 27 of the Act, 2013, there can be no gainsaying that the post of the Chairman or any member of the District Board is entirely formal in nature and it has no independent role to play; to confer any benefit on any person by dis-regarding the policy guidelines given by the Provincial Board.

(ix) We have gone through the entire scheme of the **Bait-ul-Mal Act, 1992** and the provisions of section 7(2) thereof, which clearly provides that non-official member shall not draw any salary, but shall be entitled to such facilities and privileges as may be prescribed from time to time. It is not established at the bar that the Chairman is paid remuneration or any type of emoluments in cash thus, it appears that except some privileges or facilities which are provided at office, nothing is paid in cash either as remuneration or "honorarium". Hence, in the absence of clear proof, which has not been provided to us, it could not be held on high presumption that the contesting respondent as Chairman, District Bait-ul-Mal is getting pecuniary benefits from the Government or/and from the fund/revenue generated by the Bait-ul-Mal at the Federal level, the Provincial level or to say, the District level.

(x) The persons, who are to get financial assistance from the fund of Bait-ul-Mal, are clearly defined in the provision of section 4 thereof therefore, not a slight discussion is left for the District Bait-ul-Mal, much less the Provincial Board of Bait-ul-Mal to extend undue benefit to any undeserved person because the guidelines given, are clearer than crystal. Moreover, it appears that the District Bait-ul-Mal Board is constituted by the Provincial Board of Bait-ul-Mal, keeping in view criteria laid down in the provision of section 3 of the Bait-ul-Mal Act. The combined study of the above provision of the Bait-ul-Mal Act leads us to a definite conclusion that it is a voluntary service, rendered by the Social Workers, possessing high integrity and spotless career because the word, "**Ameen**" has been clearly mentioned therein. Therefore, a person having the above qualifications, *inter alia*, can become eligible as Member or the Chairman of the Board. To make it more clear, in our view it is indeed a social organization.

(xi) True, that the Chairman, the Members and the servants of the Board while acting in pursuance of any provision of the Act, shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code however, the same is provided for a restricted and well-defined purpose so that the Chairman, Members and servants of the Board do not indulge in corrupt practices and if they commit a breach of trust then, they will be liable to be proceeded against for that offence(s) under PPC. When the plain language of the Statute is quite clear then it is not for the Court to widen the scope of the same.

(xii) Even in the judgment given in **Mirza Muhammad Tufail's** case (*supra*) this Court has held that the elected representatives should not be open to any influence or temptation, which may be stumbling block in their way to serve the people of their constituency, truly and freely. Possibility of existence of such influence or the interest or temptation is sufficient disqualification unless law provides otherwise i.e. the ruling concept.

(xiii) True that the expression ***“in the service”*** shall not be taken in a restricted, narrow and technical sense however, its scope could not be widened out of proportion. It was also held in the cited case as follows: -

*“Thus, the Courts found it impracticable to attempt a definition by which to test every case that may arise.”*

Moreover, there exists no master and servant relationship nor the contesting respondent has the powers to hire and fire any employee of the District Bait-ul-Mal and for that matter the case is to be referred to the Provincial Board, which is the ultimate authority to make independent decision.

(xiv) In the Case of **Aftab Shahban Mirani v. President of Pakistan**(1998 SCMR 1863) it was held that disqualification of a candidate at pre-election stage on the basis of summary inquiry is not proper unless the disqualification is of the nature, which is patent, and which needs no detailed inquiry.

(xv) Again in the short order of this Court in **CP 3186/15** (**Ghazanfar Ali v. Appellate Authority/Additional District Judge, Sahiwal and others**) dated 4.11.2015, appeals of the contesting candidates were allowed and it was held that they were not disqualified from contesting the elections of the Local Bodies under the provision of section 27(2)(e) of the Act, 2013 as they do not fall within the purview of being in the service of the statutory body i.e. Local Zakat and Ushr Committee constituted u/s 18 of the Zakat and Ushr Ordinance, 1980.

(xvi) If in future the petitioner come across some substantial materials at post elections stage, attracting disqualification clause to the contesting respondents, then he would have an opportunity to file election petition before the Election Tribunal, to be constituted and established by the Election Commission of Pakistan, which would hold extensive trial/proceedings, recording evidence,



collecting and bringing on record documentary evidence in that regard. Moreover, both the parties would have an ample opportunity to plead their cases before the Tribunal elaborately and very clearly, therefore, in our considered view this plea/objection of the petitioner, which has been concurrently rejected by all the three foras, is not tenable in law.

7. so far as the filing of five nomination papers is concerned, that is squarely permitted by the provisions of Rule 12(6) of the Rule, 2013 where it is provided that a person may be nominated for a seat in the same constituency by not more than five nomination papers. While under sub-rule (7) if the proposer or a seconder to more than one nomination papers is the same voter in the Ward, such nomination papers except the one received first by the Returning Officer shall be void, which is not the case in hand. Thus, when the law has permitted a certain course except with the above restriction then, first plea taken is entirely based on misconception of law. The Court is not supposed to add anything to law which is not provided therein nor to omit any word or expression from a Statute, which is expressly provided therein because under the cannon of interpretation of Statute the Court is to interpret the law and not to legislate the same or to provide the omission, which was deliberate and was not provided by the law makers for obvious reasons.

8. Before parting with this judgment, we may point out here that the respondents have equal, rather more supreme fundamental rights to be chosen as representatives therefore,

even in a case of borderline, where two interpretations of Statute are possible, the one favouring the candidate shall be preferred not in favour of objector, to preserve, protect and guarantee the fundamental rights, provided by the Constitution and the law and not to deprive a citizen from such rights on trifling grounds, based on mere technicalities or placing another interpretation on any provision of law, which is not expressly gleaned out therefrom by disqualifying a candidate, depriving him of fundamental right.

Accordingly, both these petitions are found devoid of all legal merits.

These are the reasons for our short order of even date, which is as follows: -

*"For the reasons to follow, these petitions are dismissed and leave to appeal declined."*

Judge

Judge

Islamabad, the  
9<sup>th</sup> November, 2015  
Nisar /-'

**Approved For Reporting**