

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

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

Civil Miscellaneous Application No.3393/2013

(Application by Syed Adil Gilani against appointment of Federal Ombudsman)

In
Constitution Petition No.30 of 2013

Khawaja Muhammad Asif

Petitioner (s)

VERSUS

Federation of Pakistan & others

Respondent(s)

Applicant (s) : Nemo.

ON COURT NOTICE

: Mr. Munir A.Malik,
Attorney General for Pakistan

For the Wafaqi Mohtasib Sectt: : Mr. Imtiaz Kazi, Secretary

For M/o Law : Nemo.

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For Establishment Division : Nemo.

For PSPM : Nemo.

For Mr. Salman Faruqui : Mr. Wasim Sajjad, Sr.ASC

Date of Hearing : 10.06.2013

ORDER

The Secretary Ombudsman has filed a report through CMA No.3644 of 2013. Notification dated 01.03.2013, issued by Imtiaz Kazi, Secretary, Wafaqi Mohtasib (Ombudsman) Secretariat has been filed, perusal whereof indicates that Mr. Salman Faruqui has been appointed as Wafaqi Mohtasib (Ombudsman). The said notification is reproduced as under: -

**"WAFAQI MOHTASIB (OMBUDSMAN)'S SECRETARIAT,
ISLAMABAD**

Islamabad, 1st March, 2013

NOTIFICATION

No.F.1(632)/A-II/2012. In exercise of powers conferred on him by Articles 3 and 4 of the Establishment of the office of Wafaqi Mohtasib (Ombudsman) Order 1983 (P.O.1 of 1983) and all other powers enabling him in that behalf, the President, Islamabad Republic of Pakistan is pleased to appoint Mr. M. Salman Faruqui, as Wafaqi Mohtasib (Ombudsman).

2. Mr. M. Salman Faruqui assumed the charge of the Office of the Wafaqi Mohtasib (Ombudsman), today, the 1st March, 2013.

Sd/-
(IMTIAZ KAZI)
Secretary"

The Secretary Ombudsman was asked to explain as to whether in all cases whenever Ombudsman is appointed a separate Notification as in the case of Mr. Salman Faruqui reproduced hereinabove is issued by the Ombudsman Office. He stated that on assumption of the charge such Notifications are issued, which are also treated as charge assumption report. Be that as it may, all the Notifications of the Ombudsman from 1983 onward be filed by him by tomorrow with the Registrar of this Court to ascertain the procedure being followed in the office of the Ombudsman for the appointment of the Ombudsman. He further stated that a separate charge report is also prepared by the Ombudsman on assumption of the charge. He also explained that copy of the above reproduced Notification, issued by the office of the Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad was endorsed/forwarded to the Manager, Printing Corporation of Pakistan Press, Karachi for its publication in the Gazette of Pakistan and it was accordingly published on the same day. Further, the oath taking ceremony of the Ombudsman had also taken place on the same day i.e 01.03.2013. We inquired from him as to whether any request from the

office of Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad was sent for seeking time from the Worthy President to administer oath, he stated that no such request was sent as at that time Mr. Salman Faruqi was working in the Presidency, therefore, the oath was administered there. We fail to understand that in such like situation when the copy of the Notification was also forwarded/endorsed to the Secretary to the President, President's Secretariat (Public), Aiwan-e-Sadr, Islamabad the process and procedure of witnessing of oath taking ceremony must have been followed. Inasmuch as Mr. Imtiaz Kazi is concerned, he stated that he has not attended the oath taking ceremony of Ombudsman held on 01.03.2013 in the Presidency. He further stated that Mr. Salman Faruqi is at present in United States for the treatment of his lady wife, however when we inquired from him whether leave for any specified period has been sanctioned, he stated that neither he knows about the sanctioning of leave nor he has received any Notification in this regard from the Ministry of Law. He stated that no case for sanctioning of leave was referred by Wafaqi Mohtasib (Ombudsman)'s Secretariat. It is to be noted that such applications like leave etc., under the Rules of the Business have to be routed from the Administration Department, Prime Minister Secretariat for formal approval, the same is to be placed before the President of Pakistan. In the instant case no such procedure seems to have been followed by him. It is also to be noted that in view of the Section 4 of the Federal Ombudsmen Institutional Reforms Ordinance, 2013 in absence of the Federal Ombudsman, the Federal Tax Ombudsman shall act as Wafaqi Mohtasib (Ombudsman), in addition to his own

duties. We inquired from Mr. Imtiaz Kazi as to whether he has intimated to the Federal Tax Ombudsman to discharge his functions in accordance with Section 4 to which his reply was in negative.

2. Registrar of this Court may send a letter to the Federal Tax Ombudsman, seeking information from him as to whether in pursuance of Section 4 of the Ordinance, appointment of the Acting Ombudsman was made and whether he has assumed duties/functions as an Acting Ombudsman. In this behalf the Registrar may also procure the statement from him.

3. Mr. Imtiaz Kazi, Secretary further stated that copy of the Notification dated 01.03.2013 was forwarded by the Ombudsman Office to 14 functionaries, list of which is available at the bottom thereof including the AGPR, Islamabad. Surprisingly a Certificate dated 08.06.2013 under the title **"TO WHOM IT MAY CONCERN"** has been placed on record at page 18 in CMA No.3644/13. A perusal whereof indicates that Mr. Salman Faruqi has drawn pay and allowances as Wafaqi Mohtasib from 1st March, 2013. He was issued Cheque No.4304413 and 4304414 for his pay and allowances for the month of March and April, 2013 respectively. From perusal of the certificate impression can be gathered that no intimation was sent to the AGPR. As according to the practice if a person is already functioning in office on his appointment he relinquishes the charge of the same and since Notification either himself or through the Department to AGPR, who is required to appoint the Officer and monthly amount of the salary is credited to his account and at the same time monthly pay slip is also issued by the AGPR but it seems that as per the certificate referred

hereinabove he has received his salary through the cheques mentioned in the certificate. It is necessary to look into the travelling history of the Notification dated 01.03.2013, maintained in the dispatch register by the office of the Ombudsman to ascertain as to when the intimation was sent to the AGPR. Similarly, the Secretary is directed to highlight the entries in the original dispatch register of Ombudsman Secretariat from where the copies endorsed to other functionaries were sent and the same be deposited in the office of the Registrar of this Court for further probe into the matter. It is also to be observed that stately on 25.02.2013, the Ministry of Law and Justice had issued a Notification a copy of which is available in the file, which has been deposited. Contents of the Notification dated 25.02.2013 is as under: -

**Government of Pakistan
Ministry of Law and Justice**

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Islamabad, the 25th February, 2013

NOTIFICATION

No.F.1(8)/2012-A.I. In exercise of powers conferred by Article 3 and 4 of the Establishment of the office of Wafaqi Mohtasib (Ombudsman) Order 1983 (P.O.1 of 1983), the President is pleased to appoint Mr. M. Salman Faruqi, as Wafaqi Mohtasib (Ombudsman) for a period of four years from the date he assumes the charge of the said office.

Sd/-
Justice (R)
Yasmin Abbasi
Secretary"

4. Interestingly the copy of this Notification was not dispatched to anyone of the offices as it has been endorsed in the Notification dated 01.03.2013. Let the Secretary, Ministry of Law and Justice Division explain the traveling history of the Notification dated

25.02.2013 before 11.06.2013, by depositing the dispatch register etc. with Registrar of this Court. The office is directed to intimate this order today positively to the Secretaries, Law and Justice and Ombudsman.

5. Mr. Wasim Sajjad, learned Sr.ASC requested for time to file Power of Attorney on behalf of Mr. Salman Faruqui. At his request the matter is adjourned to 20.06.2013.

Chief Justice

Judge

Islamabad
10.06.2013
Rabbani

Judge