

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present:

Mr. Justice Amir Hani Muslim

Mr. Justice Mushir Alam

Mr. Justice Dost Muhammad Khan

Constitution Petition No.03 of 2014

And C.M.A.No.8540 of 2015

Ch. Muhammad Akram, Advocate High Court,
Former Vice President, Islamabad High Court
Bar Association, Islamabad.....Petitioner

Versus

Registrar, Islamabad High Court and others.....Respondents

For the Petitioner : Mr. Arif Chaudhry, ASC.
Ch Akhtar Ali, AOR.

For Respondent No.1 : Mr. M. Shahzad Shoukat, ASC.

For Respondents No. : Syed Iftikhar Hussain Gillani, Sr.ASC.
3-22, 24-29, 31-76

For Respondent No.23 : Kh. Azhar Rasheed, ASC.

For Respondent No.30 : Mr. Muhammad Munir Paracha, ASC.

For the Federation : Mr. Sohail Mehmood, DAG.
Mian Abdul Rauf, A.G, Islamabad.

For the Applicant : In-person.
in C.M.A.No.8540/2015 Mr. Anees Jillani, ASC.
Syed Rafaqat Hussain Shah, AOR.

Date of hearing : 9, 10, 11, 12 & 16.05.2016.

JUDGMENT

AMIR HANI MUSLIM, J. - These proceedings have been instituted by Ch Muhammad Akram, a practicing Advocate and Human Rights Activist, challenging various appointments, absorptions and transfers in the Islamabad High Court, claimed to have been made in violation of the Services Rules of the Islamabad High Court.

2. The Petitioner has mainly relied on an Audit Report for the years 2010 to 2013 submitted in July 2013, by Nasim-ul-Ghani, Accounts Officer, Office of the Accountant General, Pakistan Revenues, Islamabad. The relevant portion of the Report is reproduced hereunder:-

“During scrutiny of personal files, it has been observed that after re-establishment of Islamabad High Court in 2010 not a single appointment of officers/officials has been made on merit and a number of appointments have been made in relaxation of rules including absorption of officer and officials (deputationists) in much higher scales than they were holding in their parent departments. Whereas, generally the absorption is made in the same scale or in some special case maximum one stage above only but in Islamabad High Court the deputationists have been absorbed in much higher scale without any plausible justification. Absorption is also a kind of appointment.

The procedure of advertising the posts in newspapers for making appointments through open competition after conducting test/interview has totally been ignored in all the appointments made during the

audit period. Appointments without open competition have been held illegal by the superior courts.

Rule 8 of the Islamabad High Court Establishment (Appointments and Conditions of Service) Rules, 2011 also provides that initial recruitment to all posts shall be made after proper advertisement of the vacancies in the newspapers and on the basis of test and interview. It is more alarming that even after advertising the posts of non-gazette cadres, the same were still filled by relaxing the rules and the applicants who had applied against the said posts were deprived of their fundamental right to compete for getting job on merit. Further observed that no justification and exigency existed as already a reasonable number of employees (more than 200) had been working in the Court and there was no hurdle in adopting proper procedure to fill up the vacant posts but it appears that the intention was not there and nepotism/favoritism was allowed to prevail. Even in case of any exigency the post could have been filled temporarily (not more than for a period of six months) and then regular appointment could have been made by adopting the proper procedure in some cases of appointments, discretionary powers of relaxing of rules have been exercised more than one time. Whereas the power to relax any of the rules (rule 16 of the Islamabad High Court Establishment (Appointments and Conditions of Service) Rules, 2011) can only be exercised where a strict application of the rule would cause undue hardship and it is also subject to recording of reason in writing”.

3. It has been pleaded by the Petitioner that appointments/absorptions of the Respondents No.3 to 76 were made in complete departure of the Islamabad High Court (Appointment and

Conditions of Service) Rules, 2011 [hereinafter referred to as 'the Islamabad High Court Rules'], without adopting the procedure laid down in the Islamabad High Court Rules. It has been pleaded that Rule 8 of the Islamabad High Court Rules, provides that initial recruitment to all posts shall be made after proper advertisement of the vacancies in the newspaper having wide circulation and in any other manner to be determined by the Chief Justice or subject to his approval by the Selection Committee or Selection Board, as the case may be, and the applications of the candidates received whereof shall be scrutinized accordingly. It has been further pleaded that as per Rule 4 (1) of the Islamabad High Court Rules all appointments whether initial or by promotion or transfer or by deputation shall be made as prescribed by the Rules.

4. The Petitioner has stated that even after advertising the posts of the non-gazetted staff, the appointments were made by relaxing the Islamabad High Court Rules and the Applicants who had applied for the said posts were deprived of their fundamental rights to compete for the jobs on merit, thereby allowing nepotism/favoritism. He has pleaded that the selection of persons for Public office is a sacred trust, which is required to be discharged honestly, justly and fairly, so that each Applicant may get a fair chance to compete for the job, he has applied for. The Petitioner has prayed that the appointments/absorptions of the Respondents No.3 to 76 may be declared as illegal having been made without lawful authority.

5. Mr. Arif Chaudhry, learned ASC for the Petitioner has contented that after the creation of the establishment of the Islamabad High Court, many appointments were made in its Establishment, which are inconsistent with the law, i.e. (1) appointments were made without any advertisement (2) direct appointments were made on posts where recruitment was supposed to be made on promotion basis (3) these appointments had not been made on the basis of merit (4) ineligible candidates were appointed against the Islamabad High Court Rules.

6. He states that 'The Islamabad High Court Establishment (Appointment and Conditions of Service) Rules 2011' were framed by the Administration Committee of the Islamabad High Court in exercise of the powers conferred by Article 208 of the Constitution and with the approval of the President. He submits that the Islamabad High Court Rules were published in the Official Gazette on 20th of May 2011. The learned ASC further states that four of the allegedly illegal appointments were made prior to the promulgation of these Rules and the remaining 57 were made after framing of the Islamabad High Court Rules.

7. It is contended by the learned Counsel for the Petitioner that the appointments were made without advertisement and bypassing the Islamabad High Court Rules. Before framing of the Islamabad High Court Rules, in terms of Section 5 of the Islamabad High Court Act, 2010, the appointments to the establishment were

governed by the Lahore High Court Service Rules. Instead of appointing the Respondents No.3 to 76 under the Lahore High Court Rules, the Chief Justice has made all the appointments in relaxation of the Rules. He submitted that the mode adopted by the Islamabad High Court for making appointments is violative of the Rules besides it deprived meritorious and deserving candidates from participating in the competitive process for appointment to different public offices which is inherent right of every citizen under the Constitution. In support of his contentions, the learned Counsel has relied upon the case of **Abdul Jabbar Memon and others** (1996 SCMR 1349), wherein it was held by this Court that all appointments made to the public offices without requisite advertisement, are violative of the fundamental rights of the citizens. The learned Counsel has also relied upon the case of **Mushtaq Ahmad Mohal v. Honourable Lahore High Court, Lahore** (1997 SCMR 1043), wherein paragraph 7 of the aforesaid judgment, it has been held that inviting applications from the public for appointments without advertisement in the press is violative of Article 18 read with Article 2-A of the Constitution. He, in support of his contention, has also relied on the cases of **Muhammad Naseem Hijazi v Province of Punjab** (2000 SCMR 1720), **Dr. Naveeda Tufail Vs. Government Of Punjab** (2003 SCMR 291) and **Chief Secretary Punjab & others V Abdul Raoof Dasti** (2006 SCMR 1876). He further relied on the cases of **Muhammad Ali Vs. Province of KPK through Secretary, Elementary and Secondary Education, Peshawar** (2012 SCMR 673), **Baz Muhammad Kakar Vs. Federation Of Pakistan through Ministry of**

Law and Justice (PLD 2012 SC 923), **Registrar, High Court Of Balochistan Vs. Abdul Majeed** (PLD 2013 Balochistan 26) and **Syed Mubashir Raza Jaffri Vs. Employees Old-Age Benefits Institutions (EOBI)** (2014 SCMR 949).

8. The learned Counsel for the Petitioner then turned towards the facts of the present case which he believed held pivotal importance in advancing his contention. He informed the Court that Respondent No.35 Omer Daraz had been appointed to the post of Registrar. The basic pay scale for this post was 21 and 22 and the appointment under the Rules rests at the discretion of the Chief Justice of the Islamabad High Court when he decides to appoint (a) by transfer of District and Sessions Judge serving in the High Court or by borrowing District and Sessions Judge from Provincial High Courts (b) by promotion of an officer serving in BS-20 or (c) by initial appointment on contract basis of a suitable person with reasonable experience of administration and financial matters. The learned ASC Arif Chaudhry, contended that Respondent No.35 was a Reader (BS-18) who was illegally promoted to the said post in blatant contravention of the Rules.

9. The learned Counsel for the Petitioner has contended that on 17.04.2012, Idrees Kasi, Respondent No.3, was directly appointed against a promotion post of Deputy Registrar (BS-19). In terms of the Rules, promotion to the said post could only be made through (a) promotion amongst cadres of Assistant Registrars, Readers and Private

Secretaries on seniority-*cum*-fitness basis on rotation basis or (b) transfer of Senior Civil Judge of Islamabad High Court or other High Courts by borrowing their services on deputation basis. Hence the direct appointment of Respondent No.3 was illegal and against the Rules.

10. Mr. Arif Chaudhry learned ASC for the Petitioner then argued that Respondent No. 30 Usman Qudoos was appointed as Research and Reference Officer. He submitted that the mode for appointment to the said post is by promotion from amongst the Librarians on seniority-*cum*-fitness basis provided that the said person is a law graduate and has rendered seven years' service in BS-17 and above. The Rules further provided that in absence of the above qualifications, a person with a Master's degree in Library and Information can be appointed, preferably a law graduate, with seven years' experience in management and maintenance of Court Libraries in BS-17 and above. The learned Counsel contended that appointment of Usman Qudoos to this post was made over looking the required qualification of a Librarian having 12 years' experience, who was not eligible for the aforesaid post.

11. It was next contended by the learned Counsel for the Petitioner that Respondent No.7 Kashif was directly appointed to the post of Additional Registrar which is a promotion post and the said

Respondent was neither eligible nor qualified to hold the said post under the Rules.

12. Ijaz Ahmed, former Additional Registrar of the Islamabad High Court, has made an Application for impleadment (C.M.A.No.8540/2015) as party in these proceedings. The said Application was dismissed with the observation that he will have a right of audience. He has contended that out of 64 appointments made in the establishment of Islamabad High Court, 42 persons were eligible but were appointed without following the mandatory requirement of advertisement in the press. According to him, the remaining 22 persons, who were appointed, were neither eligible nor qualified and the process of appointments was not transparent. He contended that Respondent No.40, 41, 42 and 43 were originally employees of different corporations, who were inducted in the Islamabad High Court without advertising the said posts. According to Ijaz Ahmed, these Respondents did not possess the qualifications for the posts against which they were appointed and thereafter unauthorizedly absorbed.

13. He further contended that Usman Mir, Respondent No.40, was serving in Allied Bank Ltd. as Credit Analysis Officer and was appointed and absorbed as Assistant Registrar (BS-18) in the Islamabad High Court. Saqib Sheraz, Respondent No.41, was in Pay Scale 4 in the Pakistan Broadcasting Corporation and was appointed and absorbed as Assistant Accounts Officer (BS-17). Aamir Abdul Majeed, Respondent No.42, who was serving as Stenographer in Punjab University was

appointed and absorbed as Personal Assistant (BS-17). Shakeel Raza, Respondent No.43, was serving as Assistant in Balochistan Assembly and was appointed and absorbed as Data Processing Officer in BS-17. He submits that all these appointments were violative of the judgments of this Court titled as **Contempt Proceedings Against Chief Secretary Sindh** (2013 SCMR 1752) and **Ali Azhar Khan Baloch vs. Province of Sindh** (2015 SCMR 456). He next contended that this Court in the case of **Muhammad Naseem Hijazi vs. Province of Punjab** (2000 SCMR 1720), while interpreting the scope of writ of quo warranto has held that any party can challenge the appointment of a person, who is not legally qualified to hold the office by way of a writ of quo warranto. He has further contended that the appointments of the Respondents were not only violative of the Rules of the Court, but also violative of Articles 27 and 189 of the Constitution.

14. Mr. Shehzad Shoukat, learned ASC appearing for the Islamabad High Court has contended that the Registrar, Islamabad High Court has filed a concise statement by way of C.M.A.No.369 of 2015 on behalf of the Respondents No.1 and 2. He has contended that Respondents No. 3 to 76 were appointed by the Islamabad High Court, which fact is incorrect. According to him, 11 Respondents have been named twice in the array of the Respondents. He contended that in all, 61 Respondents were appointed out of which 29 were appointed on lower posts e.g. Naib Qasids, Chowkidars and Sweepers. He contended that these employees could not be said to hold Public Office and,

therefore, the Petition against them in the nature of quo-warranto does not lie. In support of his contention, he has relied on the judgment in the case of **Sohrab vs. the State** reported in (PLD 1975 SC 248). He next contended that the Respondents No.48 and 56 are no more in the employment of the Islamabad High Court.

15. The learned Counsel has further contended that out of the remaining 32 Respondents, 10 were appointed prior to the promulgation of the Islamabad High Court Rules and from the remaining 22, 06 were initially appointed on deputation and subsequently absorbed by the Competent Authority in terms of Rule 4(5) of the Rules. He contended that 14 fresh appointments were made; one was appointed on contract basis and the other on deputation. According to him, these appointments were made in relaxation of Rule 16 of the Rules, which confers power on the Chief Justice to relax the Rules. He submits that in exercise of powers conferred on the Chief Justice, he has appointed these persons, assigning good reasons for their appointment and, therefore, no illegality, if any, has been committed by the Chief Justice/Competent Authority.

16. He next contended that the grievance of the Petitioner cannot be entertained by this Court in exercise of its jurisdiction under Article 184 (3) of the Constitution, which according to the learned Counsel, has limited scope. He contended that the Counsel for the Petitioner has pleaded that the appointments of the Respondents were made in violation of the Rules, therefore, they be declared illegal. The

learned Counsel while advancing his arguments has contended that this Court in exercise of jurisdiction under Article 184 (3) of the Constitution will seek guidance from the provisions of Article 199 (5) of the Constitution. He contended that even otherwise, a writ cannot be issued against a High Court or Supreme Court and in support of his contention, he has relied on the judgment reported as **Jamal Shah vs. The Member, Election Commission, Govt. of Pakistan, Lahore** (PLD 1966 SC 1). In substance, the contention of the learned Counsel was that the powers of appointment exercised by the Chief Justice were in his administrative capacity and cannot be examined under Articles 199 (5) and or 184 (3) of the Constitution. He submits that in order to exercise jurisdiction under Article 184 (3) of the Constitution, the Petitioner has to establish that the Competent Authority has not followed the Rules or exercised jurisdiction not vested in him under the law or did not have the requisite authority at all. According to the learned Counsel, unless any of the aforesaid ingredients are established, the Petitioner cannot seek relief in a writ of quo-warranto. He submits that the Chief Justice/ Competent Authority has the powers under Rules 16, 17 and 18 of the Islamabad High Court Rules to relax the conditions for appointment in the establishment and such appointments cannot be challenged. He submits that no rule can restrict the powers of the Chief Justice with regard to the appointments made under Rules 16, 17 and 18 to appoint any one, as these Rules have overriding effect on the other Rules. It is next contended by the learned Counsel that the scope of Article 184 (3) of the Constitution is limited. According to him, in order to entertain a

Petition under Article 184 (3) of the Constitution, a party has to establish that the issue involved relates to a question of public importance having nexus with fundamental rights. He submits that in the absence of any of these ingredients, a Petition is not entertainable. The learned Counsel contends that in the case in hand, the Petitioner has failed to place any material which could justify invoking the jurisdiction of this Court under Article 184 (3) of the Constitution.

17. Syed Iftikhar Hussain Gillani, learned Sr.ASC, for the Respondents No.3 to 76, has submitted that the appointments were challenged by the Petitioner three times i.e. the Petitioners challenged the appointments in Writ Petition No.2997 of 2011 which was dismissed by the Islamabad High Court on 26.10.2011 against which they filed I.C.A.No.562 of 2012, which was also dismissed on 18.09.2012. They again challenged the appointments through another Writ Petition No.10100 of 2013, which was returned by the Registrar of the Islamabad on grounds of maintainability, against which order the Petitioners filed an Appeal and the learned High Court maintained the objections of the Registrar.

18. He next contended that the Petitioner has not approached this Court with clean hands. According to the learned Counsel, most of these appointments were made prior to the promulgation of the Rules. He contended that the Islamabad High Court has appointed 150 persons in the establishment, out of which appointments of only 10

persons have been challenged which clearly shows malice on the part of the Petitioner.

19. He contended that the Islamabad High Court was initially established under the Presidential Order No.VII of 2007. By judgment dated 31st July 2009 in the case of **Sindh High Court Bar Association vs. Federation of Pakistan** (PLD 2009 SC 879), the Islamabad High Court was declared unconstitutional. Through the 18th Amendment in the Constitution, Act No.XVII of 2010 was introduced and the Islamabad High Court was created. The learned Counsel has referred to Sections 5, 8 and 11 of the Islamabad High Court Act 2010, in order to show that prior to the Islamabad High Court (Appointment and Conditions of Service) Rules, 2011, the appointment of officers and staff of the Court was regulated by the Rules and procedures of the Lahore High Court and even the Administration Committee of the Islamabad High Court had adopted the aforesaid Rules of appointment, therefore, the appointments made prior to the promulgation of the Islamabad High Court Rules were on the basis of Rules of the Lahore High Court.

20. He next contended that the details of the Petitions filed by the present Petitioner are incorporated in the concise statement filed by the Respondents, by way of C.M.A.No.6198 of 2014, which clearly reflects that the Petitioner with ulterior motives, has repeatedly challenged the appointments of the Respondents, therefore, the present proceedings are tainted with malice and the Petitioner has not approached this Court with clean hands. It was contended by the

learned Counsel for the Respondents that the provisions of Article 184 (3) of the Constitution which confers jurisdiction on this Court has to be read as a whole. According to him, in exercise of the jurisdiction under Article 184 (3), this Court cannot pass any order other than the order which the High Court can pass under Article 199 of the Constitution and that too, with the exception that before exercising the jurisdiction, this Court has to satisfy that the Petition raises question of public importance having nexus with fundamental rights.

21. It is further contended by the learned Counsel that even if one of the ingredients as stated hereinabove is missing, this Court could not entertain the Petition on the ground of maintainability. He next contended that the Petitioner has sought declaration in regard to the appointments on the ground that the said appointments were illegal and made without lawful authority. Such a prayer, according to the learned Counsel, is not covered under the writ of quo warranto. According to the learned Counsel, a writ of quo warranto is discretionary in nature. He submits that the appointments of the Respondents have not been challenged on the ground of their qualifications nor on the basis of encroachment on the fundamental rights of the public at large, therefore, the Petition merits dismissal.

22. The learned Counsel next contended that Article 199 (5) of the Constitution provides protection to the administrative orders of the High Courts. He, while arguing the matter contended that orders passed by the Administration Committee of the High Court could not

be challenged under Article 199(5) or 184 (3) of the Constitution. (In support of his contention, he has relied upon the case of **Wukala Mohaz Barai Thafaz Dastoor v. Federation of Pakistan** (PLD 1998 SC 1263). He submits that in paragraph 3 at page 1301 of the said judgment, this Court has provided protection to the superior judiciary and has placed the same on a higher pedestal providing a shield from challenging its orders passed on the administrative side). He next contended that this issue was dealt with by a Full Bench of the Lahore High Court in the case of **Asif Saeed Vs. Registrar, Lahore High Court and others** (PLD 1999 Lahore 350). He, however, contended that the bar contained in Article 199 (5) is not absolute and is subject to exceptions like if the order passed is mala fide, *coram non judice* and/or without jurisdiction. The learned Counsel states that these exceptions have been accepted as settled principles irrespective of the language of the ouster clause. While developing his arguments, he has referred to Article 199(3) which bars the jurisdiction of the High Court in relation to the matters of armed forces, but this bar does not extend if the order challenged before the High Court lacks jurisdiction, is tainted with malice or is *coram non judice*.

23. The learned Sr. ASC, Iftikhar Hussain Gillani, representing Respondents No.3 to 76, has contended that the Islamabad High Court had adopted the Lahore High Court Establishment Rules (Volume-V) 1981, during the interim period, for appointments in the establishment of the Islamabad High Court. He submitted that the Lahore High Court

Rules referred to hereinabove were adopted by the Administration Committee of the Islamabad High Court, in terms of the provisions provided in the Islamabad High Court Act, 2010, as an interim arrangement. According to the learned Counsel, the Rules of the Lahore High Court conferred powers on the Chief Justice to appoint any person in the establishment of the Islamabad High Court in relaxation of the Rules. He submitted that different appointments in the establishment of the Islamabad High Court by the Chief Justice were made in exercise of powers conferred on him under Rule 26 of the Lahore High Court Rules 1981, and could not be challenged by any person and/or employee, in view of the bar contained in Article 199 (5) of the Constitution. He, however, contended that the bar of Article 199 (5) is not absolute and is subject to three exceptions laid down in the case of **Federation of Pakistan vs. Ghulam Mustafa Khar** (PLD 1989 SC 26). He submitted that if an impugned order is (1) without jurisdiction or (2) *coram non judice* or (3) *mala fide*, the High Court can entertain such a petition. He submitted that these exceptions also apply to the bar contained under Article 199 (3) of the Constitution, which restricts a High Court from entertaining a Constitution Petition in relation to the terms and conditions of a member of the Armed Forces of Pakistan.

24. He next contended that the judgment of the Lahore High Court in the case of **Asif Saeed** (*supra*), was affirmed by this Court in the case of **Muhammad Iqbal and others vs. Lahore High Court through Registrar and others** (2010 SCMR 632), which supports his contention

that Article 199 (5) takes away the jurisdiction of the High Court to entertain a petition of an aggrieved party, challenging the appointments made by the Chief Justice and/or Administration Committee of a High Court. He, however, conceded that the protection provided under Article 199 (5) has to be read with the exceptions referred to hereinabove.

25. Giving a brief historical account of the Islamabad High Court, Mr. Gilani has contended that the Chief Justice Islamabad High Court had requested all the High Courts for borrowing the services of the officers required in the newly established Islamabad High Court. In response to this request, officers from the High Court of Sindh and Balochistan High Court were sent to the Islamabad High Court on deputation and these deputationists were later absorbed in the establishment.

26. He further submitted that he does not support the view taken by the Lahore High Court in the case of **Asif Saeed** (*supra*), that the definition of the 'High Court' includes the Registrar, as according to him the term "High Court" given in Article 192 (1) says "*A High Court shall consist of a Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President*". The learned Counsel admitted that the term 'High Court' as defined in Article 192 of the Constitution read with the provision of Article 199(5) reflects that it is only the orders of the High Court that are protected under Article

199(5) and the orders of its Registrar etc. do not enjoy the same protection.

27. He next contended that another ground that would create room for the exercise of the jurisdiction of the High Court under Article 199 (5) of the Constitution is if an appointment made by a competent authority in 'excess of jurisdiction'. In support of his contention, he has relied upon the judgment in the case reported as **Muhammad Yousaf v. Malik Karam Dad Khan and others** (PLD 1968 Lahore 30). He therefore contended that order of the Chief Justice and/or Administration Committee of a High Court could be questioned under Article 199(5) of the Constitution if an ineligible person or a person lacking qualification has been appointed as such, which order would be in 'excess' of the jurisdiction. According to the learned Counsel, such an order would attract the mischief of the term 'excess of jurisdiction' as provided in the Black's Law dictionary. He submits that where persons not eligible under the Rules to hold certain posts in the establishment were appointed by the Chief Justice of the Islamabad High Court, such orders of appointment can be assailed on the ground of exercise of excessive jurisdiction.

28. In this context, he pointed out that except one clerk, all the other Respondents were eligible for the posts to which they were appointed. He states that the Petitioner had incorrectly and irresponsibly stated that all Respondents to this Petition had fake degrees without placing any material in support of the allegations.

29. He next contended that the present proceedings do not attract the ingredients of Article 184 (3), therefore, the Petition ought to have been dismissed on that score alone. According to Syed Iftikhar Gillani, learned ASC, the Petitioner has failed to satisfy this Court that the issue raised in these proceedings is of public importance and secondly it encroaches upon the fundamental rights of the public at large. In support of his contention, the learned Counsel has relied upon the case of **Mian Muhammad Shahbaz Sharif vs. Federation of Pakistan** (PLD 2004 SC 583) and the case of **Dr. Muhammad Tahir-Ul-Qadri vs. Federation of Pakistan through Secretary M/o Law, Islamabad** (PLD 2013 SC 413).

30. He has further submitted that the allegation that the brother of the incumbent Chief Justice was appointed on one of the posts despite the fact that he was ineligible to hold such a post, is incorrect, since he was not holding the office of the Chief Justice at the time of the appointment of his brother. However, it may be observed that the incumbent Chief Justice was nevertheless a Judge in the Islamabad High Court and could have exercised influence for the appointment of his brother.

31. The learned Counsel for Respondent No.23, Shakeel Raza, has contended that he was promoted from the post of Clerk (BS-07) as Assistant Coordinator (BS-15) in the Balochistan Provincial Assembly, on clearing the relevant departmental promotion examination. The

learned Counsel has submitted that on 12.03.2011, Respondent No.23 was appointed as Computer Operator (BS-15) by deputation in the Islamabad High Court and was later absorbed in the establishment. Thereafter on 11.05.2011, the said post was upgraded as Data Processing Officer (BS-17).

32. The learned Counsel representing Respondent No.30 has submitted that the said Respondent was directly appointed to the post of Research and Reference Officer (BS-19). He was previously a practicing Advocate of the High Court based at Mansehra, and was appointed on 02.05.2011, before the promulgation of the 2011 Rules, but without advertising the said post in the print media.

33. He has further submitted that the jurisdiction of this Court under Article 184(3) of the Constitution can only be invoked if any of the fundamental rights of a citizen have been encroached upon or the issue involved is that of public importance. He stated that Article 27 of the Constitution is the relevant Article for the case in hand, which warrants protection from discrimination on grounds of race, religion, cast, sex, residence, or place of birth. None of these grounds have been mentioned in the present Petition. He further submitted that the term "Service of Pakistan" used in Article 27 is defined in Article 260 of the Constitution, which is a wider term and includes officials of "Civil Service of Pakistan". Therefore, in absence of the grounds of discrimination laid down in Article 27, the present Petition is not maintainable.

34. He has submitted that Article 184(3) cannot be invoked against the orders of a High Court in the absence of an issue of public importance impairing any of the fundamental rights. In support of his contention, he read out Section 11 of the Islamabad High Court Act 2010 which reflects that the Chief Justice had to adjust the employees of the previously established and later dissolved Islamabad High Court and hence there was room for direct recruitment. He stated that since the Islamabad High Court was a newly established Court, therefore, there was no possibility of making appointments on promotion.

35. He then concluded his arguments by submitting that according to him, under Article 199(5) of the Constitution, the Supreme Court has no jurisdiction to question an order of a High Court since Article 199(5) provides blanket protection to all orders passed by this Court or the High Courts. He also pointed out that the cherry picking of mere 10 Respondents out of a plethora of similarly placed officers substantiates malice on the part of the Petitioner.

36. In rebuttal, the learned Counsel for the Petitioner, Mr. Arif Chaudhry, ASC, has contended that the present Petition has been filed by a practicing Advocate, who was neither provided access to the record nor was he given any information pertaining to the appointments/promotions made by the Islamabad High Court, inspite of his repeated requests. He submits that the present proceedings are in the nature of *quo warranto* and the Petitioner, in no way, has any

personal interest in the appointments made in violation of the Rules of Lahore High Court by the Islamabad High Court. Most of the appointments which are under challenge, were made on grounds of invoking of Rule 26 of the Lahore High Court Rules. This Rule authorizes the Chief Justice to undertake the exercise of appointments by relaxing the Rules '*as may appear just and equitable to him*'. He contended that he has merely passed on the information to this Court, in terms of Article 184(3) of the Constitution, with the objective to enable this Court to satisfy itself as to whether the mode adopted by the competent authority while making these appointments goes against the interest of the public at large, depriving the merit of those who were entitled to compete. According to him, every citizen of this country is entitled to hold a public office by competing in the process of appointments, which right is conferred upon by the Constitution, therefore, the two essential ingredients attracting the jurisdiction of this Court i.e. (1) that the question raised is one of public importance and (2) that fundamental rights of the citizens have been infringed, are covered in the Petition in hand, enabling this Court to exercise jurisdiction under Article 184(3) of the Constitution. According to the learned Counsel, there are a number of citizens who were similarly placed but were not allowed to compete for appointments, which reflects that the task undertaken by the Chief Justice in making appointments or promoting the officers in the establishment of the Islamabad High Court was neither transparent nor could it in any manner sustain the litmus test of merit. In support of his contentions, he has relied upon

the case of **Renue and others vs District and Sessions Judge** (AIR 2014 SC 2175).

37. We have heard the learned Counsel for the parties, the learned Law Officers and perused the record with their assistance. In the present proceedings, the Petitioner who is a practicing Advocate, has challenged different appointments made by the Administration Committee of the Islamabad High Court. On the surface of this pool of heated debates between the parties, the material point of contention, is whether this Court under Article 184(3) is competent to entertain a Petition in the nature of *quo warranto*, challenging the appointments made by the then and the incumbent Chief Justice of the Islamabad High Court in the establishment. It is important to unshackle some of the legal minds from the preconceived notions about the limitations to 'justice'. We need not remind the learned Counsel that the Supreme Court is the supreme and ultimate authority for the judicial determination of the precise scope of any Constitutional provision. The language of Article 184(3) of the Constitution provides a clear gateway to this Court to step in the matters which (1) raise a question of public importance and (2) involve the enforcement of any of the fundamental rights of the citizens of this Country. Moreover, under sub-Article 3 of Article 184, the application of Article 199 has been expressly excluded where the two aforementioned conditions have been satisfied. The term 'considered' used in sub-Article 3 of Article 184 is of pivotal importance as it connotes subjective assessment of this Court. Once this Court has

satisfied itself that the matter in hand is one that affects the public at large and involves the infringement of fundamental rights given protection under the Constitution, there remains no bar on its competence to entertain this Petition. Conversely, it is equally important to distinctly define the outline of the scope of this Court's judicial determination in the case at hand; the orders in question are the orders made by the Chief Justice of High Court in his capacity as the Chairman of the Administration Committee and not the judicial orders passed by him in his capacity as a Judge. The latter would be a separate debate, which can only aptly be addressed in wholly different circumstances. The challenge in these proceedings does not pertain to the competence of the appointing authority but in fact it is the process of appointments which needs to be examined for its legality.

38. It is settled that while it is impossible to mould the term 'public importance' in a rigid definition that is applicable to myriad situations, this Court in **Watan Party vs. Federation of Pakistan** (PLD 2012 SC 292) has held that a matter is of public importance if it directly and vitally concerns the general interest of the community or public at large, as opposed to the particular interest of an individual. It is not denied that the appointments made in the establishment of the Islamabad High Court are of acute significance to the community. A High Court is amongst the sacred establishments that stand as a beacon of justice. It is amongst the eminent establishments that are entrusted by the nation with the shoulder-crushing responsibility of dispensing

justice. It goes without saying, that if appointments in the Islamabad High Court are made in colorful exercise of power or by bypassing the transparent process of recruitment provided under the Rules, it will have far reaching undulate effects on the public at large. If the torch bearers of justice are permitted to make appointments overlooking merits, the sanctity of the judicial system will be in peril. The exercise of power in a manner that results in depriving meritorious citizens from the opportunity of competing for public offices, therefore, is beyond a shadow of doubt and is a matter of public importance. Such an unlawful exercise of power is also an abrogation of the fundamental rights guaranteed under Article 18 of the Constitution, which protects an individual's right to enter upon a lawful profession or occupation. The right conferred under Article 18 has to be read with Article 4 of the Constitution which provides every citizen the right to be dealt with in accordance with the law.

39. While the Counsel for Respondents in unanimity were of the view that no specific fundamental right has been violated by the Chief Justice/Administration Committee of the Islamabad High Court in making non-meritorious appointments to the establishment, it must be pointed out that no instance of a specific violation of Fundamental right needs to be established where ex-facie codal formalities or eligibility or competence of candidates have been given the due consideration as held by this court in the cases **Dr. Akhtar Hassan Khan and others v. Federation Of Pakistan and others** (2012 SCMR 455).

Similarly this Court in the case of Miss Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416) held that :-

"After all the law is not a closed shop and even in the adversary procedure, it is permissible for the next friend to move the Court on behalf of a minor or a person under disability, or a person under detention or in restraint. Why not then a person, if he were to act bona fide activate a Court for the enforcement of the Fundamental Rights of a group or a class of persons who are unable to seek relief from the Court for several reasons. This is what the public interest litigation/class action, seeks to achieve as it goes further to relax the rule on locus stands so as to include a person who bona fide makes an application for the violation of any constitutional right of a determined class of persons whose grievances go unnoticed and unredressed. The initiation of the proceedings in this manner will be in aid of the meaningful protection of the rule of law given to the citizens by Article 4 of the Constitution, that is, "(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan"

40. In the aforesaid background, we are of the considered view that the issue raised in these proceedings attracts a question of public importance, which has a direct bearing on the fundamental rights of the citizens of Pakistan, therefore, we hold that this Petition under Article 184(3) is competent as the appointments to the public office made by an authority can be challenged through a petition even in the nature of a writ of *quo-warranto* so that no one can claim immunity from its scrutiny under the garb of any constitutional provision.

41. Having addressed the maintainability of this petition, now the next issue that needs to be focused is the bar contained under

Article 199(5) with regard to challenging the appointments made in the High Court establishment by the Chief Justice or by the Administration Committee under the Rules framed under Article 208 of the Constitution; and whether such bar applies to the present proceedings. A common contention of the Counsel for the Respondents was that both the judicial and non-judicial decisions of the High Court/ Supreme Court are protected under Article 199(5) of the Constitution. This contention is based on the view of the Full Bench judgment rendered in the case of **Asif Saeed v. Registrar Lahore High Court** (PLD 1999 Lahore 350), which judgment was maintained by this Court in the case of **Muhammad Iqbal and others v. Lahore High Court through Registrar and others** (2010 SCMR 632).

42. We have gone through aforementioned judgments and have examined the case law cited by the Counsel in support of their contentions. We, with great respect, are not in agreement with the conclusion reached by the learned Lahore High Court that the judicial, administrative, consultative and executive powers are indistinguishable within the meaning of Article 199(5), and hence, unassailable through a writ petition. It is our considered view that the Constitution confers judicial powers (jurisdiction) on the High Court only under Article 199 and the administrative, consultative or executive powers are conferred on the High Court by virtue of the rules framed under Article 208. Rules framed by the High Court or Supreme Court further require approval of the Governor or President as the case may be. It needs to be

highlighted that Article 199(5) excludes a High Court and Supreme Court from the definition of 'person'. High Court is defined under Article 192, the relevant part of which is reproduced as under:

"192. Constitution of High Court. (1) A High Court shall consist of a Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President."

This definition does not include the Registrar or any other officer of a High Court Establishment, who is appointed by the Chief Justice or the Administration Committee under the Rules. The executive/ administrative/ consultative powers conferred on the Chief Justice or an Administration Committee are drawn from the Rules; whereas the judicial powers (jurisdiction) conferred upon the High Court and exercised by the judges are embedded in Article 199 itself; hence, both the powers are different and unparallelled.

43. We, for the aforesaid reason, are of the considered view that the view of learned Lahore High Court and maintained by this Court in the cases of Asif Saeed (Supra) and Muhammad Iqbal is against the language of Article 192 and Article 199 of the Constitution. Moreover, the provisions of Article 208 which empowers the High Court or Supreme Court to frame Rules for their establishments have been completely overlooked. As a result, the judicial powers and the powers which are administrative/consultative/executive in nature have been mixed up leading to denial of remedy to an aggrieved person

even in a case where codal formalities or eligibility or other mandatory requirements have been blatantly disregarded.

44. Even the plain reading of Article 199(5) leads to the conclusion that by excluding a High Court and Supreme Court from the definition of 'person', the framers of Constitution envisaged judicial jurisdiction and not the extraneous administrative/ executive/ consultative matters pertaining to the Establishment of the Courts. The reason obviously lies in the conferment of powers through the rules which are subject to the approval of the executive. Hence, in our view, a Judge acts in two different domains, when he performs judicial functions under Article 199 and when he performs administrative/ executive/ consultative functions under the Rules which cannot be mixed with each other. In other words, there is a grading of power: the parameters of judicial powers exercised by a judge under the provisions of the Constitution are distinct from the non-judicial powers he exercises under the Rules framed under the provision of the Constitution. The judgment rendered in the case of **Mohammad Iqbal** (*supra*) approving the case of **Asif Saeed** (*supra*) being against the provisions of the Constitution is *per incuriam* and is not a good law.

45. We for the aforesaid reasons conclude that the provisions of Article 199(5) would bar a writ against a High Court if the issue is relatable to judicial order or judgment; whereas a writ may lie against

an administrative/consultative/executive order passed by the Chief Justice or the Administration Committee, involving any violation of the Rules framed under Article 208, causing infringement of the fundamental rights of a citizen.

Relaxation of Rules:

46. The learned Counsel for the Respondents jointly attempted to save the appointments and absorptions, as the case may be, under the garb of Section 26 of the Lahore High Court Rules and Section 16 of the Islamabad High Court Rules. For facility of reference these two provisions are reproduced hereunder:-

Rule 26 of the Lahore High Court:

"26. Nothing in these rules shall be deemed to limit or abridge the powers of the Chief Justice to appoint or promote any person who has neither passed nor qualified at an examination held by the Public Service Commission or under these rules or to deal with the case of any person in such manner as may appear to him to be just and equitable.

Rule 16 of the Islamabad High Court (Establishment Appointment and Conditions of Service) Rules, 2011:

"16. Relaxation.- The Chief Justice may relax any of these rules, subject to reason in writing, if the Chief Justice is satisfied that a strict compliance of the rule would cause undue hardships and his decision shall be final on such matter."

47. A bare perusal of the Rule 26 of Lahore High Court Rules, makes it abundantly clear that the Chief Justice may deal with the case of a person/employee of the Lahore High Court as may appear to him just and equitable. It would be advantageous to interpret the term "just

and equitable". In Corpus Juris Secundum, Volume L, the term "just" has been defined as under:-

"conforming to, or consonant with, what is legal or lawful; conformable to laws; conformable to rectitude and justice; conformed to rules or principles of justice; conforming to the requirements of right or of positive law; correct; right; legally right; rightful; right in law or ethics; due; lawful; legitimate; equitable; fair; honest; true; impartial in accordance with law and justice; not doing wrong to any; not transgressing the requirements of truth and propriety;

48. In Words and Phrases, Permanent Edition, Volume 23A, the term "just" has been defined as under:-

"The term "just" may apply to law as well as ethics. In certain cases it denotes that which is right and fair according to positive law. The word "just" means a right, and more technically a legal right – a law. This "jus dicere" was to pronounce the judgment; to give the legal decision."

49. The term "equitable" has been interpreted in Words and Phrases, Permanent Edition Volume 15, as under:-

"The term "equitable" is defined as meaning according to natural right or natural justice; marked by the due consideration for what is fair, unbiased, or impartial."

50. The term "undue" used in Section 16 of the Islamabad High Court Rules, has been defined in Words and Phrases, Permanent Edition, Volume 43, as under:-

"Undue" means not appropriate or suitable, improper, unreasonable, unjustifiable, illegal, going beyond what is appropriate, warranted or natural"

51. From the perusal of the above definitions in conjunction with the above-quoted Rules of Lahore High Court and Islamabad High Court, it can safely be held that absolute power to relax a certain service Rule has not been conferred on the Chief Justices of both the High Courts and this power is limited only to be exercised where it does not encroach upon the statutory rights of the other persons or employees. These two Rules cannot be interpreted in such a manner as to bestow an absolute power upon the Chief Justices to deal with the case of a person/employee in a manner they like. The Chief Justices can exercise powers under these Rules only in a manner that may not cause injustice or prejudice to any individual/employee. In the case in hand, the learned Chief Justice of Islamabad High Court has exercised a power beyond the scope of the Rules and relaxed them under the garb of "relaxation of Rules" which cannot be permitted in any circumstances, especially when it impinges upon the statutory rights of the citizens and other employees of the High Court. Rules can only be relaxed if the rules permit their relaxation, and the conditions stipulated for relaxation are strictly met. Admittedly, the conditions for relaxation of the Rules which are "just and equitable" and "undue hardship" have not been met in relaxing the Rules for making appointments and absorptions in the Islamabad High Court.

52. We have noticed that the Chief Justice Islamabad High Court has exercised powers under Rule 26 of the Lahore High Court and under Rule 16 of the Islamabad High Court to alter the eligibility

and qualification for appointment as well as promotion within the Establishment of Islamabad High Court. We hold that the Chief Justice has lost sight of the scheme of the Rules by appointing Respondents and others in the Establishment of Islamabad High Court. We have also noticed that the provisions of Rules that provide for a mandatory competitive test for the appointment of employees in the Islamabad High Court Establishment were not followed, nor any advertisement was made to invite applications of eligible candidates. The justification that the Islamabad High Court was a new Establishment is not sufficient to override the mandatory requirement for the appointments. As a result, a number of meritorious and eligible candidates have been deprived of their fundamental right to seek employment through a competitive examination as provided under Article 18 of the Constitution.

53. This Court in the case of Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456), while interpreting Section 24 of the Sindh Civil Servants Act, has held as under:-

" 137.The Competent Authority can exercise powers under section 24 of the Act, by relaxing rules, if there is a vacuum in law, but such powers cannot be exercised under the garb of the term "Relaxation of Rules" with the intent to by-pass the mandate of law for extending favours to a person or an individual, offending and impairing the statutory rights of other Civil Servants. The Competent Authority, by an executive order, cannot frame Rules in exercise of powers under section 24. The authority conferred under section 24 of the Act is confined to hardship cases, without negating the vested rights of the other Civil Servants and/or causing prejudice to their

interests.”

54. While discussing section 23 of the Civil Servants Act, 1973 in the case of **Peer Mukarram-ul-Haq Vs Federation of Pakistan (2014 SCMR 1457)** this Court was pleased to observe that:

“15. We may further observe that scope of section 23 is very limited. This section empowers the Competent Authority (President) to deal with the case of a Civil Servant in such a manner as may appear to him to be 'just' and 'equitable', but such powers are not unbridled.”

55. Scope of powers of Governor under section 22 of the Punjab Civil Servants Act, also (pari materia to section 24 of the Sindh Civil Servants Act) were discussed in the case of **Muhammad Iqbal Khokhar Vs. Govt of Punjab (PLD 1991 SC 35)** and it was observed that:

“This power permits the Governor, as the Chief Executive of the Province at the apex, to deal with serious cases relating to civil servants in such manner as may appear to him to be just and fair, which otherwise cannot be sorted out by the Chief Minister or the Punjab Government under the various powers vested in them by the different rules existing from time to time relating to relaxation. This section is primarily a saving section, basically intended to correct serious cases, where unusual factors place a civil servant in serious disability, which requires correction on the basis of equity and justice by the Governor himself, sitting at the apex of the executive hierarchy. Amendments, additions and substitutions effected in the rules from time to time, mergers in and transfers from one service to another, etc., create a host of problems, where civil servants placed under serious disability and hardship call for a fair and equitable resolution of their difficulties. To meet these genuine cases, the Governor has been granted this special

*savings power to deal with such cases, so as to remove injustice and inequity which may stand in the way of a civil servant in securing his just rights. **In short, it is a power rarely used, unless to serve justice or correct grave injustice, and perhaps never used arbitrarily to reward a person or to grant him an undue privilege over the right of another.*** (Emphasis is ours)

56. We have noticed the numerous infirmities in the appointments of the following made by the Chief Justice/Administration Committee, and these infirmities are incurable by the Chief Justice under the powers conferred on him under Rule 26 of the Lahore High Court Rules and Rule 16 of the Islamabad High Court Rules.

57. Respondent No 31, Mr. Faiz Rasool was working as Deputy Registrar in the High Court of Baluchistan and after his retirement, on 10.05.2013, he was appointed on contract basis in BS-19 as Deputy Registrar. Since then his contract has been extended twice, thereby keeping a public office unnecessarily occupied which under the Rules is either to be filled through promotion from amongst the cadres of Assistant Registrars, Readers and Private Secretaries on seniority cum fitness basis or by transfer of a Senior Civil Judge serving under the High Court.

58. Respondent No. 27, Mr. Shakil Ahmed Qazi, was previously a Programmer in BS-18 in the Sindh High Court. On 02.06.2012, he was appointed as Additional Registrar (I.T) in BS-20 in the Islamabad High Court on deputation basis for a period of three

years and was later absorbed. His appointment was made after the promulgation of the Islamabad High Court Rules according to which appointment to this post can be made by promotion from amongst the Deputy Registrars on seniority-cum-fitness basis; or by transfer of an Additional District and Sessions Judge serving under the High Court or the Provincial High Courts by borrowing his services on deputation basis. The appointment of a Computer Programmer to the post of Additional Registrar on the face of it is legally flawed and the Chief Justice's power to relax the rules under Rule 26, only opens a narrow window for such relaxation where it is 'just and equitable' to provide such relaxation.

59. Respondent No.26, Mr. Shehzada Aslam, was previously a Private Secretary in BS-18 in the Lahore High Court. On 01.02.2011, his services were requisitioned on deputation basis for a period of three years to work as Secretary to the Chief Justice of the Islamabad High Court (BS-20). He was absorbed on 09.05.2011 as Additional Registrar (BS-20) under Section 11 of the Act. His appointment was made during the interim period and therefore as per Rule 7 read with Rule 6(i) of the Lahore High Court Rules, such appointment could only be made either (a) with the concurrence of the Governor or in Consultation with the Public Service Commission. This procedure was not followed. Section 11 cannot be used as a shield to effect the said appointment, since his appointment in 2008 too is not in conformity with the Rules for induction in the High Court establishment.

60. Respondent No. 7, Mr. Muhammad Kashif was previously a practicing lawyer in the Subordinate Courts of Punjab. On 27.04.2011, he was appointed as Assistant Registrar (BS-18) in the Islamabad High Court. He was placed on probation for a period of two years and on 10.05.2013 his probation was further extended. His appointment was made during the interim period and therefore as per Rule 7 read with Rule 6(i) of the Lahore High Court Rules, appointment could only be made either (a) with the concurrence of the Governor or in Consultation with the Public Service Commission. This procedure was not followed. The Chief Justice's power to relax the rules under Rule 26, only opens a narrow window for such relaxation where it is 'just and equitable' to provide such relaxation. This was not the case here.

61. Respondent No. 5, Mr. Usman Mir was previously a Credit Analyst in Allied Bank Limited. On 30.05.2013, he was appointed on deputation basis as Assistant Registrar (BS-18) in the Islamabad High Court. On 27.05.2016, concurrence was obtained from Allied Bank Limited for extension of his deputation which was not available in the bank's policy. He was appointed on deputation after the promulgation of the Islamabad High Court Rules. Furthermore, the Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency where undue hardship exists. The illegality in appointing a Credit Analyst from a bank to the post of Assistant Registrar on deputation in disregard of the applicable Rules

cannot be cured by Rule 16 since the Respondent was previously employed and no undue hardship existed.

62. Respondent No.35, Mr. Umar Daraz was previously a Reader (BS-18) in the Lahore High Court and on 01.02.2011, he was appointed as Deputy Registrar (BS-19) on deputation basis in the Islamabad High Court. On 09.05.2011, he was absorbed against the post of Additional MIT (BS-20) on permanent basis. His absorption was made during the interim period and therefore as per Rule 7 read with Rule 6(i) of the Lahore High Court Rules, the absorption could only be made either (a) with the concurrence of the Governor or in Consultation with the Public Service Commission. This procedure was not followed. The Chief Justice's power to relax the rules under Rule 26 only permits such relaxation where it is 'just and equitable'. This was not the case where a Reader was appointed as Deputy Registrar on deputation basis and later absorbed as Additional Member Inspection Team, depriving countless meritorious potential candidates from the chance to compete for the post.

63. Respondent No.28, Mr. Imtiaz Ahmed was previously a Private Secretary (BS-18) in the Lahore High Court. On 01.02.2011 he was appointed on deputation basis as Deputy Registrar (BS-19) in the Islamabad High Court. On 09.05.2011 he was absorbed on permanent basis in the establishment. His appointment was made during the interim period and therefore as per Rule 7 read with Rule 6(i) of the

Lahore High Court Rules, such appointment could only be made either (a) with the concurrence of the Governor or in Consultation with the Public Service Commission. This procedure was not followed. The Chief Justice's power to relax the rules under Rule 26, only permits such relaxation where it is 'just and equitable'.

64. Respondent No.29, Mr. Muhammad Naveed Qaisar, was previously a Personal Assistant (BS-17) in the Lahore High Court. On 01.02.2011, he was appointed on deputation basis for a period of three years as Private Secretary (BS-18) in the Islamabad High Court. On 09.05.2011 he was absorbed as Private Secretary on permanent basis in the establishment. His appointment was made during the interim period and therefore as per Rule 7-A of the Lahore High Court Rules, his credentials did not match the eligibility criteria and yet he was selected at the cost of other deserving candidates.

65. Respondent No. 34, Mr. Waheed Nawaz was directly appointed to the post of Assistant Accounts Officer (BS-17) on 18.02.2011. He was previously an Income tax Practitioner and was enrolled as Advocate of the subordinate Courts in Sindh Bar Council, Karachi, since April, 2009. His appointment was made during the interim period and therefore under Rule 7 read with Rule 6(i) of the Lahore High Court Rules, he was required to be selected on the basis of competitive examination but he was also selected by the Competent Authority using his power to relax the rules under Rule 26.

66. Respondent No. 30, Mr. Usman Qudoos, was previously a practicing lawyer with an LL.M degree, who was directly appointed on 02.05.2011 as a Research and Reference Officer (BS-19) in the Islamabad High Court. He was appointed during the interim period and since there are no rules applicable to the appointment of a Research and Reference Officer in the Lahore High Court Rules, applicable customary practices of recruitment shall apply. This post was not advertised and he was appointed by the Chief Justice under the garb of relaxation of Rules. In this case also the Chief Justice's power to relax the rules under Rule 26 is not applicable, because such relaxation did not pass the test of it being 'just and equitable'.

67. Respondent No. 8, Mr. Sabir Hussain was a fresh appointee who was appointed as Personal Assistant (BS-17) in 2008 after the advertisement of the post in the Daily Azkaar newspaper on 20.11.2008. Under Section 11 of the Act, he was appointed in the establishment in 2011. He was previously working as Stenographer (BS-16) in the Lahore High Court. Selection of a Stenographer with a B.A for the post of Personal Assistant from a pool of deserving candidates, on the face of the record does not make sense to the discerning eye. Lack of transparency is clearly reflected.

68. Respondent No. 24 (and 41), Mr. Saqib Sheraz, who was previously working as Assistant Accountant (SPS-04) in Pakistan

Broadcasting Corporation (Islamabad), was appointed on deputation basis on 17.02.2011 as Assistant Accounts Officer (BS-17) and later absorbed. His appointment was made after the promulgation of the Islamabad High Court Rules according to which, initial recruitment could be made from amongst the holders of B.Com or equivalent degree. No advertisement had been published whereby other eligible candidates could be permitted to compete. Moreover, he was appointed on deputation basis and the Rules do not permit his absorption. The Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency where undue hardship exists.

69. Respondent No.43, Shakeel Raza, was previously working as Coordination Assistant (BS-15) in the Provincial Assembly of Baluchistan. On 24.03.2011, he was appointed as Computer Operator (BS-15) on deputation basis (before the promulgation of the Rules) for a period of three years. On 11.05.2011 his post along with that of Mr. Yasir Altaf was upgraded to Data Processing Officer (BS-17). On 12.09.2011 he was absorbed in the establishment of the Islamabad High Court, by the Chief Justice in relaxation of Rules. The illegality committed in his absorption cannot be cured by the Chief Justice's power to relax the rules.

70. Respondent No. 13, Mr. Amir Abdul Majeed, was previously working as a Stenographer (BS-12) in the University of

Punjab. On 27.05.2011 he was appointed on deputation basis as Personal Assistant (BS-17) in the Islamabad High Court. Although his credentials match the eligibility criteria applicable under the Islamabad High Court Rules no advertisement had been published whereby other eligible candidates could be permitted to compete and therefore, his application was the only one considered for the said post. The Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency where undue hardship exists.

71. Respondent No.3, Muhammad Idrees Kasi, was appointed directly without advertisement on the post of Deputy Registrar on 17.04.2012, which is meant for promotion. Since he was appointed after the promulgation of the Islamabad High Court Rules, appointment to this post could only be made on promotion basis from the cadres of Assistant Registrars, Readers and Private Secretaries on seniority-cum-fitness basis or by transfer of a Senior Civil Judge serving under the High Court. It is impossible that even a year after the establishment of the Islamabad High Court, there was no other deserving candidate who could be appointed on this post on promotion or transfer basis, that too without advertisement and treating him as the sole candidate for this post. The Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency where undue hardship exists. No such hardship existed in this case.

72. On 13.09.2011, Respondent No. 8, Mr. Hafiz Muhammad Sufyan, was directly appointed to the post of Assistant Registrar (BS-18), without advertisement of the post in the press. Although he had a Master's Degree in Journalism, the required qualifications under the eligibility criteria for initial recruitment to this post was BA, B.Sc or B.Com and hence the required field may not have been journalism for a post of this nature. He was appointed after the promulgation of the Islamabad High Court Rules. Regardless of his credentials, however, the procedure of initial recruitment in terms of advertisement and transparency was not followed. Furthermore, the Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency where undue hardship exists. No such hardship is apparent on the face of the record.

73. On 02.07.2012, Respondent No. 9, Mr. Zaid Ahmed, was directly appointed to the post of Assistant Registrar (BS-18), after the promulgation of the Islamabad High Court Rules. He was previously working as data Processing Officer for Official Assignee in the High Court of Sindh. Although with a BA, he fulfilled the required qualifications under the eligibility criteria for initial recruitment to this post which is BA, B.Sc or B.Com, the procedure of initial recruitment in terms of advertisement and transparency was not followed. Furthermore, the Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency

where undue hardship exists. No such hardship is apparent on the face of the record.

74. On 25.09.2012, Respondent No. 4, Mr. Ghawas Gul Mastoi, was directly appointed to the post of Assistant Registrar (BS-18), after the promulgation of the Islamabad High Court Rules. Although he had a Master's Degree in International Relations, the required qualifications under the eligibility criteria for initial recruitment to this post was BA, B.Sc or B.Com and hence the required field may not have been International Relation for a post of this nature. He was appointed after the promulgation of the Islamabad High Court Rules. Regardless of his credentials however, the procedure of initial recruitment in terms of advertisement and transparency was not followed. Furthermore, the Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency where undue hardship exists. No such hardship is apparent on the face of the record.

75. On 01.06.2011, Respondent No.6, Ms. Faiza Mir, was directly appointed as Personal Assistant (BS-17), after the promulgation of the Islamabad High Court Rules. She was previously working as a Teacher at Beacon House School System since March 2003, and although the record shows that she was computer literate, there is no record of her possessing the required skills for the post under the Islamabad High Court Rules which are shorthand speed of 100 w.p.m. and typing speed of 40 w.p.m. Although with a BA degree, she did not fulfill the required qualifications under the eligibility criteria for initial recruitment to this post, which is BA, B.Sc or B.Com with the required

speed in typing and shorthand, and the procedure of initial recruitment in terms of advertisement and transparency was not followed. Furthermore, the Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency where undue hardship exists. No such hardship is apparent on the face of the record.

76. On 15.04.2011, Respondent No. 10, Mirza Abid Baig, was directly appointed as Assistant (BS-14), after the promulgation of the Islamabad High Court Rules. The eligibility criteria for this post was fulfilled by the Respondent as he possessed a MS (CS) while the requirement was BA, B.Sc or B.Com, however the procedure of initial recruitment in terms of advertisement and transparency was not followed. On 19.05.2011, he was appointed as Personal Assistant (BS-17), without complying with the codal formalities. It is not known whether he possessed the required skills of typing speed of 50 w.p.m. On 25.09.2012, he was appointed as Assistant Registrar (BS-18). It is also alarming that the competent authority for appointment, found no need of finding other deserving candidates for the posts and no advertisements were published for any of these posts, making the Respondent the only applicant. Furthermore, the Chief Justice's power to relax the rules under Rule 16 of the Islamabad High Court Rules only permits for such leniency where undue hardship exists. No such hardship is apparent on the face of the record.

77. Respondent No. 38, Mr. Imtiaz Ahmed, was appointed directly on the post of Deputy Registrar (BS-19) on 10.03.2008, after an advertisement was published in the Daily Nawa-i-Waqt newspaper. He possessed a BA and LL.B. It is not known whether the appointment of Respondent No.38 was made in a transparent manner or if all required procedures for initial recruitment were followed. Eligibility criteria under Lahore High Court Rules for this post were not followed. Since he was appointed in 2008, he was inducted in the establishment of the Islamabad High Court under Section 11 of the Act.

78. After hearing the contentions of the learned Counsel for the parties and on examining the record made available to us, we hold that the appointments which have been made in the Establishment of the Islamabad High Court since 2011 without following the codal formalities of competitive process are a nullity. Such appointments cannot be sanctified by the Chief Justice or the Administration Committee by dispensing with the mandatory requirements including competitive process.

79. We, therefore, direct in the following manner:

Contract Employment

Any person appointed on contract basis against a permanent vacancy or against a promotion post is violative of the spirit of the Rule and untenable, and should be de-notified.

Deputation

Any appointments made on the basis of deputation without observing the required codal formalities under the Rules and absorption of the deputationist thereafter against a permanent post or promotion post, in complete disregard of the eligibility or qualification required for initial appointment should also be de-notified.

Initial Appointment

Initial appointments made against a permanent post without following the required procedure as provided in the Rules, particularly the provisions related to the advertisement of posts, eligibility and competitive examination, are also to be de-notified.

Promotions/up-gradations

Appointments whether by way of initial appointment, deputation, contract or absorption in the grades/scales higher than the grades/scales in which such employees were serving before their induction in the Establishment are to be de-notified, as such up-gradation is not envisaged under the Rules and is contrary to the established principles of service laws.

Absorptions

Except those employees who have been recruited from the Establishments of different High Courts of Pakistan, in the same scale in which they were serving or were given one-step promotion within the same cadre, all other appointments by way of absorptions are without lawful authority and hence to be de-notified.

We may clarify that the aforesaid directives will not be applicable to the low scale employees appointed in BS-1 to BS-07, provided they are otherwise eligible.

80. We direct that the appointments of the Respondents and other such employees of the Islamabad High Court are to be de-notified and they shall be repatriated to their parent departments, including the private sector, within fifteen days from the date of their de-notification in line with the mode given by this Court in the case of Contempt proceedings against Chief Secretary Sindh and Others reported in **(2013 SCMR 1752)** and in the case of Ali Azhar Khan Baloch reported in **(2015 SCMR 456)**.

81. On repatriation the Respondents and/or other such employees shall be allowed to join their parent departments and the question of termination of lien of their service will not come in their way as their deputation or appointment by way of absorption was nullity in the eyes of law. They will also be entitled to their seniority with their batch mates in their parent departments.

82. For the purpose of these proceedings, the principles laid down by this Court in the case of **Contempt proceedings against Chief Secretary Sindh and others** reported in **(2013 SCMR 1752)** and in the case of **Ali Azhar Khan Baloch and others vs. Province of Sindh and others** reported in **(2015 SCMR 456)** would be applicable to the employees of Islamabad High Court Establishment.

83. In order to examine the cases of appointments of the employees other than the Respondents, we constitute a three-member Committee, comprised of Senior Pusine Judge and two senior most Judges next to him, to examine the cases of all appointments made from 2011 onwards in violation of the Rules and findings recorded by us in these proceedings, and order their de-notification accordingly. The Committee shall complete this exercise within a period of one month from the date of communication of this judgment and submit a detailed report to this Court.

84. Fresh recruitment in place of the denotified employees shall be initiated simultaneously in accordance with the Rules and preferably completed in 45 days. This competitive process should be undertaken through NTS as is being practiced in this Court and Sindh High Court.

85. Before parting with the judgment, we may observe that the Chief Justice Islamabad High Court and/or the Administration Committee of Islamabad High Court have made appointments in the Establishment in complete disregard of the mandate given by the Rules framed under Article 208 of the Constitution. If the competent authority itself starts cherry picking by deliberately ignoring and overlooking meritorious candidates in appointment exercising powers under Rule 26 of the Lahore High Court or Rule 16 of the Islamabad High Court, then the image of the institution will be tainted beyond repair. Such

practice may lead to distrust of the public in the judicial institution of the country. We could not allow denial of justice to those candidates who merit appointment nor could we encourage anyone to bypass transparent process of recruitment provided under the Rules. We have already cited certain instances showing the mode and manner in which the appointments were made by abusing the authority.

86. We, for the aforesaid reasons, allow this Petition in the above terms. Copy of this judgment be immediately remitted through fax to the Registrar, Islamabad High Court, for placing it before the Chief Justice and all the Judges for their information and compliance.

Judge

Judge

Judge

Approved for reporting

Announced in open Court on 26-09-2016.

J.