

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

Present:

**Mr. Justice Iftikhar Muhammad Chaudhry, CJ.**

**Mr. Justice Jawwad S. Khawaja**

**Mr. Justice Gulzar Ahmed**

**Civil Appeal No.669-L of 2013**

[Direct appeal under section 67(3) of the Representation of the People Act, 1976 (Act No.LXXXV of 1976) against the judgment dated 05.04.2013 passed in Election Petition No.104/2008 by the learned Election Tribunal, Lahore]

Malik Umar Aslam

...Appellant

Versus

Mrs. Sumaira Malik, etc.

...Respondent (s)

For the appellants(s):

Mr. Hamid Khan, Sr. ASC  
Mr. Imtiaz Rashid Siddiqui, ASC  
Mr. Waqar Rana, ASC

For respondent No.1:

Syed Iftikhar Hussain Gillani, Sr. ASC  
Mr. Mobeen ud Din Qazi, ASC  
Mr. Mehr Khan Malik, AOR  
Assisted by:  
Barrister Saad Buttar, Adv.

Respondent No.2 & 3:

Nemo

Date of hearing:

09.10.2013

**JUDGMENT**

**Iftikhar Muhammad Chaudhry, CJ.**— Instant direct appeal has been filed under section 67(3) of the Representation of the People Act, 1976 (ROPA) against the judgment dated 05.04.2013 passed by the Election Tribunal, Lahore, whereby Election Petition No.104 of 2008 filed by the present Appellant was dismissed.

2. Precisely stating facts of the case are that the Appellant and Respondent No.1 along with other candidates contested the

election of National Assembly from NA-69 (Khushab-I) in the General Elections held on 18.02.2008 in which Respondent No.1 was declared returned candidate with 61076 whereas the Appellant was the runner-up having secured 60413 votes. The Appellant challenged the said election through Election Petition No.104 of 2008 under section 52 of ROPA on the ground that various provisions of law, particularly section 39 of ROPA, were violated and that the BA degree of Respondent No.1 was bogus. It was alleged in the election petition that Respondent No.1 colluded with government and election officials for the perpetration of countless election offences and grave violations of law, which materially and substantially affected the entire election process. Such **malpractice** adopted by Respondent No.1 rendered the entire election process void for not being just, free and fair. It was further alleged that on the polling day bogus votes were cast in a majority of polling stations. Moreover, it was asserted that the concerned Returning Officer (RO), without giving notice to contesting candidates or their polling agents, in collusion with Respondent No.1 manipulated the entire record. Allegedly, the RO broke open the packets sent by the Presiding Officers and replaced/destroyed/changed the ballot papers, resultantly, the rejected votes increased from 220 to 1061. Finally, it was alleged that the BA degree of Respondent No.1 was bogus as she completed her Intermediate in 1981 but did not obtain a BA degree until 2002, when she obtained forged and fabricated BA degree from the University of the Punjab. He made following prayer in petition: -

“In view of the aforementioned facts and submissions, it is most respectfully prayed that the election of the Respondent No.1 is void and the petitioner be declared as the successfully returned

Candidates from NA-69, Khushab-I, in the national election conducted on 18.02.2008."

3. Respondent No.1 was the only respondent who contested the election petition. Respondent No.1 in her reply raised various legal and factual defences to controvert all the allegations levelled against her. Learned Election Tribunal on 11.05.2010 formulated the following points: -

- (i) Whether in the facts and circumstances given in the election petition, the election of NA-69 is void?
- (ii) Whether the election petition is not maintainable and has been instituted in violation of the provisions of the Representation of Peoples, Act, 1976?

4. In the meantime, on 17.09.2008, Respondent No.1 filed CMA No.2 of 2008 under section 63 of ROPA read with section 151 CPC before the Election Tribunal praying therein that the petition may be dismissed as the provisions of section 55 of ROPA had not been complied with while instituting the same, inasmuch as the annexures appended with the petition had not been verified and attested in the manner provided in the Code of Civil Procedure, 1908. The Election Tribunal vide order dated 24.04.2009 dismissed the said CMA and CPLA No.1322 of 2009 filed against the said order was also dismissed as withdrawn by this Court vide order dated 24.03.2010.

5. The Appellant produced evidence which was also rebutted by Respondent No.1. The Tribunal after examining the evidence produced before it, dismissed the election petition vide impugned judgment which the Appellant has challenged before this Court through the instant appeal.

6. Mr. Hamid Khan, learned counsel for the Appellant, placed on record following formulations: -

"1. That from the evidence on record, it is obvious that the degree of B.A. has not been obtained by the Respondent No.1 in the ordinary course.

- She passed her F.A. in 1981 and did not attempt B.A examination until 2002.
- B.A. in April 2002 was obviously attempted in desperation to qualify for contesting elections for MNA in the forthcoming general elections of 2002.
- In such circumstance, particularly, when she was not in touch with the formal education for 20 years, it is plausible that another lady was hired to appear in the examination for her.

2. That impersonation of Respondent No.1 by another lady is established from the following evidence:

(I) Respondent No.1 does not remember the subjects in which she appeared in the first instance and then corrects herself.

- She does not remember that there was any compulsory paper other than English;
- She does not remember the location of examination centers in Mustafaabad and Lahore Cantt. and as to how many papers were taken at what examination centre;
- She does not remember prescribed syllabus of the English papers and as to what she studied for the examination. She does not remember how many questions were to be attempted or whether those questions referred to poetry, dram, prose etc;
- She could not recall whether Pak Studies was a compulsory subject and how many parts were there in such paper.
- She could not recall the syllabus of history paper and what she studied for that paper;

(II) It is obvious from the photographs of the lady on the admission for and Roll No. slip that person in these photographs is different from Respondent No.1 as

appears from her photograph on ID Card application for obtaining ID Card, computerized ID Card (CNIC), election poster and news papers clipping:

- The photograph on Admission form and Roll No. Slip is of a lady in her early twenties whereas the Respondent No.1 in 2002 is admittedly in her late thirties (38 to 39 years of age);
- The features of the two faces are different. The lady on the admission form and roll No.slip were glasses. On no photograph of the Respondent No.1 she is wearing glasses.

(III) The signatures on the Admission Form are totally different from signatures of the respondent No.1 as seen from her specimen signatures, her ID Card of 21.08.2002 her computerized ID Card. The letters and flow of the two set of signatures are different even to the naked eye.

3. The so called enquiry and its findings are evidently fake, false and manipulated in order to cover up the impersonation.

- There is no notice of proceedings of enquiry for 11-12-2002 as is evident from the report of 10.12.2002;
- She does not seem to have appeared before any enquiry committee and the writing and signatures appears to have been procured because she does not remember the number of committee members, who was its head, what were their designations, what is the date of appearance before the committee and who dictated her writing.
- Her husband at the given time held a very important position being Additional Secretary (Schools) Department of Education, Government of Punjab and the University of Punjab is controlled by the Education Department of the Punjab Government (rules of Business of the Government of Punjab Education Department, para2). Thus her husband was in a position to have his way with university officials who were dependent on him and he could manipulate matter in the university and actually did so.

- The hurried manner of holding an enquiry if at all, producing reports, one on 10.12.2002, the other on 12.12.2002 obviously with an intent to cover up the impersonation would clearly establish an influential hand behind the whole scheme of cover up. Even the order of V.C. to put up documents before him was not complied with.
- The court can presume above course of events and human conduct in relation to the facts of present case under Article 129 of the *Qanun-e-Shahadat*, 1984.

4. It is established from the evidence and the record that the appellant was never associated with the so called enquiry or its proceedings. This fact is critical in views of the judgment of the Election Tribunal in which reliance is placed heavily on these so called enquiry/enquires and report/reports.

- Whatever enquiry was held on 11.12.2002, the Appellant was not in picture because he applied for the first time on 16.1.2003 and the second time on 28.1.2002;
- At no place in the so called enquiry proceedings the Appellant has been marked present.
- It is not even alleged in the statement of PW 5 Muhammad Rauf Nawaz, Deputy controller (Examination), who appeared for the Punjab University, that Appellant participated in any such enquiry.

5. That the degree of B.A. claimed by the Respondent No.1 has been proved to have been a result of impersonation, fraud and falsehood and therefore such a person is not qualified to contest for member of Parliament not being sagacious, righteous, non profligate, honest and amen as ordained by Article 62(i)(f) of the Constitution of Pakistan.

- It has been held by this Honourable Court that those making false declarations about their qualifications in the nomination papers are hit by the Article 62(i)(f) of the Constitution.
- Reference in this behalf is made to the following authorities:

(I) Abdul Ghafoor Lehri Vs Returning Officer, 2013 SCMR 1271

(II) Malik Iqbal Ahmad Langrial Vs Jamshed Alam, PLd 2013 SC 179

(III) Mudassar Qayyum Vs Ch. Bilal Ijaz, 2011 SCMR 80"

7. Syed Iftikhar Hussain Gillani, learned Sr. ASC appearing on behalf of Respondent No.1 placed on record following formulations: -

- (1) As the Honorable Supreme Court is exercising statutory jurisdiction under section 67 of the Representation of People Act thus can pass an order which is within the powers of the Tribunal and not beyond the mandate of the Law;
- (2) That the Appellant has come with unclean hands, and also perjured himself before the Tribunal;
- (3) That the Honorable Supreme Court may kindly not go behind the orders passed by the competent authority in 2003, which has attained finality;
- (4) That the reports of the University of Punjab are past closed transactions and cannot be reopened after a lapse of 10 years.
- (5) That the entire exercise is with regard to the 2008 elections, whereas new elections were held in 2013 and the Appellant has already filed an Election Petition on the same ground;
- (6) That it is a classic case of harassment, intimidation and abuse of the process of the court by Appellant even though he lost three elections i.e. 2002, 2008 and 2013 to the respondent, and is harassing the Respondent since then, which means that Appellant desires to win the elections through court orders and not by votes. The Honorable Supreme Court may never countenance such conduct."

8. It is to be noted that the Appellant has been challenging the success of Respondent No.1 in the General Elections from 2002 to onward. The first chapter in this series of bilateral election disputes

began with Respondent No. 1's success in the General Elections held on 10.10.2002 from the Constituency NA-69 (Khushab-I). The Appellant challenged the said election by submitting an election petition under section 52 of ROPA on 02.12.2002, which was forwarded to the Election Tribunal for adjudication. On the objection of Respondent No. 1, the petition was dismissed *vide* judgment dated 2.10.2003 passed in Election Petition No. 101/2002 for want of compliance with the verification requirements mandated by section 55(3) of ROPA. The Appellant proceeded to file Civil Appeal No.1716/2003 before this Court, which was decided on 19.12.2006 and reported as Malik Umar Aslam v. Sumera Malik (PLD 2007 SC 362). It is to be noted that in the Election Petition, the Appellant specifically levelled the allegation that Respondent No.1 was not a graduate and had procured a fake degree from the University of the Punjab in order to overcome the bar contained in Article 8-A of the Conduct of General Elections Order, 2002 and section 99(cc) of ROPA.

9. As it has been noted hereinabove the Appellant lost in the General Elections held on 18.02.2008 and Respondent No.1 was declared returned. Therefore, towards the month of April, 2008, the Appellant filed Election Petition No.104/2008, which was initially entrusted to Mr. Justice M. Bilal Khan Judge/Election Tribunal who heard the petition from 30.04.2008 to 17.11.2008 when for personal reasons he declined to hear this case and forwarded it to the Chief Election Commissioner of Pakistan for its entrustment to any other Election Tribunal. It seems that the election petition was entrusted to Mr. Justice Ali Akbar Qureshi, Judge/Election Tribunal, who commenced proceedings from 17.12.2008 to 17.07.2009. Thereafter,



the case was heard by Mr. Justice Manzoor Malik and Mr. Justice Nasir Saeed Sheikh on different dates who on 11.06.2010 in view of the following observations forwarded the case to the Election Commission of Pakistan: -

"4. The learned counsel for the respondent No.1 has argued that he has no objection to the production of the election result sheets prepared by the Polling Officer, but seriously takes exception to the use of this method for effecting recounting of the ballot papers.

5. This objection raised by the learned counsel for the respondent No.1 that the election petitioner is creating a situation for recounting of the entire ballot papers of Constituency NA069 is, on the face of it, premature at this stage. However, this situation can be taken care of by the present in the bags sealed by the Polling Officer of each Polling Station be first produced for comparison, if necessary, with the election result sheets prepared by the returning Officer.

6. With this observation and direction, I dispose of this CM No.4 of 2010 and allow the record of Constituency NA-69 to be brought before the Commission with full security by the Registrar of the Election Commission. The abovementioned observation recorded by this Tribunal be kept in consideration by the Commission while recording the statement of the Returning Officer and of opening the bags of the Polling Stations of Constituency NA-69. It is however clarified that in case some serious objection is felt by the Commission that in order to verify the correctness of any of the result sheets prepared by the Polling Officer, the examination of the ballot papers or of the rejected ballot papers or of the tendered ballot papers is

necessary, the Commission may for reasons recorded order that that Commission shall not allow the opening of the ballot papers generally and will only stick to the comparison of the election sheet results with the result sheets prepared by the Returning Officer. CM No.4 of 2010 stands disposed of."

10. The Election Commission again entrusted this case on 7.7.2010 to Mr. Justice Sh. Azmat Saeed, Judge/Election Tribunal (as he then was) who also declined to hear the case for personal reasons as is evident from the order dated 14.07.2010. Accordingly, the case was entrusted to Mr. Justice Sh. Najam-ul-Hassan Judge/Election Tribunal who commenced hearing from 24.08.2010 and on 7.2.2011. He also declined to hear the case due to personal reasons, thus the case was sent to Chief Election Commissioner for its entrustment to any other Election Tribunal. Accordingly, on 15.03.2011 Mr. Justice Ejaz-ul-Ahsan Judge/Election Tribunal commenced the hearing and finally dismissed the petition vide impugned judgment dated 04.05.2013 about five weeks before the polling of the next General Elections, 2013.

11. The purpose of noting the above facts is that under the provisions of section 67(1A) of ROPA, the decision of election petition is required to be taken within four months from its receipt, which are reproduced hereinbelow: -

67. (1) .....

(1A) The Election Tribunal shall proceed with the trial of the election petition on day to day basis and no adjournment shall be granted to any party for more than seven days and that too on payment of costs as the Tribunal may determine} and the decision thereof shall be taken within four months from its receipt:

Provided that where a petition is not decided within four months, further adjournment sought by any party shall be granted only on payment of special cost of ten thousand rupees per adjournment and adjournment shall not be granted for more than three days:

Provided further that if the Tribunal itself adjourns it shall record reasons for such adjournment:

Provided also that where delay in the proceedings is occasioned by any act or omission of a returned candidate or any other person acting on his behalf, the Tribunal itself, or on application of the aggrieved party, shall after issuance the show cause notice to the returned candidate, within fifteen days from the date of show cause notice may order that the returned candidate has ceased to perform the functions of his office either till the conclusion of the proceedings or for such period as the Tribunal may direct.

12. It has been noticed that not only in the instant case but in so many other identical cases pertaining to elections, timely decisions are not taken by the Election Tribunals; because, *inter alia*, Election Tribunals are ordinarily presided by learned Judges of the High Courts who remain unable to conclude matters expeditiously on account of their other judicial commitments, or because of delaying tactics employed by respondents who, having been declared as returned candidates, enjoy the status of Member of the National or Provincial Assembly. We are of the considered opinion that, as held by this Court in Muhammad Usman Achakzai v. Election Tribunal Balochistan (PLD 2010 SC 943), such delays in disposal of election petitions before the Tribunal in fact deprives a large number of electors of the constituency to have their due representation in the elected Houses, particularly in those matters where a whole term has been enjoyed by a winning candidate, who may later turn out to be disqualified on any count.

Thus, delay causes the people of constituency to be represented by a person who is not duly elected. This clearly negates the principle of democratic system of Government. There is wisdom in fixing the period for decision of such cases, namely, that there should be no uncertainty for the persons, who have been elected or who have challenged the election before the Tribunal or the Court and after expeditious disposal of the same. They should consume all their energies for the welfare of the people whom they represent, instead of wasting time in pursuing such matters before the Courts. This principle was reaffirmed by this Court in Workers' Party Pakistan v. Federation of Pakistan (PLD 2012 SC 681). Furthermore, in the case of Muhammad Khan Junejo v. Fida Hussain Dero (PLD 2004 SC 452) this Court held that it is a mandatory requirement of ROPA that Election Tribunal shall proceed with the trial of the election petition on day-to-day basis and the decision thereof shall be taken within four months from its receipt as provided under section 67(1A) *ibid*. This Court further held that the contention of the Appellant in that case that fair hearing was not afforded to him was without merit and in fact spoke volumes of the appellant's propensity to prolong litigation at any cost.

13. In light of the aforementioned facts, it is clear that a legal duty has been cast upon the Election Tribunal to reach a conclusion expeditiously by following stringent/coercive measures of imposing a cost and assigning the reasons if cases are adjourned by the Tribunal. To this end the Tribunal is even empowered to declare that a returned candidate who is delaying the proceedings of the Tribunal ceases to be a member of the Parliament/Provincial Assembly, either till the

conclusion of the proceedings or for such period as the Tribunal may direct.

14. In this vein, it is pertinent to note that the provisions of section 67(1A) are mandatory in nature. This is evident as the said section contains penal consequences for taking adjournments and failing to decide an election petition within four months. In this regard it is instructive to have recourse to the decision of this Court in the case of Maulana Nur-ul-Haq v. Ibrahim Khalili (2000 SCMR 1305), wherein it was held that: -

"7. ... No doubt there exists no faultless acid test or a universal rule for determining whether a provision of law is mandatory or directory and such determination by and large depends upon the intention of Legislature and the language in which the provision is couched but it is by now firmly settled that where the consequence of failure to comply with the provision is not mentioned the provision is directory and where the consequence is expressly mentioned the provision is mandatory. ..."

In the case of Ghulam Hussain v. Jamshed Ali (2001 SCMR 1001) this Court held as under: -

"13. It is an established principle of law that where the Legislature has provided a penalty/consequences for the non-compliance, the said provision would be mandatory in nature and where such consequences are not provided it would be termed as directory..."

Similarly, in the case of Malik Umar Aslam v. Sumera Malik (PLD 2007 SC 362) it was held as under: -

"10. ... the Court is always empowered to ensure that the law under which proceedings have been initiated

before it stands complied with fully particularly in the cases where non-compliance of mandatory provision prescribes a penalty... .."

Furthermore, in the matter of: HUMAN RIGHTS CASES NOS.4668 OF 2006, 1111 OF 2007 and 15283-G of 2010 (PLD 2010 SC 759).

Relevant extract therefrom is reproduced hereinbelow: -

"12. ... .. It is to be noted that non-adherence to legislative provisions other than the Constitution is permissible, provided it does not entail penal consequences as there are two types of statutes/legislation, i.e. mandatory and directory. As far as mandatory provision of law is concerned, same is required to be enforced strictly without interpreting/construing it in any manner liberally. ... .."

15. In light of the aforementioned case-law, it is abundantly clear that section 67(1A) is a mandatory provision of law that entails penal consequences for non-compliance. Therefore, the Learned Election Tribunal below failed to penalise Respondent No. 1 for repeatedly delaying the proceedings.

16. Moving now to the merits of the Appeal, it is pertinent to recap that the election petition No.104/2008 challenged the success of Respondent No.1 as a member of National Assembly on the alleged commission of corrupt and illegal acts, etc., by and on behalf of Respondent No.1 prior to as well as on the date of polling. In her reply, Respondent No.1 raised various legal and factual defences. Learned counsel appearing on behalf of Respondent No.1 contended that during the hearing of the election petition, the Appellant abandoned every ground of attack except pleading that the election of

respondent No.1 was liable to be declared void because she had procured a fabricated BA degree from University of the Punjab. Moreover, according to him, the pleadings of the Appellant never mentioned that Respondent No. 1 obtained the said degree as a result of impersonation. He explained that no fresh plea is allowed to be introduced without seeking amendments under section 62(3) of ROPA. If such amendment has not been made, the petition deserves to be dismissed on this sole ground as well.

17. In response, learned counsel for the Appellant contended that this very issue was raised before the Election Tribunal wherein the Appellant was not only allowed to raise this plea but permission was also accorded to produce the evidence, for which Respondent No.1 also had no objection as is evident from the perusal of the impugned judgment. A careful perusal of the proceedings supports the contention raised by the Appellant's counsel as after examining the record the learned Tribunal in the circumstances observed as under: -

*"Therefore, the only question that requires determination by the Tribunal is as follows: -*

*"Whether respondent No.1 procured a fabricated degree of Bachelor of Arts (B.A.) from the University of Punjab by arranging for some other lady to sit for the examination in her place, and hence her election is liable to be declared to be void."*

*The answer to above question will have direct bearing in deciding issue No.1 ibid."*

Thus, objection raised by learned counsel for respondent being without substance needs no further discussion.

18. Learned counsel for Respondent No.1 also emphasized that under section 67 of the ROPA this Court can pass the order, which is within the powers of the Tribunal and not beyond mandate of the law.

Suffice to say, the instant appeal is in continuation of proceedings which have been dealt with by the Election Tribunal under section 52 of the ROPA as appeal has been filed to challenge the order of the Tribunal, which is based on evidence produced before it. According to him, the question of granting relief to the parties in respect of genuineness or otherwise of the degree is concerned depends upon the final judgment. However, the Court cannot travel beyond the powers conferred upon it by the law.

19. Learned counsel had a feel about exercising the jurisdiction of this Court under different constitutional provisions like 185(1), 185(2) and 185(3). We are of the opinion that appeal is a statutory right that can only be exercised if the Statute has provided so as a matter of right. Section 96 of CPC can be cited for reference, which provides that an appeal lies against all decrees passed by a court in the exercise of original civil jurisdiction, except consent decree, and decree passed in suit filed under section (9) of the Specific Relief Act, 1877, and a final decree, the preliminary decree of which is not challenged. Appeal also lies against an order if so provided for by section 104 or Order XLIII CPC. In the same breath learned counsel argued that this Court may not go beyond the orders of the competent authority of University of the Punjab which were passed in 2003, and validity of BA degree of Respondent No.1 has attained finality. He has made reference to the decision dated 10.12.2002 of the Committee of the University of Punjab in the proceedings captioned as "*Reference Civil Suit from Mr. Muhammad Afzal son of Muhammad Din Versus Vice Chancellor/controller of Examination Against Mrs. Samaira Malik Tahir*" and the said Committee meeting held on 12.12.2002 which has been



taken in continuation of the Order noted hereinabove and then the decision of the same dated 10.02.2003.

20. Learned counsel for the Appellant stated that Election Tribunal *inter alia* has based its decision on the documents on record. Therefore, according to him, if a written decision has been taken by the Election Tribunal by misreading any of these documents, this Court while disposing of the appeal is not precluded to examine the evidence as a whole and not base its findings on the conclusion, which have been drawn illegally by a forum without appreciating evidence according to law. The Appellant had raised a dispute since filing of earlier election petition on 12.12.2002 *inter alia* on the ground that Respondent No.1 was not a graduate and in order to overcome the bar contained in Article 8-A of the Conduct of General Election Order and section 99(cc) of ROPA she had managed to procure fake and fabricated degree from the University of the Punjab but this question had never been adjudicated upon as the election petition, referred to hereinabove, which culminated in dismissal of petition for non-compliance of the mandatory requirement of section 55(3) of ROPA on 2.10.2003 and appeal filed by the appellant was also dismissed vide judgment passed in Malik Umar Aslam's case (supra). Again in the petition, which has given rise to instant appeal, as it has been noted hereinabove, the Election Tribunal after hearing the parties had also framed question to the effect whether respondent procured fabricated degree of BA etc.

21. It may not be out of context to note that judicial adjudication has to be undertaken by a forum duly authorized to

exercise judicial powers and pronounce the judgment between the parties as in the instant case Election Tribunal vide judgment dated 05.04.2013 had pronounced a judgment holding BA degree of Respondent No.1 to be valid and this decision is under examination in appeal before this Court. Therefore, subject to its decision it would not be possible to say that past and closed issue is not required to be adjudicated upon. Before deciding the case finally, the argument of the learned counsel of Respondent No.1 in this behalf seems to be premature. In absence of final adjudication the orders passed by the competent authority of the University in 2003 cannot be considered to have attained the finality.

22. At this juncture it is pertinent to note that domestic tribunals like Inquiry Committee, Departmental Committee constituted statutorily by the Universities to probe the genuineness or otherwise of a degree are bound by the principles of Qanun-e-Shahadat Order. Reference in this behalf may be made to the case of Rahat Naseem Malik v. President of Pakistan [2003 PLC (C.S.) 759], wherein this Court held at Para. 9 that "...if an Inquiry Officer on the basis of material placed before it assesses/estimates that the point which is required to be determined has been established and if his such verdict/opinion is acceptable to a prudent man it could be deemed under Article 2(d) of Qanun-e-Shahadat Order, 1984 that fact has been proved accordingly." In the same Para., it was also held that "...opinion rendered by an Inquiry Officer is not a final verdict to decide the fate of the parties arrayed before it for determination of a particular/specific question."

23. Thus, from the above discussion we are of the opinion that adjudication in appeal proceedings by this Court at the apex level is distinct and different from the decision/findings of domestic Tribunals, not because of hierarchy but because of the statutory powers available to an appellate Court under section 67 of ROPA. Adjudication of an issue, which is a continuous bone of contention between the parties, cannot be postponed because of lapse of a period of 10 years as it has been suggested by the Respondent No.1's learned counsel. More particularly, a candidate has to prove his credentials in terms of both Articles 62 and 63 of the Constitution to establish that no objection/attack is actionable against him or her; both before as well as after entering the Parliament or Provincial Assembly. In a number of cases, the Court has intervened in the election of such candidates who were found to be disqualified after having been elected the members of the Parliament and thereby they were de-notified. Reference in his behalf may be made to the cases of Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 SC 1089) and Muhammad Azhar Siddiqui v. Federation of Pakistan (PLD 2012 SC 774). In the latter case, former Prime Minister Syed Yousaf Raza Gillani was found guilty of Contempt of Court by a 7-member Bench of this Court, as a result whereof he was sentenced, and subsequent thereto, on a number of petitions filed by politicians, including one filed by Mr. Imran Khan, Chairman of the Pakistan Tehreek-e-Insaf, question of the then Prime Minister's disqualification was examined and he was de-notified to hold the office of Member of National Assembly forthwith, with all its consequences.

24. Learned counsel for Respondent No.1 stated that entire exercise is with regard to 2008 elections whereas new elections were held in 2013 and Appellant filed election petition on the same ground. It may be seen that when the Court was hearing the case, it was brought to our notice that election petition wherein appellant Umar Aslam Khan had challenged the election held on 11.05.2013. And said petition has been dismissed for violating mandatory provision of section 55(3) of ROPA as it has been observed in the order of Election Tribunal, Faisalabad dated 1.10.2013. Copy of the same, after procuring from the Tribunal, has been placed on record. Having said so, it is to be noted that in view of the above discussion instant matter relates to election of 2008, decision of which has been taken on 05.04.2013 by the Election Tribunal on the petition of Appellant. In view of the above discussion, the instant case involves more than the mere issue of maintainability of the appeal. Rather, the instant case also involves the question of the power of the Court to hear the appeal and finally dispose of the issues therein. Thus, the appeal would not become infructuous with the flux of time as findings so recorded by the Election Tribunal are based on the material produced before it, therefore, adjudication has to take place.

25. Moving further, it may be observed that according to learned counsel for the Appellant, the Election Tribunal has based its finding on the fact that Respondent No.1 had obtained BA degree in the ordinary course. He has referred to evidence, which has been relied upon by the Tribunal. According to him, the conclusion of the Tribunal is not based on correct appreciation of evidence. On the other hand, learned counsel for Respondent No.1 contended that the

Committee constituted by the University had independent jurisdiction and in view of evidence so brought on record a correct decision was arrived at; therefore, no interference is called for.

26. It is to be seen that the learned Tribunal, after having gone through one para of the petition, in which the allegation of fabricated degree has been levelled against Respondent No.1, proceeded to note that record does indicate that Respondent No.1 actually sat herself in the BA examination, whereas, by the Appellant the precise allegation against Respondent No.1 was that in absence of having her photographs on the application form or registration record as well as record of examination, she procured a fake and bogus degree, and further it was alleged that if there is any record with the University, same was falsely created under direct and unlawful influence of the Respondent No.1's husband. It may be noted that at the time of submission of application form for examination of BA in the University of Punjab, her husband namely Malik Tahir Sarfraz, was Additional Secretary Schools and had attested her alleged admission form. In reply, Respondent No.1 denied the allegation as false and her stand was that she was *bona fide* graduate and the allegation was highly degrading and vague. However, learned Tribunal referred to the statement of Muhammad Rauf Nawaz, Deputy Controller (Examination) who appeared as PW-5, and also discussed the details of the record, including the statement of Muhammad Rauf Nawaz and details of the document, which according to him was admittedly part of the record of University of Punjab. It is important to note that the Tribunal also observed that "what is important to note is that the allegation of impersonation was levelled by the petitioner against

Respondent No.1 for the first time in the year 2002 by way of an application before the University of the Punjab. The said charges were not proved and after due inquiry in which the both parties participated, the degree of Respondent No.1 was found to be valid and the charge of impersonation was found to be baseless." Learned Tribunal has relied upon the findings of the Committee of the University of the Punjab comprising: -

- (a) Sh. Rehmat, Assistant Controller-II;
- (b) Muhammad Akram Khan, Deputy Controller, (Examination);
- (c) Muhammad Akram Khan, Deputy Controller (Secretary).

The Committee examined Respondent No.1's admission form, result notification, award list, attendance chart, answer books, roll number slips, national identity card, her specimen signatures, handwriting which was compared with the handwriting on the answer books. The Committee found the handwriting on the specimen and the handwriting in the answer books as identical and according to the observation/finding so recorded by it, the Appellant on his appearance produced three documents namely (1) Election Poster with the photograph of respondent No.1 (2) Photocopy of the Admission form and (3) a photograph of respondent No.1 published in a newspaper. The report of the Committee contains the following observations: -

- (a) National Identity Card. Its copy was not attached with the Admission Form. It was inspected in original and photocopy retained. Same was issued on 21.08.2002.

- (b) Specimen handwriting obtained, compared with the handwriting of the candidate's Answer Books. The handwriting was found similar.
- (c) Photographs on the roll No Slip, Admission Form compared with the photo of the candidate's NIC and candidate herself & found similar.
- (d) Specimen signature of the candidate obtained & compared with the one on NIC, SF 16 and found similar.

The statements of Appellant and Respondent No.1 were also recorded who supported their respective stances taken before the Court.

27. It is important to note that Learned Counsel for Respondent No.1 pointed out that a manual Identity Card was issued to Respondent No.1 bearing No.128-63-180716. Subsequently, she moved an application with NADRA intimating that her correct year of birth was 1964 instead of 1963; therefore, corrected National Identity Card bearing No.128-64-180716 was issued to her. Later, upon introduction of computerized I.D. Cards, a Computerized National Identity Card was issued to her, which indicated her date of birth as 1963. (It is important to note that she herself has brought on record that in one of the ID Cards prepared manually, her date of birth was written as 1963, which she got corrected as 1964 and then again when she obtained computerized ID Card, it again indicated her date of birth to be 1963).

28. Learned Tribunal also obtained consent of the learned counsel and summoned relevant record of NADRA and examined the same. The Tribunal compared her signatures in exercise of powers

under Article 84 of the *Qanun-e-Shahadat* Order, 1984 and on her appearance she was also compared with the photograph attached with the admission form, registration form and Roll Number Slip with the attendance sheet of respondent and on having taken into consideration all the material, concluded that the photographs on the Forms were those of the Respondent No.1 herself and not of any third party who had allegedly impersonated her. Consequently petition was dismissed.

29. In view of the facts that all the documents referred to hereinabove have been relied upon by the Election Tribunal and based its findings on the same without any objection from Respondent No.1, therefore, this Court is bound to consider the effect of the same vis-à-vis the plea of both the sides.

30. Learned counsel for Appellant besides relying upon the documentary evidence has also referred some of the oral parts of her statement to substantiate his plea. It is a cardinal principle of appreciation of evidence that in presence of both kinds of evidence i.e. oral and documentary, preferably the Courts take into consideration latter kind of evidence. Therefore, it would be appropriate to discuss the same in the light of the findings so recorded by the Tribunal.

31. Learned Tribunal perhaps for want of proper assistance has referred to an application filed in the year 2002 by the Appellant before the University of Punjab. However, in the year 2002, admittedly no application was filed by Appellant. The correct position in this behalf is that reference of the members of the Committee namely Sh. Rehmat Assistant Controller and Muhammad Akram Khan, Deputy Controller relates to report dated 10.12.2002 which emerged from a



civil suit filed by one Muhammad Afzal son of Muhammad Din. Learned counsel for the Appellant during hearing of the appeal, filed CMA 6329/2013 for the purpose of placing on record the plaint dated 14.12.2002 in the aforementioned Civil Suit which was filed against the Board of Intermediate and Secondary Education, Lahore as well as Controller of Examination, Board of Intermediate.

32. It is to be noted that the residential address of the plaintiff Muhammad Afzal as mentioned in the plaint was 38-J, Defence Housing Authority, Lahore, which was the same as that of Appellant Umar Aslam mentioned by him in his application dated 28.01.2003 filed before the Vice Chancellor, University of Punjab, but this application is not relevant in any manner with the above-referred report of the Committee dated 10.12.2002 as the application was submitted on 29.1.2003. The Vice Chancellor/Controller of the Examination and Respondent No.1 were not made party in the civil suit. An application under Order VII, Rule 11 of CPC was moved in that suit for the rejection of the plaint as against Board of Intermediate and Secondary Education said Court had no jurisdiction. Ultimately the suit was dismissed for non-prosecution on 13.11.2003. Reference of the civil suit has been made here because learned counsel for Respondent No.1 has himself brought on record the same. A perusal of this document, which bears signatures of the members of the Committee and also Deputy Controller as well as Controller of Examinations, also suggests that Appellant had not participated in the said proceedings. Therefore, the observations of the learned Tribunal that the Appellant participated in those proceedings is not correct. Same is the position of the proceedings which took place on 12.12.2002 because on the said

date as well, the Appellant was not associated in the proceedings arising out of civil suit, obviously for the reasons that according to the contents of the plaint he was neither cited as plaintiff or defendant nor there is any material on record to suggest that he was summoned in these proceedings.

33. It is to be seen that on 10.12.2002 the Committee examined Admission Form, Roll No Slip, Gazette of BA 1<sup>st</sup> Annual Examination, 2002, Award Lists and Attendance Chart of Respondent No.1 and found the following: -

She appeared in B.A Annual Exam 2002 under roll No.54334 Regd No.2002-z-27691 and was declared passed securing 293 marks.

Photographs pasted on the Roll No slip and Admission Form were similar to each other.

It was observed that allegation of impersonation can, however, be verified only after due inspection of the candidate's NIC and her handwriting to compare it with the Answer Books. This document does not indicate that she was summoned on the following date; whereas report dated 12.12.2002 suggests that Respondent No.1 appeared before the Committee on 11.12.2002. Report further reveals that: -

- (a) Copy of NIC was not attached with the Admission Form. It was inspected in original and photocopy retained. Same was issued on 21.08.2002;
- (b) Specimen handwriting obtained compared with the handwriting of the candidate's Answer Books. The handwriting was found similar;

- (c) Photographs on the Roll No.Slip, Admission Form compared with the photo of the candidate's NIC and candidate herself, and found similar.
- (d) Specimen signature of the candidate obtained & compared with the one on NIC, SF 16 and found similar.

After making the above observation, the Committee was of the view that the charges of impersonation are baseless and the result notified is correct. This document was signed again by 5 persons whose names have already been noted hereinabove. As the Appellant was not party, therefore, on 29.01.2003 he filed an application for permission to participate and assist the pending proceedings against Respondent No.1. Contents of this application are reproduced hereinbelow: -

Sumaira Malik Tahir daughter of Allah Yar Khan purportedly appear in B.A. Examination under Roll No.54334. The registration number of the said candidate was 202-Z-27691 while the serial number was 102527. She has been declared as successful candidate while the fact remains that she procured the degree by impersonation. She has impersonified herself with some other lady who took the exam in her place.

The University has initiated the proceedings against the said candidate and it was the applicant who through a formal application brought to the notice of the University about the said illegality and fraud played by the said candidate.

There is every likelihood that the said candidate by exerting her influence might take illegal advantage and get the record destroyed or fabricated.

The applicant is an aggrieved person as the said candidate by using unfair means procured the B.A. Degree and subsequently contested the last general

election. The applicant is in a position to provide sufficient proof about the illegalities, which the said candidate has committed.

It will be in the interest of justice, equity and fairplay that the petitioner be allowed to join the aforementioned proceedings. The permission to allow the petitioner in the said proceedings would make the process transparent and fair.

It is therefore, most respectfully requested that the applicant may please be allowed to participate and join the proceedings for fair, just and lawful decision of the matter.

34. A perusal of above application indicates that it was not the Appellant on whose application the University has initiated proceedings against respondent No.1. Essentially, the appellant has not adverted to the finding recorded on 10.12.2002 and 12.12.2002 because same were on account of Civil Suit which was filed against Vice Chancellor and Respondent No.1 and in these proceedings he was not a party. It seems that some other applications have been moved by him on the basis of which proceedings were initiated. On one of these applications, an order was passed by the Vice Chancellor on 17.01.2003 and a report was prepared on 10.02.2003 again by Muhammad Akram Khan, Deputy Controller Exams under his signatures, wherein it was mentioned that a civil suit was filed against Respondent No.1, who appeared in BA annual examination, 2002 under Roll No.54334 containing the allegation that she made arrangements to cheat in the examination by way of impersonation. The Court directed the University to report the validation of her result. Case was placed before the Committee for consideration. The Committee considered the Admission Form, Result Notification, Award

Lists, Attendance Chart, Answer Books and Roll No. Slips, etc. It may be noted that these are the same documents reference of which has been given by the Presiding Officer of Election Tribunal attributing that the application was filed by the Appellant whereas from these documents it is also clear that these proceedings were drawn in pursuance of a civil suit to which the Appellant was not a party. It is further stated in the said document that the Committee after examining the whole record directed office to call upon the candidate to appear before it along with her National Identity Card. Candidate appeared before the Committee; her NIC was checked; her specimen handwriting was obtained and compared with the handwriting available on the answer books and it was found identical. In the meanwhile, another application from the Appellant was received stating therein that he had some solid evidence against Ms. Sumaira Malik Tahir. He provided three documents to the Committee: Election Poster with photograph of the candidate, photocopy of Admission Form and a photocopy of her photograph published in the newspaper. After going through the said documents the Committee was of the view that Respondent No.1 is not guilty of impersonation and her result is valid as per University record. On the said noting, Vice Chancellor passed following order: -

"Please review and put all documents seen by the Committee by 20.2.2003."

However, the matter was not placed before Vice Chancellor as per available record as the Additional Controller wrote 'seen' on the note.

35. It is not understandable that when the application of Appellant had not been entertained and he had not been made party in

the earlier proceedings held on 10.12.2002 and 12.12.2002, instead of allowing him to participate in the proceedings, merely on receipt of documents referred to hereinabove, it was concluded that Repondent No.1 is not guilty of impersonation. We are of the opinion that any proceedings which have been drawn in absence of the Appellant do not have binding effect upon him as he had a right to be allowed to participate in the proceedings.

36. Learned Tribunal has not made reference to the second report, which has been signed by Mr. Muhammad Akram Khan, Deputy Controller (Exam) and Additional Controller (Exam) on 10.2.2003 and the Tribunal concluded that Respondent No.1 is in possession of a genuine degree by relying upon the reports of the Committee arising from the aforementioned civil suit.. This statement of fact, as it is apparent, is not correct. The three member Committee was constituted by the Vice Chancellor and later a five members Committee was constituted, names whereof have already been mentioned hereinabove, for probing into the issue, which has arisen at that time out of a civil suit filed by Muhammad Afzal or in respect of some other suit wherein Vice Chancellor and Respondent No.1 were parties. Therefore, under the circumstances, the conclusion that the findings of the Committee followed those of another Committee is not acceptable. The Tribunal seized with the issue could have inquired from both the sides about the nature of the proceedings which have given rise to constitute a Committee to record proceedings on 10.12.2002 signed by five persons. Inasmuch as nothing has been stated in respect of application dated 29.01.2003. As this document is not disputed, therefore, making reference to the same is not difficult.

37. Thus, in view of such circumstances we have to examine the documents independently. In a number of cases, courts, including the Supreme Court have examined the veracity of documents, signatures and handwriting under the powers granted by Article 84 of the *Qanun-e-Shahadat* Order, 1984. Reference may be made to Waqas Enterprises v. Allied Bank of Pakistan (1999 SCMR 85), Ahmed Hassan Khan v. Naveed Abbas (1998 SCMR 346) and Zar Wali Shah v. Yousaf Ali Shah (1992 SCMR 1778).

38. First of all reference has to be made to the Admission Form, Ex.R1/3, which is purportedly filled by the Respondent, containing her photograph Ex.RW 1/2 to appear in BA examination as a private candidate. Admittedly no ID Card was attached as it is mentioned in the proceedings dated 10.12.2002 conducted by five members Committee arising out of a civil suit. It is important to note that in Column No.19 of the Admission Form, it was necessary to note Bank Challan Number, Date, Amount and City/Branch, because according to the calendar of the University of Punjab no student shall be allowed to appear in examination if requisite fee for examination etc. has not been paid.

39. Admittedly, on examining the Admission Form and Roll No. Slip, it appears that there is no difference in both these photographs. According to her own version, her date of birth was shown in the manual ID Card as 1963 and she got it corrected her date of birth as 1964 and number of the same has been mentioned in the Admission Form. It would be appropriate to note that at the time of preparation

of manual ID Card, in Blocks 5 and 6, the year of birth used to be mentioned.

40. A comparison of all the three ID Cards of Respondent No.1 with the naked eye makes it abundantly clear that her photograph on ID Card showing her date birth to be 1964 bearing No.128-64-180716 is identical with the photographs on Admission Form as well as Roll No. Slip. Whereas, there is quite a noticeable difference between the above said photographs and the photographs appearing on her manually prepared ID Card bearing No.128-63-180716 as well as her computerized ID Card bearing No.61101-0176307-6 wherein again her date of birth has been shown as 1963. Similar is the position of her photographs appearing in the newspaper filed by the appellant. Likewise, photograph appearing on posters used for the election campaign is not identical with the photographs appearing on the Admission Form and Roll No. Slip as well as ID Card showing her date of birth to be 1964.

41. Now turning towards the handwriting, it is to be noted that she had allegedly given sample of her handwriting, extract of a para, which has been produced before this Court. A plain comparison of the signature on the ID Card bearing No.128-64-180716, handwritten samples and the signatures on the Admission Form clearly indicates that there is lot of difference. We consider it appropriate to hold, with due deference, that the learned Tribunal had a duty to compare all these documents in juxtaposition to ascertain whether Respondent No.1 appeared in the examination. Respondent No. 1's oral evidence has also not supported her contention as after going through her cross-examination one can conveniently note that she failed to furnish



correct version of her stance, which she has taken before the Tribunal as well as before the Election tribunal. Therefore, on deep appreciation of evidence, both documentary and oral, made by the parties and also going through the judgment of the learned Tribunal we have no option except to hold that University authorities failed to arrive at a correct conclusion in view of the evidence produced before them. It is clear that in order to make herself qualified for contesting elections in the year 2002 she arranged a BA degree by way of impersonation to fulfill the requirements of Article 8-A of the Conduct of General Election Order, 2002. Otherwise, after having passed Intermediate in the year 1981 there was no necessity for her to obtain BA degree.

42. Learned counsel for Respondent No.1 contended that as there is allegation against the University, therefore, without impleading the same no finding can be recorded. We are of the opinion that the contentions, raised by the learned counsel are not entertainable because there are always litigations between the parties in respect of validity and genuineness, of the degree obtained by adopting illegal means including impersonation. It is to be observed that a University, being a place of education, should not be dragged into litigation; as it is for the University to decide whether or not to take action against delinquents.

43. Learned counsel for Respondent No.1 also stated that the Appellant has not approached the Court with clean hands because as far as the contents of the application dated 29.05.2003 are concerned, he participated in the proceedings and the stand taken by him before the Court was that he was not allowed to participate in the same. The

arguments of the learned counsel could have carried weightage had we not held hereinabove that the Respondent No.1 is in possession of BA degree which she has got by impersonation. Thus, the arguments are without substance and not acceptable.

44. The next question is as to whether the appellant is entitled for any relief in view of the fact that Respondent No.1 is no more member of the National Assembly as a result of the General Elections of 2008 because the Assembly, after completing its term has been dissolved. It is to be noted that the Appellant has been diligently pursuing the case of Respondent No.1's disqualification for the last so many years commencing from 2002 up till now. Therefore, he is entitled for the relief as it has been concluded against Respondent No.1 that she has obtained BA degree by way of impersonation; meaning thereby that at the time when she filed nomination papers she was not qualified to contest and had proved herself not sagacious, righteous, non-profligate, honest and Ameen in terms of Article 62(1)(f) of the Constitution, as it has held in the case of Syed Mehmood Akhtar Naqvi's case (PLD 2012 SC 1089). Relevant portion therefrom is reproduced hereinbelow: -

"81. ... ..

(d) All the Members of the Parliament/Provincial Assemblies noted above had made false declarations before the Election Commission while filing their nomination papers and as such appear to be guilty of corrupt practice in terms of Section 78 of Representation of Peoples Act, 1976, therefore, the Election Commission is directed to institute legal proceedings against them under section 82 of the Act read with sections 193, 196, 197, 198 and 199 PPC in accordance with law.

(e) The members of Parliament/ Provincial Assemblies noted hereinabove, being disqualified persons are directed to refund all monetary benefits drawn by them for the period during which they occupied the public office and had drawn their emoluments etc. from the public exchequer including monthly remunerations, TA/DA, facilities of accommodation along with other perks which shall be calculated in terms of money by the Secretaries of the Senate, National Assembly and Provincial Assemblies

accordingly.

(f) The amount, so recovered from all of them by respective Secretaries shall be deposited in the public exchequer within a period of two weeks and compliance report shall be sent to the Registrar.

(g) As regards the case of Senator A. Rehman Malik, it may be noted that at the time of filing of nomination papers for election to the Senate held in the year 2008, he had made a false declaration to the effect that he was not subject to any of the disqualifications specified in Article 63 of the Constitution or any other law for the time being in force for being elected as a member of the Parliament/Provincial Assembly, therefore, reference will be required to be made to the Chairman Senate under Article 63(2) in view of the provision of section 99(1)(f) of the Act of 1976, which lays down that a person shall not be qualified from being elected or chosen as a member of an Assembly unless he is sagacious, righteous and non-profligate and honest and ameen. Mr. A. Rahman Malik, in view of the false declaration filed by him at the time of contesting the election to the Senate held in the year 2008, wherein he was elected, cannot be considered sagacious, righteous, honest and ameen within the contemplation of section 99(1)(f) of the Act of 1976. Therefore, for such purposes Article 63(p) is to be adhered to because the disqualification incurred by him is envisaged under the law, referred to hereinabove in view of his own statement that he had renounced his citizenship of UK whereas the fact remains that such renunciation along with declaration can only be seen as having been made on 29-5-2012."

In the case of Malik Iqbal Ahmad Langrial v. Jamshed Alam (PLD 2013 SC 179) this Court held as under: -

"10. Learned counsel for the appellant has vehemently argued that prior to 18th Constitutional Amendment, in terms of Article 62(1)(f) of the Constitution, the Court was not empowered to declare any person to be non-sagacious, not righteous or honest or an ameen, as such the observations of the Election Tribunal that the appellant was not only to contest the election in the year 2008, but was also not righteous or honest or an ameen person, was sustainable. In this regard it is to be noted that at the time of filing of nomination papers to contest the election in the

year 2002, the appellant produced fake and forged education certificates and the Election Tribunal had declared him to be a impostor vide judgment dated 26.12.2002. It is to be noted that Article 62(1)(f), as it stood prior to 18th Constitutional Amendment, provides that a person shall not be qualified to be elected or chosen as a Member of Majlis-e-Shoora (Parliament) unless he is sagacious, righteous, non-profligate, honest and ameen. It is clear from the plain reading of the said Article that there is no restriction upon the Court/Tribunal to declare any person to be not sagacious, righteous or ameen. Admittedly the appellant used fake documents not only in the year 2002 but also in the year 2008 and also made false declaration making him liable to criminal action under certain provisions of P.P.C. In the case of Muddasar Qayyum Nahra v. Ch. Bilal Ijaz (2011 SCMR 80) this Court had upheld the findings of Election Tribunal, Punjab whereby it was held that a person who indulges into using unfair means in procuring his educational qualifications does not deserve to claim to be an honest, righteous or Ameen person so that he be assigned the high responsibilities of performing national functions of running the affairs of the country. The spirit with which the words sagacious, righteous, non profligate, honest and Ameen have been used by the Constitution of Islamic Republic of Pakistan, 1973 for the eligibility of the candidates contesting the elections of Members of National or Provincial Assembly cannot be allowed to be frustrated if persons who secure their educational documents through unfair means and are found guilty of such a condemnable act by the competent authority are allowed to be given entry into the doors of National or Provincial Assemblies of our country. The respondent (therein) is thus not worthy of credence and cannot be allowed to be entrusted with State responsibilities of Law Making; to be in-charge of the National Exchequer or be eligible to represent the people

of Pakistan."

In the case of Abdul Ghafoor Lehri v. Returning Officer, PB-29, Naseerabad-II (2013 SCMR 1271) it was held that: -

"14. In the instant case, the appellant has failed to meet the criteria set out for proposed candidates under Article 62(1)(d) & (f) of the Constitution and subsections (d), (e), (f) and (g) of section 99 of the Representation of People Act, 1976. It may be noted that under Article 63 of the Constitution of the Islamic Republic of Pakistan there are certain disqualifications which are of temporary nature and a person disqualified under Article 63 can become qualified after lapse of certain period as mentioned therein, whereas, the requirement of Article 62 are of permanent nature and a person has to fulfill certain qualifications/conditions to become eligible to be elected or chosen as a member of Majlis-e-Shoora (Parliament), otherwise, he is not eligible to be a Member of Majlis-e-Shoora (Parliament). For this reason alone, Article 62 does not provide any period after which a person, who was declared disqualified under the said Article, can be eligible to contest the elections of the Parliament. In such view of the matter we hold that a person who is not qualified under Article 62(1)(f) cannot become qualified by efflux of time. Reference in this regard may also be made to the case of Imtiaz Ahmed Lali v. Ghulam Muhammad Lali (PLD 2007 SC 369). In such circumstances the appellant has rightly been disqualified to be elected as member of the Parliament by the learned Election Tribunal by allowing the election appeal filed against acceptance of his nomination papers by the Returning Officer which findings were upheld by the High Court of Balochistan. In view of the facts and circumstances of the case and the material available on record we are of the view that the findings of the learned High Court are based on correct appreciation of evidence on record and the law on the subject."

In the case of Muhammad Azhar Siddiqui's case (PLD 2012 SC 774) the Court, *inter alia*, held as follows: -

"(3) As a Bench of 7 Hon'ble Judges vide judgment dated 26.4.2012 followed by the detailed reasons released on 8.5.2012 has found Syed Yousaf Raza Gillani guilty of contempt of Court under Article 204(2) of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 3 of the Contempt of Court Ordinance, 2003 and sentenced him to undergo imprisonment till rising of the Court under section 5 of the said Ordinance, and since no appeal was filed against this judgment, the conviction has attained finality. Therefore, Syed Yousaf Raza Gillani has become disqualified from being a Member of the *Majlis-e-Shoora* (Parliament) in terms of Article 63(1)(g) of the Constitution on and from the date and time of pronouncement of the judgment of this Court dated 26.4.2012 with all consequences, i.e. he has also ceased to be the Prime Minister of Pakistan with effect from the said date and the office of the Prime Minister shall be deemed to be vacant accordingly".

45. Thus, on account of disqualification, under Article 62(1)(f) of the Constitution, in view of discussion and principles discussed above, the Respondent No.1 was not qualified to contest the elections in terms of the Constitutional provisions noted hereinabove, and she was not holding the office of MNA from Constituency No.69 with lawful authority; as a disqualified person has no right to represent the electorate of the country. Therefore, on account of such qualification she would not be entitled to contest the election in future as well, and if she does contest elections and is declared successful, the Election Commission shall be bound to de-notify her. From ab-initio, when she submitted nomination papers she was not qualified as according to

findings so recorded by this Court she had obtained BA degree by way of impersonation and depending upon the same educational qualification as it is normally disclosed by the candidates in the nominations papers, she had proved herself not to be truthful person.

46. For the foregoing reasons, the instant appeal is allowed. Resultantly, the notification dated 01.03.2008, notifying Respondent No.1 as the returned candidate from the Constituency NA-69 (Khushab-I) in the general elections held on 18.02.2008, is declared to be void. Ms. Sumaira Malik is hereby declared to be disqualified from becoming Member of Parliament with all its consequences noted hereinabove.

47. Copy of the judgment be sent to the Election Commission of Pakistan for further proceeding in accordance with law. The Appellant is also held to be entitled for cost throughout.

Chief Justice

Judge

Judge

Announced on 28.10.2013 at Islamabad

Chief Justice

**Approved For Reporting**