

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ.  
MR. JUSTICE JAVED IQBAL  
MR. JUSTICE MIAN SHAKIRULLAH JAN  
MR. JUSTICE TASSADUQ HUSSAIN JILLANI  
MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE SARMAJAL OSMANY  
MR. JUSTICE AMIR HANI MUSLIM

INTRA COURT APPEAL NO. 9 & 10 OF 2011

Abdul Hameed Dogar, former Judge/CJP ...	APPELLANT (ICA 9/2011)
Mr. Justice Sayed Zahid Hussain ...	APPELLANT (ICA 10/2011)

INTRA COURT APPEALS NO. 3, 4, 6 TO 8 & 11 OF 2011

Mr. Justice Hasnat Ahmed Khan ...	APPELLANT (ICA 3/2011)
Mr. Justice Syed Shabbar Raza Rizvi ...	APPELLANT (ICA 4/2011)
Mr. Justice Syed Hamid Ali Shah ...	APPELLANT (ICA 6/2011)
Mr. Justice (R) Iftikhar Hussain Chaudhary...	APPELLANT (ICA 7/2011)
Mr. Justice Syed Sajjad Hussain Shah ...	APPELLANT (ICA 8/2011)
Justice Mrs. Yasmin Abbasey ...	APPELLANT (ICA 11/2011)
VERSUS	
Federation of Pakistan/State ...	RESPONDENT

For the appellants: (ICA 9/2011)	Raja Muhammad Ibrahim Satti, Sr. ASC Mr. Ejaz Muhammad Khan, AOR (absent)
For the appellants: (ICA 10/2011)	Mr. S.M. Zafar, Sr. ASC Raja Abdul Ghafoor, AOR
For the appellants: (ICA 3 & 4/2011)	Dr. A. Basit, Sr. ASC Mr. Arshad Ali Chaudhry, AOR

For the appellants: (ICA 6/2011)	Syed Raza Kazim, Sr. ASC Mr. G.N. Gohar, AOR (absent)
For the appellants: (ICA 7/2011)	Dr. Khalid Ranjha, Sr. ASC Mr. Mehmood A. Sheikh, AOR
For the appellants: (ICA 8/2011)	Sh. Zamir Hussain, Sr. ASC Mr. Ejaz Muhammad Khan, AOR (absent)
For the appellants: (ICA 11/2011)	Raja Abdul Ghafoor, AOR
On Court's notice:	Maulvi Anwar-ul-Haq Attorney General for Pakistan
Respondent:	Not represented
Date of hearing:	03.03.2011

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## ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. – By Intra Court

Appeals No. 9 & 10 of 2011 filed under section 19 of the Contempt of Court Ordinance, 2003, appellants Justice (Retd.) Abdul Hameed Dogar and Justice Sayed Zahid Hussain have questioned the legality of the order dated 02.02.2011 passed by a Bench of this Court in Criminal Original Petitions. The concluding paragraph therefrom reads as under: -

“Let the cases now be fixed for framing of charge against the aforesaid respondents on 21.02.2011. The respondents, if they so desire, appear on that date to enter their plea on the charge(s) framed. In the alternative, they may, if they choose, enter their pleas through counsel who are duly instructed.”

Mr. Justice Sayed Zahid Hussain, Judge of the Supreme Court, after filing the appeal realized that he had taken oath under a misunderstanding on 03.11.2007, when a 7 – Member Bench of the Supreme Court had passed a restraint order to block imposition of unconstitutional rule in the country, *inter alia*, directing as follows: -

- “(i) Government of Pakistan, i.e. President and Prime Minister of Pakistan are restrained from undertaking any such action, which is contrary to Independence of Judiciary;
- (ii) No judge of the Supreme Court or the High Courts including Chief Justice(s) shall take oath under PCO or any other extra-Constitutional step;
- (iii) Chief of Army Staff, Corps Commanders, Staff Officers and all concerned of the Civil and Military Authorities are hereby restrained from acting on PCO which has been issued or from administering fresh oath to Chief Justice of Pakistan or Judges of Supreme Court and Chief Justice or Judges of the Provincial High Courts;
- (iv) They are also restrained to undertake any such action, which is contrary to independence of Judiciary. Any further appointment of the Chief Justice of Pakistan and Judges of the Supreme Court and Chief Justices of High Courts or Judges of Provinces, under new development shall be unlawful and without jurisdiction.”

2. Mr. Justice Sayed Zahid Hussain admittedly had taken oath in violation of above order of this Court and now after having regretted opted for retirement and addressed a letter to the President of Pakistan in this behalf. Copy thereof was also endorsed to the Registrar of this Court. The competent authority has acceded to his request as is evident from the contents of the notification dated 01.03.2011, issued by the Government of Pakistan, Ministry of Law and Justice, which reads as under: -

“In exercise of the powers conferred by Article 179 of the Constitution of Islamic Republic of Pakistan, the President is pleased to allow retirement to Mr. Justice Sayed Zahid Hussain, Judge of Supreme Court of Pakistan with immediate effect in terms of Paragraph 15 of the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997.”

3. Mr. S.M. Zafar, learned Sr. ASC for appellant Mr. Justice Sayed Zahid Hussain, now retired, has filed an application under Order XXXIII, rules 5 & 6 of the Supreme Court Rules, 1980, wherein besides mentioning the different dates on which Justice Sayed Zahid Hussain

had taken oath as an Additional Judge, as a Judge and as Chief Justice of the Lahore High Court, and thereafter as a Judge of the Supreme Court, already referred to in the judgment of this Court in Sindh High Court Bar Association's case (PLD 2009 SC 879), it is categorically stated that **"he is extremely sorry for having taken oath on 03.11.2007 under a misunderstanding and has regretted for the same"**. The learned counsel submitted that Mr. Justice Sayed Zahid Hussain, for the sake of the dignity and respect of the Institution of Judiciary, has sacrificed his four years' service as a Judge of the Apex Court and henceforth he would be no more adorning the Bench, as the notification of his retirement has already been issued, therefore, while exercising jurisdiction available to this Court to decide not to proceed against a person facing the charge of contempt who offers regrets, the proceedings against him be terminated.

4. The learned Attorney General for Pakistan, after having gone through the notification of retirement of Justice Sayed Zahid Hussain and the contents of the application containing statement of regrets for taking oath on 03.11.2007 stated that regrets so expressed by him may be accepted, particularly keeping in view that he had stood retired and was no more the Judge of this Court.

5. It may be observed that in a case of contempt of Court like the one in hand all that the Court is required to be satisfied is that the dignity and authority of the Court by flouting its judgments/orders are not put at stake. The law of contempt is primarily intended to ensure that the majesty of the law is upheld and the dignity of the Institution of Judiciary, which is a most important pillar of the State, is protected and it also restores confidence of the general public in the due and proper administration of justice in the country. Indeed, Courts are

vested with an extraordinary jurisdiction to punish a person for committing contempt of Court, and armed with a powerful weapon, but the same is to be exercised/used judiciously and sparingly depending upon the facts and circumstances of each case. However, with reference to instant case, it needs to be emphasized that on 03.11.2007, a 7 – Member Bench of this Court passed a restraint order not only to save the dignity of the judiciary, but also to protect Constitution as it is the duty of Judges of Superior Courts who have taken oath to preserve and protect it. Thus, it was all the more necessary for the Judges of the Superior Courts to respect the order in all circumstances. However, Mr. Justice Sayed Zahid Hussain having realized that he had taken oath under a misunderstanding has regretted for his action and decided to quit in the larger interests of the Institution and he would not be adorning the Bench. Therefore, we accept the request so made by him. Consequently, appeal (ICA No. 10 of 2011) is allowed and proceedings for contempt of Court to his extent pending before a Bench of this Court are terminated.

6. Now, turning towards the case of Justice (Retd.) Abdul Hameed Dogar, mentioning of the facts in detail may not be necessary in view of the judgment of this Court in Sindh High Court Bar Association's case wherein this Court has declared that Justice (Retd.) Abdul Hameed Dogar, in view of violation of order dated 03.11.2007 noted above, was never a constitutional Chief Justice of Pakistan and all the appointments of the Judges made in consultation with him were declared to be unconstitutional. For reference, relevant portion from the short order/judgment is reproduced hereinbelow: -

“(ii) it is declared that the office of the Chief Justice of Pakistan never fell vacant on November 3, 2007 and as a consequence thereof it is further declared that the appointment of Mr. Justice Abdul Hameed Dogar as the

Chief Justice of Pakistan was unconstitutional; void ab initio and of no legal effect."

"(iii) since Mr. Justice Abdul Hameed Dogar was never a constitutional Chief Justice of Pakistan, therefore, all appointments of Judges of the Supreme Court of Pakistan, of the Chief Justices of the High Courts and of the Judges of the High Courts made, in consultation with him, during the period that he, unconstitutionally held the said office from 3.11.2007 to 22.3.2009 (both days inclusive) were declared to be unconstitutional, void ab initio and of no legal effect and such appointees shall cease to hold office forthwith."

7. It is pertinent to mention here that against the above judgment review petitions were also filed, which have been dismissed in Justice Khurshid Anwar Bhinder's case (PLD 2010 SC 483). Subsequent thereto, notices for contempt of Court were issued to Justice (Retd.) Abdul Hameed Dogar and others. He contested the proceedings and ultimately a Bench of this Court decided to proceed against him for contempt of Court as is evident from the concluding paragraph of the order dated 02.02.2011, reproduced hereinabove. Thus, instant appeal has been filed.

8. Mr. Muhammad Ibrahim Satti, learned Sr. ASC appeared and placed on record a statement under the signature of Justice (Retd.) Abdul Hameed Dogar, which is reproduced hereinbelow *in extenso*: -

**"STATEMENT OF MR. JUSTICE (RETD) ABDUL HAMEED DOGAR (APPELLANT)**

With all humility and humbleness at my command, it is submitted that under abrupt, unexpected changes, confusion, misconception and misunderstanding, the order dated 3.11.2007 could not be complied which is highly regretted with repentance and sorrow. I stood retired on 21.3.2009 and not enjoying good health. It is humbly requested that, in view of my ailment, the explained scenario, for which I am really sorry, my regrets may very kindly be accepted and notice of contempt may please be

withdrawn for which I shall highly obliged and place myself at the mercy of Court.

Sd/-  
(Abdul Hameed Dogar)  
Appellant  
02.03.2011"

9. The learned counsel has submitted that Justice (Retd.) Abdul Hameed Dogar has already retired on 21.03.2009, he is no more a Judge of this Court, he is not enjoying good health and while feeling sorry and expressing regrets he has stated that he could not comply with the order dated 03.11.2007 under confusion, misconception and misunderstanding. Besides, he has placed himself at the mercy of the Court, therefore, his regrets may be accepted and his appeal may be disposed of accordingly.

10. The learned Attorney General for Pakistan, on having gone through the statement noted hereinabove has stated that as Justice (Retd.) Abdul Hameed Dogar has placed himself at the mercy of the Court, therefore, on account of the realization that he ought to have complied with the aforesaid order, the request so made by him may be accepted.

11. We have considered the request made before us *vide* statement reproduced hereinabove and have also gone through the judgments of this Court in the cases of Sindh High Court Bar Association and Justice Khurshid Anwar Bhinder. We are of the opinion that as against the past practice, the order dated 03.11.2007 was passed by a 7 – Member Bench for the first time in the history of this Court whereby Judges of Supreme Court and High Courts including Chief Justices of High Courts were restrained not to take oath under PCO or any other extra-constitutional act with a view to block the imposition of martial law and abrogation of the Constitution as it has

already been clarified hereinabove, as the dignity and respect of the Institution of Judiciary are to be guarded first of all by its own members. Admittedly, Justice (Retd.) Abdul Hameed Dogar violated the order dated 03.11.2007 as it is evident from the conclusion drawn by this Court in the case of Sindh High Court Bar Association (*ibid*). However, in the case of Justice (Retd.) Abdul Hameed Dogar much water has already flown under the bridges, during course whereof all the actions taken by the then Chief of Army Staff had been declared unconstitutional including appointment of Judges of Supreme Court and High Courts. Reference may be made to the case of Justice Khurshid Anwar Bhinder (*ibid*). At this stage, Mr. Justice (Retd.) Abdul Hameed Dogar has regretted for his actions and has also thrown himself at the mercy of the Court. In the case in which helplessness has been shown by a person facing contempt proceedings has persuaded us to exercise jurisdiction of contempt sparingly. We accept appeal (ICA No. 9 of 2011) and terminate the contempt proceedings against him too. However, no exception of whatsoever nature shall be claimed by him in respect of observations made in the Sindh High Court Bar Association's case as well as in Justice Khurshid Anwar Bhinder's case.

12. M/S Raza Kazim, Khalid Ranjha and Sh. Zamir Hussain, learned counsel for Justice Syed Hamid Ali Shah, Justice Iftikhar Hussain Chaudhry and Syed Sajjad Hussain Shah, appellants in ICA No. 6, 7 & 8 of 2011 have submitted that they may be allowed two weeks' time to take instructions from the appellants in view of the orders/observations made hereinabove.

13. Mr. Ali Zafar, learned ASC who is representing Justice Ms. Yasmin Abbasey, appellant in ICA No. 11 of 2011 is not present. Mr.



Raza Kazim, learned ASC submitted that instead of dismissing the appeal in default, the same may also be adjourned in the interest of justice along with other appeals. Adjourned to 21.03.2011.

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.

JAVED IQBAL, J.

MIAN SHAKIRULLAH JAN, J.

TASSADUQ HUSSAIN JILLANI, J.

MIAN SAQIB NISAR, J.

SARMAD JALAL OSMANY, J.

AMIR HANI MUSLIM, J.

Islamabad,

March 3, 2011

APPROVED FOR REPORTING