

JUDGMENT SHEET

**PESHAWAR HIGH COURT
ABBOTTABAD BENCH
[APPELLATE ELECTION TRIBUNAL]**

(Judicial Department)

Election Appeal No. 02-A/2025

Abdul Rasheed

Appellant(s)

V e r s u s.

Returning Officer and others

Respondent(s)

For Appellant(s): Abdur Rehman Qadir, Advocate & Barrister Hassan Qadir

For Respondent:

(Election Commission) Ms. Saira Afridi Law Officer & Naveed-ur-Rehman, Returning Officer

For Respondent

(Asad Usman) Nemo.

Date of hearing: 30.10.2025.

JUDGMENT

SYED MUDASSER AMEER, J. Through this Election Appeal filed under section 63 of *The Elections Act, 2017* read with Rule 54 of *The Election Rules, 2017*, the appellant has impugned the order dated: 22.10.2025 passed by the Returning Officer, NA-18, Haripur, whereby objections of respondent No. 2 were

accepted and the appellant's nomination papers were rejected.

2. In accordance with the election schedule issued by the Election Commission of Pakistan for the bye-election in NA-18 Haripur, the appellant was among fourteen candidates who submitted nomination papers within the prescribed time. The final list of candidates was published on 18.10.2025. Thereafter, respondent No.2, Mr. Asad Usman, filed objections under Section 62(1) of *the Elections Act, 2017*. He contended that the appellant was, at the relevant time, serving as Chairman of the Village Council, Chaintry, an office governed by *the Khyber Pakhtunkhwa Local Government Act, 2013*. Relying on Section 85 of the said Act, he argued that the appellant was barred from contesting another political office without first resigning from his local government post. It was further alleged that such resignation must be tendered in writing to the competent authority, namely the Tehsil Chairman, Haripur. After hearing the parties, the learned Returning Officer accepted the objection and rejected the appellant's nomination papers through the impugned order dated 22.10.2025. Aggrieved thereby, the appellant filed the present appeal.

3. Arguments heard and record perused.

4. The contention of the appellant is that he had resigned from his office on 16.10.2025 and filed nomination papers the next day, i.e. 17.10.2025. It was urged that his resignation had also reached the competent authority on the date of scrutiny, i.e. 21.10.2025. Learned counsel further contended that Section 85 of *the Local Government Act, 2013*, a provincial statute, cannot be imported into the *Elections Act, 2017*, as the latter is a self-contained and independent federal statute.

5. These contentions are not tenable. The requirement of Section 85 is explicit: a person holding a local government office must resign *before filing* nomination papers, not by the date of scrutiny. The statute fixes a definite timeline, leaving no room for discretion. The appellant admittedly filed nomination papers on 17.10.2025, while his resignation neither accompanied those papers nor reached the competent authority at that time.

6. The argument that the resignation became effective once it was signed and ‘*given away*’ is also misconceived. Sections 82 and 85 of the Khyber Pakhtunkhwa Local Government Act, 2013 provide otherwise. For clarity, they read:

82. Resignation---(1) A member of a local council may resign his office by tendering resignation in writing to the respective Chairman.

(2) A Chairman, Tehsil Local Government may resign his office by tendering resignation in writing addressed to the Chief Minister.

(3) The resignations so tendered shall deem to be accepted and effective forthwith.

(4) Copies of all resignations shall be forwarded to the Election Commission.

85. Bar against dual membership--- A Chairman or member of a local council may contest election for any political office after resigning from his respective existing office before filing of his nomination papers.

(Underlining supplied)

7. The statute speaks plainly. It requires that the resignation in writing be tendered to the respective Chairman. When it says a candidate must resign *before filing nomination papers*, courts cannot stretch it by common-law notions of effectiveness or by counting time till scrutiny. The timeline is fixed; the duty is absolute.

The intent of Section 85 is clear; to prohibit dual membership. The principle has constitutional recognition under Article 63(1)(p) of *the Constitution*. The same issue was examined in *Fozia Khalid v. Election Appellate Tribunal* (**PLD 2018 Lahore 895**), where the Lahore High Court held that an office-holder of a local government must resign before filing nomination papers for another political office. The Court emphasized that the ‘*resign-to-run*’ principle ensures fairness, prevents misuse of official position, and safeguards the sanctity of elections. The Supreme Court dismissed a subsequent petition (C.P. No.2044-L/2018) and affirmed that view. Similarly, in *Zahid Naseem and others v. Election Commission of Pakistan and others* (**2019 CLC 830**), it was held that a person holding public office must resign before contesting another political office, as this principle ‘creates a level playing field’ and protects the integrity of the electoral process.

8. Moreover, Sections 231 and 232 of *the Elections Act, 2017*, when read with Article 63(1)(p) of *the Constitution*, incorporate the qualifications and disqualifications provided in *any law* for the time being in force. The bar contained in Section 85 of *the Khyber Pakhtunkhwa Local Government Act, 2013*, therefore, squarely applies. The argument that this provision cannot extend to parliamentary elections is

misconceived. The constitutional and statutory framework leaves no such distinction. Both provisions are reproduced below for ready reference:

“63. Disqualifications for membership of Majlis-e-Shoora (Parliament):

(1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:-

(p) he is for the time being disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament) or of a Provincial Assembly under any law for the time being in force.

Explanation: For the purposes of this paragraph "law" shall not include an Ordinance promulgated under Article 89 or Article 128."

(Underlining supplied)

“231. Qualifications and disqualifications— The qualifications and disqualifications for a person to be elected or chosen or to remain a Member of the Majlis-e-Shoora (Parliament) or a Provincial Assembly shall be such as are provided in Articles 62 and 63.”

9. The record shows that scrutiny of nomination papers was scheduled for 20.10.2025. At the time of filing his papers, the appellant was still serving as Chairman of the Village Council, Chaintry, which also

made him a member of the Tehsil Council, Haripur. He did not disclose this fact in his nomination papers.

10. The petitioner claimed to have submitted his resignation to the Secretary of the Village Council on 16.10.2025, though it was addressed to the Tehsil Chairman. The Secretary initially denied receipt of such resignation before the Returning Officer. Later, on 21.10.2025, he submitted a written statement acknowledging receipt and stating that it had been forwarded to the Assistant Director (Local Government), who in turn sent it to the Tehsil Chairman on 21.10.2025. It was received there on 22.10.2025. This sequence makes it clear that the statutory process was not followed. The law requires that resignation be tendered *directly* to the competent authority before nomination papers are filed. The appellant instead routed it through subordinate offices, causing delay. His resignation reached the competent authority only after he had filed his nomination papers.

11. The conclusion is inevitable. The appellant had not effectively resigned from his local government office before filing his nomination papers. The requirement of Sections 82 and 85 of the Khyber Pakhtunkhwa Local Government Act, 2013 was not met. The deviation from the prescribed procedure appears deliberate. The learned Returning Officer, therefore, rightly upheld the objection

of respondent No.2 and rejected the appellant's nomination papers.

12. The impugned order is neither arbitrary nor perverse. It is based on sound reasoning and supported by law. Finding no illegality or infirmity, this Tribunal declines to interfere. Resultantly, this appeal, being devoid of merit, is **dismissed**.

Announced.

30.10.2025.

Tahir CS.

J U D G E