

Form No: HCJD/C-121.  
**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

Writ Petition No. 4620 of 2021

Syed Saif Ali Shah  
Vs  
Election Commission of Pakistan, etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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21-06-2022

Barrister Aqeel, Advocate for the petitioner.  
Mr Awais Shahzad, Advocate for respondent no.4.

**ATHAR MINALLAH, C.J.-** The petitioner has assailed order, dated 15.12.2021, passed by the Election Commission of Pakistan.

2. The dispute is in the context of election conducted for electing the members of the Cantonment Board, Taxila. The petitioner had contested the election and was declared as a returned candidate from ward no.4. The eligibility of the petitioner to contest the elections was assailed before the Commission by respondents no.4 and 5. Vide the impugned order, the Commission rejected the nomination papers of the petitioner and his notification as returned candidate was set aside. The declaration was made under Article 63 (1)(h) of the Constitution of the Islamic

Republic of Pakistan, 1973. The respondent had challenged the notification of the petitioner as returned candidate before the tribunal constituted for adjudicating upon election disputes. The petition was subsequently dismissed by the tribunal for non-prosecution vide order, dated 31.03.2022. It is noted that the august Supreme Court in the case titled 'Muhammad Salman vs. Naveed Anjum' **2021 SCMR 1675** has held that the Election Commission of Pakistan is not competent to adjudicate upon the disqualification of a returned candidate under Article 63 of the Constitution of the Islamic Republic of Pakistan, 1973. Nonetheless, the respondents had availed the statutory remedy by filing a petition before the tribunal, which was later dismissed.

3. For the above reasons, the Commission was bereft of jurisdiction to give a declaration regarding disqualification of the petitioner and, therefore, the petition is allowed. Consequently, the order, dated 15.12.2021 is hereby set aside.

*CHIEF JUSTICE*

Asif Mughal/\*