

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2058 of 2020

Malik Munsif Awan Advocate

Vs

Federation 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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01) 30-07-2020. Mr Muhammad Ikram Chaudhary Advocate, for the petitioner.

ATHAR MINALLAH, CJ.- The petitioner who is an enrolled advocate has challenged the respective appointments of respondents no. 6 to 13 as Special Assistants of the Prime Minister of Pakistan. He has also questioned the vires of sub rule (6) of rule 4 of the Rules of Business, 1973 [hereinafter referred to as the "**Rules of 1973**"].

2. The learned counsel has been heard at length and with his able assistance the record has also been perused. The learned counsel has mainly argued that rule 4(6) of the Rules of 1973 is ultra-vires the Constitution. In the memorandum of the petition, the petitioner has also taken the plea of dual nationality for seeking a declaration regarding disqualification of the respondents.

3. The Rules of 1973 have been made and duly notified by the Federal Government in exercise of powers vested under Articles 90 and 99 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the "**Constitution**"]. Sub Article 3 of Article 99 empowers the Federal Government to make rules for the allocation and transaction of its business. It is pursuant to the said powers that the Federal Government has made the Rules of 1973 and has described the "Organization of Divisions" in rule 4 *ibid*. Sub rule 6 of rule 4 enables the Prime Minister to appoint Special Assistant or Special Assistants and to determine their status and functions.

4. The Rules of 1973, particularly rule 4(6) are not in conflict with the provisions of the Constitution. Special Assistants are not members of the Federal Cabinet. Moreover, they are distinct from Advisors appointed by the President on the advice of the Prime Minister under Article 93(1) of the Constitution. The Prime Minister is the chief executive of one of the most important organs of the State and has to perform multiple/complex functions. A person elected as Prime Minister is answerable to the people of Pakistan and the Majlis-e-Shoora (Parliament). The onerous role of the Prime Minister described under the Constitution cannot be performed by the latter alone. In order to enable the Prime Minister to transact business of the Executive organ of the State, the latter ought to

have the freedom to appoint officials or other persons for assistance. Rule 4(6) is one of such modes whereby the Prime Minister has been empowered to appoint Special Assistants. There is no restriction regarding the number of Special Assistants that can be appointed by the Prime Minister.

5. There is also no restriction of appointing persons having dual nationality. The only restriction provided in the Constitution is under Article 63(1)(c) and it is confined to disqualification of a person from "being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament)". This disqualification is also attracted in case of the membership of the Provincial Assembly. There are some statutes, which prescribe renunciation of nationality of another State as an eligibility condition for employment. There is no such restriction for appointment of a Special Assistant under rule 4(6) of the Rules of 1973.

6. It is noted that the Pakistan Citizenship Act, 1951 [hereinafter referred to as the "**Act of 1951**"] expressly allows a citizen of Pakistan to hold dual nationality as has been described in section 14(3) *ibid*. It is not fair to raise doubts or to be skeptical regarding appointment of a dual national as a Special Assistant by the Prime Minister. The importance and contributions made by dual nationals cannot be denied. The patriotism

of Pakistani citizens holding dual nationality cannot be doubted. The august Supreme Court has acknowledged the contributions of Overseas Pakistanis in numerous judgments and reference in this regard may be made to the cases of "Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others" [PLD 2012 S.C. 1089] and "Muhammad Ibrahim Sheikh v. Government of Pakistan through Secretary Ministry of Defence and others" [PLD 2019 S.C. 133]. Patriotism of a person who is a citizen of Pakistan cannot be doubted nor suspected unless the State can demonstrably and without a shadow of doubt establish otherwise. A person who holds dual nationality is indeed a citizen of Pakistan and thus his or her commitment to Pakistan and patriotism cannot be doubted. A Pakistani citizen holding dual nationality is thus not ineligible or barred from being appointed by the Prime Minister as a Special Assistant under rule 4(6) of the Rules of 1973. Moreover, interference by this Court would adversely affect the transaction of business of the Federal Government and prevent the Prime Minister from discharging obligations under the Constitution, thus warranting restraint.

7. For the above reasons, this petition is devoid of merits and thus **dismissed in limine**.

CHIEF JUSTICE