

JUDGMENT

MOHSIN AKHTAR KAYANI, J.---Through this common judgment, I intend to decide the captioned writ petitions as well as criminal original petition as common questions of law and facts are involved in all the captioned writ petitions.

2. Brief facts referred in W.P. No.4761/2013 (Sh. Ahsan-ud-Din, etc. v. FOP, etc.) are that Petitioners Nos.1 and 2, who are former Presidents of Lahore High Court Bar Association, Rawalpindi Bench, Rawalpindi, whereas petitioner No.3, who is former President of District Bar Association Attock (hereinafter the "first three petitioners"), in capacity of lawyers appear before different superior Courts of country and rendered legal assistance to the Courts in matter of their legal rights and in this capacity they always came forward to take all actions and steps for protection and defence of these rights for enforcement of fundamental rights and with this intention they claims that they have locus standi to file the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. In capacity of faculty members of bar association the petitioners are concerned and worried about the security of former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry as no efficacious remedy is available to them, as a result whereof they have filed this writ petition with the following prayer:

"It is, therefore, humbly prayed that this writ petition may very kindly be accepted and respondents be directed to provide full security to Mr. Iftikhar Muhammad Chaudhry, former Chief Justice of Pakistan by providing "bullet proof" and "jammer vehicle" along with elite force and squad of rangers. It is further prayed that any other suitable, just and proper relief, which this Hon'ble Court may deem fit and necessary in the circumstances may also be granted."

3. The petitioners in this writ petition contend that former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry has dealt with various cases of high profile nature such as the high treason case of Gen. Parvez Musharraf who was declared usurper under Article 6 of the Constitution of the Islamic Republic of Pakistan, 1973, whereas the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry has also dealt with different cases in suo motu jurisdiction, to name a few, the controversial privatization of Pakistan Steel Mills, Hajj Scandal, Rental Power Case, NRO case, Asghar Khan's Case, LPG Case, NICL Case, LNG Case, EOBI Case, Bank of Punjab Case, PIA Case, distribution of funds among nearer and dearer of former Prime Minister of Pakistan in the name of development scheme from government exchequer, contempt notice to Yousaf Raza Gillani, Civil Aviation Fateh Jang Airport Case, Touqeer Sadiq OGRA Scam, out of turn promotion of 21-22 grade officers by Prime Minister Case, Reckodic Case, Suo Motu Notice against rangers for killing young boy in Karachi, Price Adjustment Case of Petrol and CNG, Illegal Imposition of GST Case, Punjab Police Foundation Case, DHA Society Case, and Missing Persons Case. Petitioners further contend that the above referred cases resulted into difficult situation and in this regard former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry requires security of extreme nature as he himself could not act and plead before the Courts in terms Article 207(3) of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, petitioners have invoked the jurisdiction of this Court by way of filing instant writ petition. It has further been argued that in such like situation when former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry is left without any remedy, the principle of ubi jus ibi remedium (there is no wrong without a remedy) attracts. The petitioners to strengthened their arguments have placed their reliance upon PLD 1988 Supreme Court 416 (M/s Benazir Bhutto v. FOP), PLD 1993 Supreme Court 473 (Mian Muhammad Nawaz Sharif v. President of Pakistan), PLD 1996 Supreme Court 324 (Al Jihad Trust v. FOP), PLD 2011 Supreme Court 963 (Corruption in Hajj Arrangements in 2010), PLD 2011 Supreme Court 407 (Munir Hussain Bhatti v. FOP), PLD 2012 Supreme Court 774 (Muhammad Azhar Siddiqui v. FOP), PLD 2010 Supreme Court 1109 (Bank of Punjab v. Haris Steel Industries), PLD 2012 Supreme Court 1089 (Syed Mehmood Akhtar Naqvi v. FOP), and PLD 2012 Supreme Court 92 (Baz Muhammad Kakar v. FOP). The first three petitioners have also drawn attention of this Court towards the Rules for the Use of Staff Cars, 1980, whereby the term "vulnerable dignitary" has been used which means that any person who is exposed to risk, attached or harm, either physical or emotionally, has to be given due protection by the State and keeping in

view the background referred by petitioners, they claimed that relief prayed in the instant writ petition be granted.

4. On the other hand, Mr. Riaz Hanif Rahi (hereinafter the "fourth petitione") for being a Member of the Bar Association and in his individual capacity, filed Writ Petition No.2228/16 (Riaz Hanif Rahi, etc. v. FOP, etc.) on the ground that he cannot remain silent when his contribution as taxpayer is being wasted continuously on the issue not permitted by law and on giving advantage to a person (former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry) who is not entitled for Honda Accord Car No. CIA-2, 2400cc, along with additional vehicle bearing registration No. GD-0341 (bullet proof car, 6000cc) with unlimited petrol and maintenance with additional security and escort vehicles. The petitioner has prayed for the following relief:

- i. Reasons may kindly be given by determining the questions raised pursuant to order dated 11.05.2016 passed in I.C.A. 65/2014 by the Hon'ble Division Bench of this Court.
- ii. Direct respondents Nos.1 to 3 to consider the application dated 13-05-2016 on such terms and conditions as this Honorable Court deems proper and fit.

The petitioner-in-person mainly argued that former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry is not allowed to retain additional benefits on any ground and respondents Nos.10 to 12 i.e. Sh. Ahsan-ud-Din, ASC, Toufeeque Asif, ASC, and Syed Azmat Ali Bukhari, ASC have no locus standi to file the writ petition to render advantages to respondent No.13/former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry, who himself has not approached this Court for the same cause; that this Court has no jurisdiction to pass order which may generate discrimination and law does not allow to pass order for personal advantage; that respondent No.13/former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry is a head of a political party, who could not be allowed to launch campaign at the cost of public exchequer.

5. Furthermore, Mr. Riaz Hanif Rahi by filing Writ Petition No.1055/2017 (Riaz Hanif Rahi, etc. v. FOP, etc.), has challenged the order dated 05.09.2016 passed by the Secretary to Prime Minister of Pakistan holding therein that a 2400cc car is to be provided to every outgoing Chief Justice of Pakistan w.e.f. former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry. Mr. Riaz Hanif Rahi has also assailed order dated 09.01.2014 passed in respect of provision of a bullet proof car i.e. Mercedes Benz No.GD-3041 Model 2005 to former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry as replacement of protective Mercedes Benz No.IDE-5445 (Model 1991) as a special dispensation for a period of three months. In essence, the petitioner-in-person has made the following prayer in the instant writ petition.

"It is, therefore, respectively prayed that instant writ petition may kindly be accepted and impugned minutes passed on 09.02.2016 and the order of PM dated 09.01.2014 for grant of vehicle for three months may kindly be declared to have passed without lawful authority and of no legal effect in the interest of justice and equity."

The petitioner-in-person further relied upon the case of *Mustafa Impex Karachi v. Government of Pakistan* (PLD 2016 Supreme Court 808) with the view that it was held therein that Prime Minister cannot exercise the powers of Cabinet and Prime Minister as a single individual is not the Cabinet and any decision taken by Prime Minister on his own initiative lacked the authority of law and constitution, in this respect, petitioner-in-person has also relied upon the case *Gadoon Textile Mills v. WAPDA* (1997 SCMR 703). Petitioner-in-person/Mr. Riaz Hanif Rahi also contended that the awarding of gift from public exchequer amounts to bribe from the funds of public for their personal benefits; that under the monetization policy the Hon'ble Judges can retain last vehicle in use on the depreciated value whereas former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry as well as Hon'ble Judges retired thereafter, except for former Chief Justice of Pakistan, Mr. Jawad S. Khawaja, have taken the vehicle, therefore, they are not entitled to receive another vehicle which is not permissible under the law.

6. In addition, Mr. Riaz Hanif Rahi, has also filed Writ Petition No.1979/2017 (Riaz Hanif

Rahi v. FOP, etc.), and prayed for the following relief:

"It is, therefore, respectfully prayed that instant writ petition may graciously be accepted and vehicle No.CIA-2 Honda Accord, Model 2006, 2400CC, received at depreciated value of Rs.549,817/- may kindly be held to have been delivered without lawful authority and have no legal effect."

The petitioner-in-person has arrayed the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry as respondent No.5 and claimed that former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry has received the vehicle on depreciated value but he was restrained by the Hon'ble Supreme Judicial Council on 09.03.2007 not to perform functions as Judge of Supreme Court and as Chief Justice of Pakistan till the pendency of the reference and the said order is in field as the reference is pending adjudication, therefore, he is not allowed to receive any benefit in this regard. Mr. Riaz Hanif Rahi further argued that respondent No.5/former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry challenged the restraining order dated 09.03.2007 of the Hon'ble Supreme Judicial Council along with reference by filing C.P. No.21 of 2007 in the apex Court and the final decision was passed and reported as PLD 2010 Supreme Court 61 (Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary) but the said judgment is ignorable.

7. Whereas, through the captioned Criminal Original No.176-W-2017, Mr. Riaz Hanif Rahi, ASC contends that respondent/Mr. Iftikhar Muhammad Chaudhry, former Chief Justice of Pakistan, and Sh. Ahsan-ud-Din, ASC may please be directed to comply with the order dated 02.12.2016 passed in Writ Petition No.4761/2013 whereby Sh. Ahsan-ud-Din, ASC was directed to produce the protected vehicle in the Islamabad High Court which was in use of former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry. The applicant in this case contended that the said order has not been complied with whereas the order still holds the field as the same was not set aside and respondents are committing contempt.

8. On the contrary, the Federation of Pakistan has been presented in all the captioned cases and para-wise comments have been filed on behalf of quarters concerned. Whereas, Cabinet Division through the para-wise comments has taken the stance that Cabinet Division provides protected vehicle to vulnerable dignitaries, subject to availability and approval of Prime Minister in pursuance of Rule 24(2)(a) of the Rules for the Use of Staff Cars, 1980 and accordingly, Mercedes Benz No.GD-0341 (model 2005) was provided on 07.01.2014 to Mr. Justice (R) Iftikhar Muhammad Chaudhry, former Chief Justice of Pakistan, for a period of three months with approval of Prime Minister with direction of POL and Repair/Maintenance whereas expenditure has to be paid by the user. It was further acknowledged in the comments that necessary security has been provided by Ministry of Interior as per SOPs.

9. The Cabinet Division has also submitted their comments in connected Writ Petition No.1979/2017 whereby it was admitted that bullet proof vehicle was provided by Cabinet Division for three months with approval of Prime Minister and the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry, who was retired on 11.12.2013 with full benefits, was legally entitled to purchase the allotted vehicle at depreciated price and there is no disparity under the policy for purchase of vehicle in possession at the time of retirement. The Cabinet Division, Government of Pakistan also acknowledged in their para-wise comments submitted in Writ Petition No.1055/2017 that Prime Minister was pleased to order that 2400cc car shall be provided to every outgoing Chief Justice of Pakistan w.e.f. the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry. The facility will continue to hold effect till the lifetime of the Chief Justice of Pakistan and expenditure of maintenance and POL shall be catered by the Supreme Court of Pakistan.

10. In Writ Petition No.2228/2016, Ministry of Law and Justice Division has submitted their para-wise comments and contended that Ministry of Law is not presumed to determine questions raised in the instant writ petition and same could only be determined by the Hon'ble Court.

11. The Ministry of Interior, Government of Pakistan has also submitted their report and placed

relevant record which reveals that a foolproof security has been provided to the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry which comprised of fourteen (14) officials including Gunman, House Guards, Sub-Inspectors, Head Constables, Drivers and two pickups. Ministry of Interior also relied upon amendment of PO.NO 2 of 1997, whereby Clause (e) was inserted in the Supreme Court Judges (Leave, Pension and Privileges) (Amendment) Order, 2016, whereby round-the-clock posting of security guards at the residence by the concerned police during the lifetime of judge has to be maintained. Ministry of Interior also provided details for security arrangement of retired judges of the Supreme Court of Pakistan vide letter dated 12.10.2017 has been appended as Annexure-III. Ministry of Interior has also disclosed the details of security reports of the law enforcement agencies whereby no threat is in existence to the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry as of today. Similarly, law and justice division has also filed report and put emphasis on the amendment provided in the Supreme Court Judge (Leave, Pension and Privileges) Order (PO-II), 1997.

12. In last, former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry has also filed his para-wise comments in Writ Petition No.1979/2017 through Mr. Mohiuddin Amir Mughal, Advocate and denied the contention of petitioner/Mr. Riaz Hanif Rahi, ASC and has referred PLD 2009 SC 879 (Sindh High Court Bar Association v. FOP) wherein the Larger Bench of the Supreme Court of Pakistan, with the ratio of 10:3, has quashed the Reference against former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry; that vehicle bearing registration No.CIA-2 was sold to former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry in 2014 after following due process with the permission of competent authority and petitioner/Mr. Riaz Hanif Rahi, ASC has no locus standi to invoke the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as he has only scandalized the position of respondent No.5/ former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry as well as the institution of judiciary as a whole. Whereas, the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry has not submitted any reply in contempt application No.176-W-2017, however reply on his behalf was submitted in Criminal Original No.13/2017 in I.C.A. No.65/2014 mainly on the ground that he was neither party in the I.C.A. nor even any direction was passed against him for return of vehicle.

13. Learned Deputy Attorney General in all these cases has taken a stance that all the captioned writ petitions are not maintainable as petitioners have no locus standi to claim any relief under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973; that the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry is enjoying his last vehicle in use bearing registration No.CIA-2 which was purchased by him at the time of retirement under the Rules for the Use of Staff Cars, 1980 and the protected vehicle bullet proof Mercedes Benz bearing registration No.GD-0341 was provided with the approval of Prime Minister of Pakistan for a period of three months from the date of his retirement as a special dispensation; that in the earlier round of proceedings the Hon'ble Division Bench of this Court has passed direction in I.C.A. No.65/2014 to decide the questions on the locus standi being the most important question and under the said order the first three petitioners have no locus standi to claim any relief in Writ Petition No.4761/2013 on behalf of former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry, who himself has not claimed for such relief. Similarly, learned DAG has also argued that case of Mr. Riaz Hanif Rahi, ASC is of a similar status as having no locus standi to claim any relief and in this regard the learned DAG has relied upon 1979 SCMR 299 (Nisar Ahmad v. Additional Secretary Food and Agriculture Government of Pakistan), PLD 2007 SC 386 (Province of Balochistan through Secretary Excise and Taxation Department v. Murree Brewery Company Ltd.), 1987 SCMR 1577 (Noor Jehan Begum v. Abdus Samad), 2011 SCMR 279 (Anjuman Fruit Arhtian v. Deputy Commissioner, Faisalabad), PLD 2007 SC 52 (Hafiz Hamdullah v. Saifullah Khan), 2001 YLR 916 [Sindh] (Subzi and Fruit Commission Agents Association v. Commissioner, Larkana), PLD 2013 Balochistan 13 (Asmatullah Khan v. Government of Balochistan), 2012 MLD 97 (Moula Bux Khatian v. Province of Sindh), 2014 YLR 825 [Karachi] (Saeed Ismail Burero v. Province of Sindh) and PLD 2013 Supreme Court 829 (regarding Pensionary Benefits of the Judges of Superior Courts from the date of their respective retirements, irrespective of their length of service as such judges), application by Abdul Rehman Farooq Pirzada, and Begum Nusrat Ali Gonda v. FOP, etc.)

14. Arguments heard, record perused.

15. From the perusal of record it has been observed that petitioners i.e. Sh. Ahsan-ud-Din, Mr. Toufeeque Asif, ASC, and Syed Azmat Ali Bukhari, ASC, (hereinafter called the "first three petitioners") who are members of Supreme Court Bar Association and remained President of High Court Bar Association, whereas Syed Azmat Ali Bukhari, ASC remained President of District Bar Association Attock, filed Writ Petition No.4761/2013 with prayer to provide foolproof security to former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry by way of providing bullet proof car and jammer vehicle along with elite force and rangers squad as the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry had dealt different high profile cases such as case of Gen. Parvez Musharraf on the charge of high treason under Article 6 of the Constitution of the Islamic Republic of Pakistan, 1973, privatization of Pakistan Steel Mills, Hajj Scandal, Rental Power, NRO, Asghar Khan's Case, LPG, NICL, LNG, EOBI, Bank of Punjab, PIA, distribution of funds among nearer and dearer of former Prime Minister of Pakistan in the name of development scheme from government exchequer, contempt notice to Yousaf Raza Gillani, Civil Aviation Fateh Jang Airport, Touqeer Sadiq OGRA Scam, out of turn promotion of 21-22 grade officers by Prime Minister Case, Reckodic Case, Suo Motu Notice against rangers for killing young boy in Karachi, Price Adjustment Case of Petrol and CNG, Illegal Imposition of GST, Punjab Police Foundation, DHA Society, and Missing Persons.

16. It has further been argued in the writ petition that majority of the cases are against political elites of the country and there is threat to the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry, who was retired on 11.12.2013 from the apex Court and prior to his retirement he, while considering these factors in mind as well as the prevalent situation of the country at that time, applied for provision of a bullet proof car through Registrar of the Supreme Court of Pakistan vide letter dated 26.09.2013 for foolproof security arrangement for himself and for his family. As a result whereof, the Ministry of Interior, Government of Pakistan, vide letter dated 06.12.2013, suggested provision of a bullet proof car besides other measure to ensure foolproof security to former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry, however it has been observed that Mercedes Benz car bearing registration No.IDE 5445, Model 1991, was taken away on 18.12.2013 from former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry as the said vehicle was in dilapidated condition and the same was returned through Nisar Ahmed, the then P.S. of former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry on 02.01.2014. It has further been observed from the record that Prime Minister of Pakistan was pleased to approve the replacement of protective Mercedes Benz bearing registration No.IDE-5445, Model 1991 with another protected Mercedes Benz bearing registration No.GD-0431, Model 2005, as special dispensation for three months whereas the cost of the POL and maintenance against the said vehicle was not approved and the same was placed upon the user through his personal arrangement on the reference of the Islamabad High Court's order dated 03.01.2014 passed in earlier round of this writ petition (i.e. W.P.No.4761/ 2013) and the Supreme Court of Pakistan's letter dated 08.01.2014. The said letter also contains direction to Nisar Ahmed, the then P.S. to former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry to take over the vehicle from the division for compliance of the order of the Islamabad High Court.

17. The above referred background gives rise to connected petitions filed by the fourth petitioner as the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry himself not claimed any privilege, protection, or security by filing the captioned writ petition under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973 whereas three learned members of the Bar Association i.e. Sh. Ahsan-ud-Din, ASC, Toufeeque Asif, ASC, and Syed Azmat Ali Bukhari, ASC (first three petitioners) have filed the writ petition for claiming rights of the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry on his behalf, which is not under any authorization but only with reference to their association with the judicial system. In the initial round of proceedings, the learned single Bench of this Court has passed a judgment dated 15.01.2014 in which certain directions were issued, however the same was assailed in I.C.A. No.65/2014 (FOP v. Sh. Ahsan-ud-Din, etc.) which was decided by the Hon'ble Division Bench of this Court and matter was remanded back to this Court for consideration of the legal and factual issues mentioned in Para-6(i) to (ix) wherein besides other questions the Hon'ble Division Bench

has framed question No.3 which has been reproduced as under:

III. Question of locus standi was not examined which could have been taken into consideration if such opportunity would have been afforded in the respondent side in the writ petition.

Besides other issues, this Court has directed the parties to argue the case on the issue of locus standi wherein petitioners Sh. Ahsan-ud-Din, ASC, Toufeeque Asif, ASC and Syed Azmat Ali Bukhari, ASC (first three petitioners) have argued their case on the strength that former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry was not allowed to act and plead in terms of Article 207(3) of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, they have filed the instant writ petition on his behalf, however for the sake of understanding, Article 207(3) of the Constitution of the Islamic Republic of Pakistan, 1973 is reproduced as under:

"Art.207(3): A person who has held office as a permanent Judge-

- (a) of the Supreme Court, shall not plead or act in any court or before any authority in Pakistan;
- (b) of a High Court, shall not plead or act in any court or before any authority within its jurisdiction ; and
- (c) of the High Court of West Pakistan as it existed immediately before the coming into force of the Province of West Pakistan Dissolution) Order, 1970, shall not plead or act in any court or before any authority within the jurisdiction of the principal seat of that High Court or, as the case may be, the permanent bench of that High Court to which he was assigned."

18. The first three petitioners on the strength of above referred provision contended that former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry is not allowed to plead and act before any Court and due to such embargo he has been left with no remedy whereupon the legal maxim i.e. ubi jus ibi remedium has been referred to answer the said proposition and it has further been argued that in terms of Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973, the right to life is the most fundamental right of an individual which has to be given protection and state is responsible to give protection. The petitioners have relied upon PLD 1961 SC 431 (Syed Akhlaque Husain v. The Judges of the High Court of West Pakistan), PLD 1963 Lahore 82 (Hashim v. The State), and PLD 1965 SC 527 (Government of Pakistan v. Akhlaque Hussain) to maintain their arguments.

19. Whereas, on the other hand, Mr. Riaz Hanif Rahi, ASC (hereinafter called the "fourth petitioner") has filed the captioned writ petitions and criminal original petition i.e. W.P. No.2228/2016 (Riaz Hanif Rahi, etc. v. FOP, etc.), W.P. No.1979/2017 (Riaz Hanif Rahi, etc. v. FOP, etc.), W.P. No.1055/2017 (Riaz Hanif Rahi, etc. v. FOP, etc), and Cr1. Org. No.176-W-2017 (Riaz Hanif Rahi, etc. v. Iftikhar Muhammad Chaudhry, etc.), and taken the stance therein that he is a taxpayer and he has every right to seek a relief from the Court in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and raised the ground that former Chief Justice of Pakistan, Mr.Iftikhar Muhammad Chaudhry is not permitted to take any advantage or facility of the vehicle bearing registration No.GD-0341 (2005) which is not covered under the Supreme Court Judges (Leave, Pension and Privileges) Order (PO-2), 1997, and any such facility is illegal and even any further dispensation granted by Prime Minister is in violation of the case reported as Mustafa Impex Karachi v. Government of Pakistan (PLD 2016 Supreme Court 808). He has also filed three different applications to the I.G. of Police, ICT, Secretary Cabinet Division, and Secretary Law and Justice Division with the claim that expenditure of maintenance may kindly be withheld; that the bullet proof car given to former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry may be withdrawn along with security equipments and security vehicles as all those were beyond the scope of the Judges' privileges. In order to answer these question, this Court has to attend the question of locus standi of all the petitioners at the first instance, however in order to resolve this question, this Court has gone through the following case laws submitted by

the parties during the course of arguments on the issue of locus standi and public interest.

- * PLD 1988 SC 416 (M/s Benazir Bhutto v. FOP),
- * PLD 1993 SC 473 (Mian Muhammad Nawaz Sharif v. President of Pakistan),
- * PLD 1996 SC 324 (AI Jihad Trust v. FOP),
- * PLD 2011 SC 963 (Corruption in Hajj Arrangements in 2010),
- * PLD 2011 SC 407 (Munir Hussain Bhatti v. FOP),
- * PLD 2012 SC 774 (Muhammad Azhar Siddiqui v. FOP),
- * PLD 2010 SC 1109 (Bank of Punjab v. Haris Steel Industries),
- * PLD 2012 SC 1089 (Syed Mehmood Akhtar Naqvi v. FOP),
- * PLD 2012 SC 92 (Baz Muhammad Kakar v. FOP),
- * 1979 SCMR 299 (Nisar Ahmed, etc. v. Additional Secretary, Food and Agriculture, etc.)
- * PLD 2007 SC 386 (Province of Balochistan v. Murree Brewery Company Ltd.)
1987 SCMR 1577 (Mst. Noor Jehan Begum v. Dr. Abdus Samad, etc.),
- * 2011 SCMR 279 (Anjuman Fruit Arhtian, etc. v. Deputy Commissioner, Faisalabad, etc.),
- * PLD 2007 SC 52 (Hafiz Hamdullah v. Saifullah Khan, etc.),
- * 2001 YLR 916 (Subzi and Fruit Commission Agents Association v. Commissioner, Larkana, etc.),
- * 2015 PLC (CS) 1259 Islamabad (Iftikhar Rashid, etc. v. FOP, etc.),
- * PLD 2013 Balochistan 13 (Asmatullah Khan v. Government of Balochistan, etc.),
- * 2012 MLD 97 Sindh (Moula Bux Khatian v. Province of Sindh, etc.),
- * 2014 YLR 825 Sindh (Saeed Ismail Burero v. Province of Sindh, etc.),

20. From the perusal of above referred case laws, following principles have been emerged on the question of locus standi and public interest litigation:

- (i) Aggrieved person is a sine qua non for invoking writ jurisdiction of High Court and petitioner has to establish direct or indirect injury caused to him and substantial interest in the subject matter of the proceedings for invoking the jurisdiction.
- (ii) Aggrieved party has not been defined in Constitution of the Islamic Republic of Pakistan, 1973 and it depends upon circumstances of each case for invoking of jurisdiction of Article 199(2) of the Constitution of the Islamic Republic of Pakistan, 1973.
- (iii) Aggrieved person must claim a right with reference to subject matter of writ petition and the right has to be claimed as a fundamental right.
- (iv) Aggrieved person has a legal right to exercise the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

- (v) Article 199(1)(a) of the Constitution of the Islamic Republic of Pakistan, 1973, can be invoked by the aggrieved person, which denotes a person who has suffered a legal grievance, against whom the decision has been pronounced which has wrongly deprived him or wrongly refused to him something which he was legally entitled to.
- (vi) Person invoking constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has to establish that any of his legal or fundamental right guaranteed under the Constitution has been violated and resulted into a legal loss.
- (vii) Right which is the foundation of application under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is a personal and individual right and such right may be a statutory right or right recognized by law whereas a person or a party can be said to be aggrieved when he is denied of a legal right by someone who has a legal duty to perform relating to that right.
- (viii) Aggrieved person has to demonstrate that relief sought is the one which he is legally entitled to seek under any provision of law, rules or regulations and no other forum or remedies are available to him.
- (ix) Taxpayers have a right to inquire from the authorities as to have a right of life and liberty could be denied to them.
- (x) The burden of proof was upon the petitioner to demonstrate as to which of his fundamental right has been infringed upon to maintain the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

Principles Relating to Public Interest Litigation:

- (xi) In cases of public interest litigation, the rule on locus standi has to be relaxed in order to include a person whose bona fide makes an application for the violation of any constitutional right of a determined class of a person whose grievances gone unnoticed and un-redressed.
- (xii) While considering the guarantees of fundamental rights the approach of the Court should not be narrowed but elastic enough to march with the changing times and guided by the object for which it was embodied in the constitution of fundamental rights.
- (xiii) A lawyer cannot survive if the judiciary is not independent, it appears that remedies under Articles 199 and 184(3) available in High Court and Supreme Court, respectively, are concurrent in nature and question of locus standi is relevant in High Court but not in Supreme Court.
- (xiv) The judiciary, either High Court and Supreme Court is bound to protect and preserve the constitution as well as to enforce fundamental rights conferred by Constitution either individually or collectively, in exercise of jurisdiction conferred upon it either Article 199 or 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973.
- (xv) Article 184(3) empowers the Supreme Court to exercise the jurisdiction thereunder whenever the Court considers the matter is of public importance and that it pertains to enforcement of fundamental rights. The determination on both these account is to be made by the Supreme Court of Pakistan itself.
- (xvi) Violation of any judgment of the superior Courts by the State organizations is considered to be substantially detrimental to the administration of justice and

amounts to defiance principles of independent judiciary and trichotomy of powers and has also constituted a violation of the due process clause of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, in such circumstances anyone can agitate the matter before the Court.

- (xvii) To safeguard the public property the matter can be agitated if the same falls within public importance case relating to enforcement of any fundamental right.
- (xviii) Question of public importance has to be determined by the Court with reference to facts and circumstances of each case.
- (xix) Right of access to justice and independent judiciary is also one of the most important rights of the citizen and if there is any(sic) independence to judiciary, it would be tantamount to denial of access to justice, which is undoubtedly a fundamental right under Article 199 of the Constitution.
- (xx) Whenever there is violation of Articles 199 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 it would involved a question of public importance with reference to enforcement of fundamental rights of the citizens, who may approach the Court for enforcement of these rights under Article 184(3) of the Constitution without having to discharge the burden of locus standi.
- (xxi) In case of public interest litigation one can agitate the relief on his behalf and public against various functionaries, where they have failed to perform their duties relating to welfare public at large which they are bound to perform under law, and petitioner's bona fide in that respect is also established.

21. The above referred case laws cited by all the parties persuaded this Court to go through the Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 which has been reproduced as under:

"Jurisdiction of High Court: Article 199.

1. Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law, -

(a) on the application of any aggrieved party, make an order -

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or

(b) on the application of any person, make an order -

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such

directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.

2. Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged.

3.

4. ..

5. ..

(Underlining for emphasis is mine)

22. The status of Sh. Ahsan-ud-Din, ASC, Mr. Toufeeque Asif, ASC, and Syed Azmat Ali Bukhari, ASC (first three petitioners) as well as Mr. Riaz Hanif Rahi, ASC (fourth petitioner) with reference to terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, it can fairly be assumed that the first three petitioners do not fall within the definition of aggrieved person as there is no fundamental right expressed by them in their arguments nor the same was demonstrated on record as to how first three petitioners claim the right of former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry for provision of a bullet proof and jammer vehicles, especially when he himself does not think in such a manner till this date, even otherwise, from the filing of writ petition since 2013 till this date, not a single incident has been referred where any threat has been extended to former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry, even this Court requisitioned the internal reports of Ministry of Interior to demonstrate any potential threat level, wherein it has categorically been stated that no threat was reported to the former Chief Justice of Pakistan and even otherwise, if such threat was available or not, it is the prime duty of the Government of Pakistan to provide security to every citizen of Pakistan by all means, whether he was former Chief Justice of Pakistan or not, in terms of the Constitution of the Islamic Republic of Pakistan, 1973.

23. The other important aspect which has been raised in the writ petitions is the question of public importance as to whether the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry is entitled to take any such benefit which has not been in existence under any law, Act, rules, or regulations, although the first three petitioners claimed that Article 207(3) of the Constitution of the Islamic Republic of Pakistan, 1973 placed an embargo upon the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry to act or plead in any case before any Court of law, as per their stance fundamental right of the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry has also been denied and he cannot seek any remedy in this regard. The arguments are misplaced as the two terminologies used in the constitutional provisions of Article 207(3)(a) are "plead" and "act" whereas the term "plead" means "beg, treat, besieged, implore, appeal to, petition, supplicate, importune, prayed to, request, ask earnestly, call on, adjure, apply to, solicit", while the term "act" means "take action, take steps, take measures, take initiative, move, make a move, react, do something, proceed, go ahead, make progress, make headway, be active, being employed, be busy". (referred from Oxford Thesaurus of English). The said definitions as well as meanings give rise to a situation that the embargo is with reference to professional career of any Judge of the Supreme Court to earn/practice as an Advocate after retirement with reference to his status.

24. Whereas, placing the matter in hand in juxtaposition with the above referred terms of "plead" and "act" along with its respective definitions and meanings, it is evident that the Article 207(3)(a) puts embargo on retired Judges/Chief Justices of Supreme Court of Pakistan not to practice as an advocate before any subordinate Courts or authority is only to protect the dignity, respect, honour, prestige, or status of the Office of Chief Justice of Pakistan or Judge of the Supreme Court of Pakistan as for being the highest office under Article 175 of the Constitution of the Islamic Republic of Pakistan, 1973. On the other hand, despite putting on embargo upon the

retired Judges of the Supreme Court or Chief Justices of Pakistan under Article 207(3)(a), the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997 has been introduced to safeguard their needs and it is expected under the said Presidential Order that the Federation and the State is giving due protection in recognition to the services of all those who have served the highest esteemed office in a fair and on equitable high standard, therefore, this Court is not convinced with the arguments of first three petitioners of Writ Petition No.4761/2013. Whereas, such state of affairs are dealt in details by the apex Court vide order dated 25.01.2018 passed in Civil Appeal No.1703 of 2013 (Shahid Anwar Bajwa v. S.M. Asif and others), wherein it was held that:

"It is appropriate to consider the relevant constitutional/ statutory history of the restriction on the ex-Judge(s) of the superior Courts to practice before the same Court. The restriction was first introduced in 1956 in the shape of Article 166(3) of the 1956 Constitution, however, such restriction ceased to exist in the year 1958 when the Constitution of 1956 was abrogated. Thereafter, the restriction was reintroduced by the Retired Judges (Legal Practice) Order, 1962 (Order of 1962), but the same was limited to such Judges who were removed from service; however, a retired Judge retained the right to practice before the same High Court. In the Constitution of 1962, there was no provision imposing any such restriction on a permanent Judge of the High Court after his retirement or removal, however, by means of the Legal Practice (Disqualifications) Ordinance, 1964, the Order of 1962 was repealed and the bar was reintroduced. Ultimately, the restriction was again introduced in the form of Article 207(3)(b) of the Constitution of 1973. Thereafter, the Ordinance of 1964 was also repealed as the issue had already been dealt with by the Constitution itself. In this regard it is to be noted that the validity of the Ordinance of 1964 was challenged on the ground of being violative of fundamental rights. The Full Bench of the High Court in the case of Syed Akhlaque Hussain Advocate (Writ Petition No. 217 of 1964) held that the provisions of the said Ordinance offended against Fundamental Right, namely, the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business, but on appeal, this Court vide the majority judgment reported as Pakistan v. Syed Akhlaque Hussain (PLD 1965 SC 527) held that the Ordinance of 1964 did not violate any of the Fundamental Rights of citizens embodied in the Constitution. The issue was again considered by this Court in M/S Haider Automobile's case (supra) wherein it was held as under:

"The right to practice the profession of law is a right available subject to a system of licensing under the Bar Councils Act or under the powers of the High Court under its Letters Patent and of the Supreme Court under its own rules and a person seeking to practise has to obtain a licence in that behalf upon satisfying the Licencing Authority that he fulfills the qualifications laid down and has paid the fees prescribed for that purpose. He is also subject to the disciplinary control of the Courts and the tribunals in which he practises or at any rate was, until the coming into force of the Legal Practitioners and Bar Councils Act, 1965. Under the latter disciplinary control has to a large extent, been transferred to the Bar Councils but the right is nevertheless, not an uncontrolled or absolute right. Nor could it in the very nature of things be. Such regulatory provisions are not and can never be considered to be violative of the Fundamental Right to carry on a trade or profession. The question then is as to whether Ordinance No.II of 1964 did impose any bar which went beyond regulation of the profession. The impugned Ordinance did not prevent, it will be observed, a retired Judge of the High Court from doing chamber practice, that is, advising clients in Chambers or practising in the jurisdiction of a High Court of which he was not a Judge or practising in the Supreme Court. Similarly although a retired Judge or Chief Justice of the Supreme Court was prohibited from practising before any Court or tribunal in Pakistan, his right to do Chamber practice remained unaffected. The Ordinance No.II of 1964 did not, therefore, introduce any total prohibition but it only restricted the forums before which a retired Judge could practise, in the interest of maintaining the independence of the judiciary; preserving the dignity of a person who had held such a High Office and preventing embarrassment both to him and to the Judges before whom he was otherwise likely to appear. Such a restriction was not, in the circumstances, in my opinion, violative

of the said Fundamental Right No. 8 and, therefore, the question of the Ordinance being void did not at all arise. I am in this respect, in agreement with Cornelius, C. J. Fazle-Akbar, Yaqoob Ali and Abdus Sattar, JJ. with their opinions in this regard in the case of Government of Pakistan v. Syed Akhlaque Hussain and another."

7. The rule that a retired Judge is not entitled to appear as a counsel before a Court of equal or lower jurisdiction to the one in which he sat in his capacity as a Judge is found all across the common law world, including England, Canada, India, several US states, Jamaica, Trinidad and Tobago. Reference in this regard may be made to Section 75 of the Courts and Legal Services Act 1990 of UK, which provides a bar on a Judge as under:-

75. Judges etc. barred from legal practice. No person holding as a full-time appointment any of the offices listed in Schedule 11 shall:-

- (a) provide any advocacy or litigation services (in any jurisdiction);
- (b) provide any conveyancing or probate services;
- (ba) carry on any notarial activities (within the meaning of the Legal Services Act 2007);
- (c) practice as a barrister, solicitor, public notary, licensed conveyancer or licensed CLC practitioner, or be indirectly concerned in any such practice;
- (d) practise as an advocate or solicitor in Scotland, or be indirectly concerned in any such practice; or
- (e) act for any remuneration to himself as an arbitrator or umpire.

Schedule 11 includes the Judges of the Supreme Court, Lord Justices of Appeal, Puisne Judge of the High Court, Circuit Judges, District Judges, etc. The outline Conditions of Appointment and Terms of Service of High Court Judge in UK also provides such restrictions, i.e. "A High Court Judge shall not practise as a barrister or solicitor or be indirectly concerned in any such practice (S.75 Courts and Legal Services Act 1990).... Any offer of appointment is therefore made on the understanding that appointees will not return to practice". Similarly, Article 220 of the Indian Constitution imposes restriction on legal practice after being a permanent Judge, i.e., "No person who has held office as a permanent Judge of a High Court ... shall plead or act in any court or before any authority in India except the Supreme Court and the other High Courts". In the light of the above it is clear that in the common law jurisdictions the intention of the legislature has always been to impose a bar on ex-judges of the superior Courts to appear as counsel before the same Court or the Courts/forums subordinate to that Court."

(underlining for emphasis is mine)

In view of the above referred judgment of the apex Court, it is clear that any former Judge of the Supreme Court of Pakistan has only been restricted from entering into legal profession whereas issues pertaining to personal rights were not kept under any restriction.

25. The other aspect of fundamental right available to the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry for providing protection has already been taken care of by the latest amendment in the Supreme Court Judges (Leave, Pension and Privileges) (Amendment) Order, 2016, wherein the amendment contains the following:

President's Order No.05 of 2016

An

ORDER

**further to amend the Supreme Court Judges (Leave,
Pension and Privileges) Order, 1997.**

Whereas, it is expedient further to amend the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997 (P.O.No.2 of 1997), for the purpose hereinafter appearing:

NOW, THEREFORE, in exercise of the powers conferred by the Fifih Schedule to the Constitution of the Islamic Republic of Pakistan, the President is pleased to make the following Order:-

1. Short title and commencement.---(1) This Order may be called the Supreme Court Judges (Leave, Pension and Privileges) (Amendment) Order, 2016.

(2) It shall come into force at once.

2. Amendment of paragraph 25(1), P.O. No.2 of 1997. - In the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997, (P.O. No.2 of 1997), in paragraph 25, in sub-paragraph (1), after clause (d), the following new clause shall be added, namely:-

"(e) Round the clock posting of a Security Guard at the residence by the concerned Police, during life time of a retired Judge:

Provided that his widow shall not be- entitled to the facility under this clause."

MAMNOON HUSSAIN

PRESIDENT

26. The above referred amendment in the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997 settled the rights of all former Judges of the Supreme Court in every manner and the security has been provided at the residence of a retired judge during the lifetime by the concerned police, whereas the Federation of Pakistan has provided the details of all the security personnel provided to the former Judges of the apex Court referred in the report of Law and Justice Division. Glimpse of the report is reproduced as under.

. Whereas the Ministry of Interior has also submitted a report in 2017, the summary of deployment in case of former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry, details of which have been reproduced as under:

"As per record, after the superannuation of Mr. Justice Iftikhar Muhammad Chaudhry Honourable former Chief Justice of Pakistan following security was provided.

- a. One official of ICT Police as personal gunman with former Chief Justice.
- b. An Escort vehicle bearing Registration No.GV-132 of the ICT Police in Islamabad with a driver and 01 Upper Subordinate and 02 officials armed with official weapons.
- c. Another Escort vehicle bearing Registration No.GV-753 of ICT Police in Islamabad with a driver and 01 Upper Subordinate and 03 officials armed with official weapons.
- d. A residential Guard at Islamabad comprising of 01 Head Constable and 03 Constables are performing duties at the residence of Mr. Iftikhar Muhammad Chaudhry.

6. Summary of the deployment is as under:-

SI	HC	Constable	Drivers	Total	Vehicle
2	1	9	2	14	02 (Pickups)

27. The above referred details give rise to a situation that the law which is applicable to the retired Judges of the Supreme Court has not been followed in letter and spirit, whereas it is mandatory upon the organs of the State to comply with the law in a manner in which things have been provided. It is trite law that where law required doing things in a particular manner, such things had to be done in that manner and all other modes stood excluded. In view of above reasons, the former judges of the Supreme Court of Pakistan are entitled to only those rights and privileges guaranteed under the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997.

28. The first three petitioners have taken another stance with reference to terms "vulnerable dignitary" referred in the Rules for the Use of Staff Cars, 1980, the same has been reproduced as under:

24. Category of Staff Cars and their Entitlement for use: (1) Staff cars for government use may be categorized as under:-

(a) Small Cars Up to engine power not exceeding 1300 CC.

(b) Medium Cars Cars with an engine power ranging from
over 1300 CC to 1600 CC.

(c) Big Cars Engine power exceeding 1600 CC.

(d) All cars earmarked for foreign dignitaries and Federal/Provincial Ministers, Hon'ble Judges of Supreme Court and Chief Justices of the High Court will be air conditioned. (Add. Vide No.12/65/81-CS, dated 4th August, 1983)

(2) The Prime Minister of Pakistan has been pleased to approve the following revisited entitlement of Staff cars:-

a. Federal Ministers/Ministers of State/

Advisors/ Special Assistants to the

Prime Minister with status of Minister/

Minister of State. 1800 CC

"Provided that the protected vehicle shall be allocated to a vulnerable dignitary subject to availability and approval of the Prime Minister. However, the repair/maintenance and POL of the vehicle shall be the responsibility of the respective Ministry/Division/Department or the dignitary concerned".

b. Secretaries General/Secretary/Parliamentary

Secretaries and Officers equivalent to BPS-22. 1300 CC

c. Additional Secretaries/Senior Joint Secretaries/

Officers in BPS-21/20 and equivalent. 1000 CC

The above referred entitlements of Staff cars have been further covered with the proviso where term "protected vehicle" has been used only to vulnerable dignitary. However, the same is subject to availability and approval of Prime Minister, in order to understand the terms "vulnerability" and "vulnerable dignitary" the meanings referred in the Black's Law Dictionary have been defined in the following manner:

Vulnerability:

"degree of people, resources, property, environments are susceptible to be harmed,

degrade, destroyed or exposed to hostile factors."

Vulnerable dignitary:

exposed to the possibility of being attacked or harmed, either physical or emotionally.

Synonyms: in danger, in peril, in jeopardy, at risk, exposed, wide open; undefended, unshielded, unfortified, unarmed, without arms, without weapons, defenceless, easily hurt/wounded/damaged, powerless, helpless.

The above referred meanings clearly provide certain requirements and threshold for its application to any dignitary, whereas unless any potential risk has not been measured, calculated or reported by any law enforcement agencies, the case of any individual may not fall within the definition of "vulnerable dignitary" and the said requirements regarding risk factor are question of fact which could not be adjudicated in constitutional jurisdiction.

29. The above referred terms give rise to a situation that protection is required to a person who is exposed to threats due to nature of his job, situation, or any other factor, however all these ingredients have to be measured in some manner which includes the reports from the law enforcement agencies including Police Department, Counter Terrorism Department, Inter Services Intelligence, Military Intelligence, Intelligence Bureau, etc. therefore, if the threat has been reported by the law enforcement agencies and the same has been notified to the Ministry of Interior, then the Ministry of Interior under the command of the Constitution of the Islamic Republic of Pakistan, 1973 has to provide due protection, however said protection is subject to fulfillment of criteria or a policy or a directive under which the same has to be measured in each case. The risk factor may vary from case to case basis and the concerned law enforcement agencies and Ministry of Interior are the best judge to define those parameters to place any dignitary under the term "vulnerable" or otherwise.

30. This Court in earlier round of the proceedings has received different statements as well as reports on behalf of Ministry of Interior and other law enforcement agencies from the date of filing of this writ petition till date, however at present there is no threat available on record to the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry as held by the Ministry of Interior. In view of said report and situation available in this case, this Court is fully convinced that the security arrangements provided under the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997 are well in place and same shall be applicable in this regard. This Court has asked the first three petitioners regarding latest status of protected vehicle i.e. GD-0341 Mercedes Benz, whereas it was clarified that the vehicle is not in a running condition, therefore, the same is not under use for traveling purpose by the former Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry. This clearly establishes that the use of a protected vehicle is not required in this case, even the Ministry of Interior for that matter is the competent authority to review all such cases wherein protected vehicles have been provided to vulnerable dignitaries under the rules and they are bound to annually review all those cases of protected vehicles after requisitioning report from the law enforcement agencies and if Ministry of Interior feel satisfied, they have to withdraw such facility otherwise it will cause loss to public exchequer and in such circumstances the concerned officials of the Ministry of Interior are responsible to bear the loss.

31. At last, I have to attend the question raised by Mr. Riaz Hanif Rahi, ASC (the fourth petitioner) who has filed W.P. No.2228/ 2016, W.P. No.1979/2017, and W.P. No.1055/2017 wherein he has called in question the order dated 05.09.2016 passed by the Prime Minister of Pakistan, which has been reproduced as under:

"10. In view of the above, the Prime Minister has been pleased to order as follows:

- i. A 2400CC car shall be provided to every outgoing Chief Justice with effect from the former Chief Justice of Pakistan Mr. Iftikhar Muhammad Chaudhry on whose behalf the present petition was filed. The facility will be available during the life time of the Chief Justice and the expenditure on maintenance and POL shall also

be catered by the Supreme Court of Pakistan;

- ii. A similar dispensation will be admissible to the two Chief Justices who have retired after him i.e. Justice (Retd) Tassaduq Hussain Jilani and Justice (Retd) Nasir-ul-Mulk as well as future Chief Justices on retirement; and,
- iii. Cabinet Division shall coordinate implementation of this decision in consultation with Registrar, Supreme Court of Pakistan. The bullet proof Mercedes Benz provided earlier to Justice (Retd) Mr. Iftikhar Muhammad Chaudhry may be retrieved on provision of the alternate new vehicle as above."

The above referred summary which was approved by the Prime Minister and forwarded by Fawad Hassan Fawad, Secretary to Prime Minister has been conveyed to the Supreme Court of Pakistan but the same has not been approved by the apex Court, however the above referred order has to be seen in the light of the judgment passed by the apex Court in case reported as *Mustafa Impex Karachi v. Government of Pakistan* (PLD 2016 Supreme Court 808) wherein all those actions which were taken by the Prime Minister of Pakistan by passing the Cabinet are considered to be nullity in the eye of laws and violation of Rules of Business as held by the apex Court in the following manner:

(k) Rules of Business, 1973---

Power of Secretary of a Division to authenticate by signature all orders and other instruments made, or executed, in the name of President--Such power was a purely formal power--Exercise of such power established the genuineness of the document, it did not confer the statutory power to issue such a document.

(r) Constitution of Pakistan---

Cabinet was a composite concept and its components were the Prime Minister and the Federal Ministers.

(s) Rules of Business, 1973---

Power of Prime Minister to by-pass the Cabinet---Vires of--Prime Minister could not exercise the powers of the Cabinet by himself---Prime Minister executed policy decisions, he did not take them by himself---Rules 16(2) of the Rules of Business, 1973 which enabled the Prime Minister to dispose of matters by by-passing the Cabinet was, thus, ultra vires (the Constitution).

Prime Minister was the head of the Cabinet. He was the single most important person in the Cabinet, but he did not stand in the position of the Cabinet. He was neither a substitute nor a surrogate for the Cabinet. He could not exercise its powers by himself. The reason that he could not stand in the position of the Cabinet was because the Cabinet was, in fact, the Federal Government. Treating the office of the Prime Minister as being equivalent to that of the Cabinet, would mean that the Prime Minister, by himself as a single individual, would become the Federal Government. This was simply inconceivable.

Decisions of the Federal Government were the decisions of the Cabinet and not of the Prime Minister. Any decisions taken by the Prime Minister on his own initiative lacked the authority of the law or the Constitution.

(t) Constitution of Pakistan--

Prime Minister--Discretionary governmental spending/ expenditure-- Authorization by Cabinet---Any discretionary spending at the initiative of the Prime Minister alone was manifestly un-constitutional and contrary to law---Prime Minister could not make fiscal changes on his own and nor could he engage in discretionary spending by himself--In all such cases the prior decision of the Cabinet was required, since it was unambiguously that

body alone which was the Federal Government---Ex-post facto approval (of expenditure) by the Cabinet would not suffice since money once spent could not be unspent---All discretionary spending without the prior approval of the Cabinet was contrary to law and would make the Prime Minister personally responsible for such action.

(Underlining for emphasis is mine)

32. The above referred interpretation of the apex Court gives rise to a situation that the order dated 05.09.2016 has no legal effect and the same was passed without any legal backing, even otherwise, such kind of orders have been considered in violation of the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997, as the former Judges of the Supreme Court of Pakistan are only entitled for their privileges provided under the supra Presidential Order of 1997, therefore, anything contrary to the said order has no legal effect and same could not be announced by the Prime Minister of Pakistan nor anyone is entitled to receive such benefit under the law.

33. The learned DAG while arguing his case on behalf of Government of Pakistan has referred the celebrated judgment PLD 2013 SC 829 (regarding Pensionary Benefits of the Judges of Superior Courts from the date of their respective retirements, irrespective of their length of service as such judges), application by Abdul Rehman Farooq Pirzada, and Begum Nusrat Ali Gonda v. FOP, etc.) the Larger Bench of apex Court has decided the scope of eligibility of pensionary benefits of the retired judges who has less than five (05) years of actual service as judge of the High Court were not eligible to receive pension and while deciding the said case, the case reported as PLD 2008 Supreme Court 522 (Accountant General Sindh v. Ahmad Ali U. Qureshi and others) was held to be per incuriam and have also declared that it is the legal and moral duty of the retired judges of the High Court who have less than five (05) years of actual service as such judges to return the pension and pensionary benefits availed by them. It has further been held in the said judgment that the right of pension and other privileges of the judge of the superior Courts has to be settled, claimed, and extended only on the basis of Presidential Order issued by the President of Pakistan from time to time and no other benefit can be received beyond the said

34. The last question raised in the Writ Petition No.1979/2017 by Mr. Riaz Hanif Rahi, ASC regarding pending reference in the Supreme Judicial Council against the former Chief Justice of Pakistan, Mr.Iftikhar Muhammad Chaudhry is a misconceived concept as the matter was already decided by the Larger Bench of the Supreme Court of Pakistan whereby the Reference was quashed. Reliance is placed upon PLD 2010 Supreme Court 61 (Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary), therefore, the claim of Mr. Riaz Hanif Rahi, ASC is not maintainable on its factual side.

35. In view of above background, this Court is fully convinced that the captioned writ petitions are not maintainable as petitioners have no locus standi to raise all these questions which are not within their preview as they are not aggrieved persons and neither any personal right nor their fundamental right has been infringed although the fourth petitioner i.e. Mr. Riaz Hanif Rahi, ASC has raised the question of public importance on the ground that he is a taxpayer and he is entitled to raise such question as a whistleblower, however, the said petitioner has not placed any record through which it could be demonstrated that he is a regular taxpayer, therefore, all these writ petitions are hereby dismissed.

36. The Criminal Original No.176-W-2017 is also not maintainable in the light of findings referred above and same is also dismissed, therefore, the Federal Government has to exercise its authority to decide the issues in accordance with law and it has been expected from all the quarters concerned to do the needful without violating the rules, regulations, and law discussed hereinabove.

Disclaimer: The content available on this document are just for Information. Users are advised not to depend on the information and use it for official purpose. Islamabad High Court, Islamabad is not responsible for any damages arising in contract from the use of the content of this site.