

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial, CJ (in Chambers)

**C.M.A. 2012 OF 2023**

**IN**

**C.M. APPEAL NO. 81 OF 2021**

The President of Pakistan and others

Versus

Justice Qazi Faez Isa

**C.M. APPEAL 81 OF 2021**

**IN**

**C.R.P. NO. 296 OF 2020**

**IN CONST. P. 17 OF 2019**

The President of Pakistan and others

Versus

Justice Qazi Faez Isa

**C.M.A. 2013 OF 2023**

**IN**

**C.M. APPEAL NO. 82 OF 2021**

The President of Pakistan through Secretary to the President, Islamabad  
and others

Versus

Sindh High Court Bar Association through its President

**C.M. APPEAL 82 OF 2021**

**IN**

**C.R.P. NO. 297 OF 2020**

**IN CONST. P. 24 OF 2019**

The President of Pakistan through Secretary to the President, Islamabad  
and others

Versus

Sindh High Court Bar Association through its President

**C.M.A. 2014 OF 2023**

**IN**

**C.M. APPEAL NO. 83 OF 2021**

The President of Pakistan through Secretary to the President, Islamabad  
and others

Versus

Mrs. Sarina Isa Wife of Qazi Faez Isa

C.M. APPEAL 83 OF 2021  
IN  
C.R.P. NO. 298 OF 2020  
IN CONST. P. 17 OF 2019

The President of Pakistan through Secretary to the President, Islamabad  
and others

Versus

Mrs. Sarina Isa wife of Qazi Faez Isa

C.M.A. 2015 OF 2023  
IN  
C.M. APPEAL NO. 84 OF 2021

The President of Pakistan through Secretary to the President, Islamabad  
and others

Versus

Supreme Court Bar Association, Islamabad through its President and  
another

C.M. APPEAL 84 OF 2021  
IN  
C.R.P. NO. 299 OF 2020  
IN CONST. P. 19 OF 2019

The President of Pakistan through Secretary to the President, Islamabad  
and others

Versus

Supreme Court Bar Association, Islamabad through its President and  
another

C.M.A. 2016 OF 2023  
IN  
C.M. APPEAL NO. 85 OF 2021

The President of Pakistan through Secretary to the President, Islamabad  
and others

Versus

Muhammad Asif Reki, President Quetta Bar Association, Quetta and  
another

C.M. APPEAL 85 OF 2021  
IN  
C.R.P. NO. 300 OF 2020  
IN CONST. P. 23 OF 2019

The President of Pakistan through Secretary to the President, Islamabad  
and others

Versus

Muhammad Asif Reki, President Quetta Bar Association, Quetta and  
another

**C.M.A. 2017 OF 2023**

**IN**

**C.M. APPEAL NO. 86 OF 2021**

The President of Pakistan through Secretary to the President, Islamabad and others

Versus

Shahnawaz Ismail, Vice Chairman, Punjab Bar Council, Lahore and another

**C.M. APPEAL 86 OF 2021**

**IN**

**C.R.P. NO. 301 OF 2020**

**IN CONST. P. 32 OF 2019**

The President of Pakistan through Secretary to the President, Islamabad and others

Versus

Shahnawaz Ismail, Vice Chairman, Punjab Bar Council, Lahore and another

**C.M.A. 2018 OF 2023**

**IN**

**C.M. APPEAL NO. 87 OF 2021**

The President of Pakistan through Secretary to the President, Islamabad and others

Versus

Balochistan Bar Council, through Vice Chairman Balochistan High Court, Quetta and others

**C.M. APPEAL 87 OF 2021**

**IN**

**C.R.P. NO. 308 OF 2020**

**IN CONST. P. 25 OF 2019**

The President of Pakistan through Secretary to the President, Islamabad and others

Versus

Balochistan Bar Council, through Vice Chairman, Balochistan High Court, Quetta and others

**C.M.A. 2019 OF 2023**

**IN**

**C.M. APPEAL NO. 88 OF 2021**

The President of Pakistan through Secretary to the President, Islamabad and others

Versus

Pakistan Federal Union of Journalists (PFUJ) through its Secretary General, Islamabad and others

C.M. APPEAL 88 OF 2021  
IN  
C.R.P. NO. 309 OF 2020  
IN CONST. P. 34 OF 2019

The President of Pakistan through Secretary to the President, Islamabad and others

Versus

Pakistan Federal Union of Journalists (PFUJ) through its Secretary General, Islamabad and others

C.M.A. 2020 OF 2023  
IN  
C.M. APPEAL NO. 89 OF 2021

The President of Pakistan through Secretary to the President, Islamabad and others

Versus

Pakistan Bar Council through its Vice Chairman, Islamabad and others

C.M. APPEAL 89 OF 2021  
IN  
C.R.P. NO. 509 OF 2020  
IN CONST. P. 21 OF 2019

The President of Pakistan through Secretary to the President, Islamabad and others

Versus

Pakistan Bar Council through its Vice Chairman, Islamabad and others

C.M.A. 2021 OF 2023  
IN  
C.M. APPEAL NO. 90 OF 2021

Federal Board of Revenue, Islamabad through its Chairman

Versus

Justice Qazi Faez Isa and others

C.M. APPEAL 90 OF 2021  
IN  
C.R.P. NO. 296 OF 2020  
IN CONST. P. 17 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Justice Qazi Faez Isa and others

C.M.A. 2022 OF 2023  
IN  
C.M. APPEAL NO. 91 OF 2021

Federal Board of Revenue, Islamabad through it Chairman

Versus

Sindh High Court Bar Association through its President

C.M. APPEAL 91 OF 2021  
IN  
C.R.P. NO. 297 OF 2020  
IN CONST. P. 24 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Sindh High Court Bar Association through its President

C.M.A. 2023 OF 2023  
IN  
C.M. APPEAL NO. 92 OF 2021

Federal Board of Revenue, Islamabad through it Chairman

Versus

Mrs. Sarina Isa wife of Qazi Faez Isa and others

C.M. APPEAL 92 OF 2021  
IN  
C.R.P. NO. 298 OF 2020  
IN CONST. P. 17 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Mrs. Sarina Isa wife of Qazi Faez Isa and others

C.M.A. 2024 OF 2023  
IN  
C.M. APPEAL NO. 93 OF 2021

Federal Board of Revenue, Islamabad through it Chairman

Versus

Supreme Court Bar Association, Islamabad through its President and others

C.M. APPEAL 93 OF 2021  
IN  
C.R.P. NO. 299 OF 2020  
IN CONST. P. 19 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Supreme Court Bar Association, Islamabad through its President and others

C.M.A. 2025 OF 2023  
IN  
C.M. APPEAL NO. 94 OF 2021

Federal Board of Revenue, Islamabad through it Chairman

Versus

Muhammad Asif Reki President Quetta Bar Association and others

C.M. APPEAL 94 OF 2021  
IN  
C.R.P. NO. 300 OF 2020  
IN CONST. P. 23 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Muhammad Asif Reki President Quetta Bar Association and others

C.M.A. 2026 OF 2023  
IN  
C.M. APPEAL NO. 95 OF 2021

Federal Board of Revenue, Islamabad through it Chairman

Versus

Shahnawaz Ismail Vice Chairman, Punjab Bar Council, Lahore and others

C.M. APPEAL 95 OF 2021  
IN  
C.R.P. NO. 301 OF 2020  
IN CONST. P. 32 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Shahnawaz Ismail Vice Chairman, Punjab Bar Council, Lahore and others

C.M.A. 2027 OF 2023  
IN  
C.M. APPEAL NO. 96 OF 2021

Federal Board of Revenue, Islamabad through it Chairman

Versus

Balochistan Bar Council through its Chairman, Quetta and others

C.M. APPEAL 96 OF 2021  
IN  
C.R.P. NO. 308 OF 2020  
IN CONST. P. 25 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Balochistan Bar Council through its Vice Chairman, Quetta and others

C.M.A. 2028 OF 2023  
IN  
C.M. APPEAL NO. 97 OF 2021

Federal Board of Revenue, Islamabad through it Chairman

Versus

Pakistan Federal Union of Journalists (PFUJ) through its Secretary General, Islamabad and others

C.M. APPEAL 97 OF 2021  
IN  
C.R.P. NO. 309 OF 2020  
IN CONST. P. 34 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Pakistan Federal Union of Journalists (PFUJ) through its Secretary General, Islamabad and others

C.M.A. 2029 OF 2023  
IN  
C.M. APPEAL NO. 98 OF 2021

Federal Board of Revenue, Islamabad through it Chairman

Versus

Pakistan Bar Council through its Vice Chairman and Chairman Executive, Islamabad and others

C.M. APPEAL 98 OF 2021  
IN  
C.R.P. NO. 509 OF 2020  
IN CONST. P. 21 OF 2019

Federal Board of Revenue, Islamabad through its Chairman

Versus

Pakistan Bar Council through its Vice Chairman and Chairman Executive, Islamabad and others

PRAYER :-	"that CMAs may kindly be accepted and the appellants may be allowed to withdraw the C.M. Appeals and Curative Review, in the interest of justice."
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<u>DATE OF HEARING</u>	<u>ORDER OF HON'BLE CHIEF JUSTICE</u>
10.04.2023	<p>For the applicant(s)/appellant(s) Mr. Mansoor Usman Awan, Attorney General for Pakistan Ch. Aamir Rehman, Addl. AG</p> <p>.....</p> <p>Through these 18 Civil Misc. Applications the appellants seek the withdrawal of their curative review petitions filed against the Supreme Court's ("<b>the Court</b>") decision dated 26.04.2021 given in its review jurisdiction in <u>Justice Qazi Faez Isa Vs. President of Pakistan</u> (PLD 2022 SC 119) ("<b>Subject Judgment</b>").</p> <p>2. The facts giving rise to the present withdrawal applications are that by a majority of 6-4 the Court vide the Subject Judgment allowed the review petitions filed by Mr. Justice Qazi Faez Isa and other parties against the decision of the Court dated 19.06.2020 delivered in <u>Justice Qazi Faez Isa Vs. President of Pakistan</u> (PLD 2021 SC 1) ("<b>original judgment</b>"). As a result, certain directions issued to the Federal Board of Revenue and the Supreme Judicial Council by the original judgment were recalled. Aggrieved by the Subject Judgment, the appellants preferred curative review petitions before the Court on 25.05.2021.</p> <p>3. The Institution Officer raised certain objections on the filing of the curative review petitions. The main objection urged was that the purpose behind seeking a curative review is to avail a second review which is not entertainable under Order XXVI, Rule 9 of the Supreme Court Rules, 1980 ("<b>1980 Rules</b>"). In response to the objections, the appellants filed chamber appeals under Order V, Rule 3 of the 1980 Rules. During the pendency of these appeals on 31.03.2023 the President, whilst acting on the advice of the Prime Minister, granted his authorisation to the concerned</p>



	<p>ASC/AOR for the withdrawal of the curative review petitions filed by the appellants. These withdrawal applications are fixed for decision in Chambers today.</p> <p>4. The learned Attorney General for Pakistan and the learned Additional Attorney General for Pakistan entered appearance on behalf of the appellants. The rationale behind withdrawing the curative review petitions is reflected in the Federal Cabinet's decision dated 27.07.2022. Essentially the legal points pressed are:</p> <ul style="list-style-type: none"><li>i. That the 1980 Rules prohibit the filing of a second review petition after the final disposal of the first review petition; and</li><li>ii. That the curative review petitions have been filed on the strength of a judgment delivered by the Indian Supreme Court ("SCI") in <u>Rupa Ashok Hurra Vs. Ashok Hurra</u> (AIR 2002 SC 1771) wherein the SCI had explicitly recognised its right to '<i>re-consider its judgments in exercise of its inherent power.</i>' However, no pronouncement to such effect has been made by the Court. Hence, the concept of a curative review petition is alien to the laws and jurisprudence of Pakistan and therefore these petitions being not maintainable are liable to be withdrawn.</li></ul> <p>5. I have heard the learned Attorney General and have also perused the record. The bar on filing a second review petition is declared in the 1980 Rules in the following words:</p> <p style="text-align: center;"><b>"ORDER XXVI REVIEW</b></p> <p style="text-align: center;">... 9. After the final disposal of the first application for review no subsequent application for review shall lie to the Court and consequently shall not be entertained by the Registry."</p> <p>This bar has also been affirmed by a 5 Member Bench of the Court in <u>Khalid Iqbal Vs. Mirza Khan</u> (PLD 2015 SC 50) at para 12. Therefore, under the current scheme of the law the appellants appear to be precluded from filing a review against the Subject Judgment because it has finally</p>
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	<p>disposed of the review petitions filed against the original judgment.</p> <p>6. Be that as it may, the Court in the past has of its own motion corrected its decisions wherein wrong principles of law have been laid down. In this regard the dictum of the Court in the case of <b><u>Khalid Iqbal</u></b> (<i>supra</i>) is illustrative:</p> <p>“13. This, however, does not mean that the jurisdiction of this Court is barred by any restriction placed by the Constitution; there is no Article in the Constitution which imposes any restriction or bar on this Court to revisit its earlier decision or even to depart from them, nor the doctrine of stare decisis will come in its way so long as revisiting of the judgment is warranted, in view of the significant impact on the fundamental rights of citizens or in the interest of public good. This issue was fully comprehended and answered in the case titled <b><u>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 (PLD 2013 SC 829 at page 993)</u></b>. The relevant portions are reproduced herein below:---...</p> <p>4. ... Therefore, if <u>any law which has been invalidly pronounced and declared by this Court, which in particular is based upon ignorance of any provisions of the Constitution, and/or is founded on gross and grave misinterpretation thereof; the provisions of the relevant law have been ignored, misread and misapplied; the law already enunciated and settled by this Court on a specific subject, has not been taken into account, all this, inter alia, shall constitute a given judgment(s) as per incuriam...</u> Therefore, if a judgment or a decision of this Court which is found to be <u>per incuriam...</u> it shall be the <u>duty of this Court to correct such wrong verdict and to set the law right.</u> And the Court should not shun from such a duty...</p> <p>On perusal of the paragraphs referred to hereinabove, we can safely reach a conclusion that <u>this Court has absolute powers to re-visit, to review and or to set aside its earlier judgments/orders by invoking its Suo Motu Jurisdiction under Articles 184(3), 187 or 188 of the Constitution. The Powers of this Court to exercise its inherent jurisdiction under the above referred Articles of the Constitution are not dependent upon an application of a party.</u>”</p> <p style="text-align: right;">(<i>emphasis supplied</i>)</p> <p>What becomes apparent from the above-quoted passages is that our jurisprudence recognises the Court's <i>Suo Motu</i> jurisdiction under Article 184(3) and Article 188 read with Article 187 of the Constitution to re-visit, review or set aside</p>
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	<p>its judgments/orders that have finally disposed of the first review petitions. However, such jurisdiction has so far not been invoked by the Court in the present matter.</p> <p>7. Insofar, as the principle of curative review petitions is concerned, it is not disputed by the appellants that the existence of this jurisdiction has hitherto not been considered by the Court. In fact, all the judgments cited by them in support of their curative review petitions reiterate what has been held above: that a second review is barred by law and that the Court alone is empowered, if so inclined, to re-visit, review or set aside any of its previous judgments/orders.</p> <p>8. Further a study of the Indian law on curative review reveals that it is a remedy altogether distinct from the <i>Suo Motu</i> exercise of jurisdiction by the Court. Whereas curative review has no standing in our jurisprudence the availability of <i>Suo Motu</i> review has long been accepted by the Court, albeit in the limited circumstances of doing complete justice under Article 184(3) and/or Article 188 read with Article 187 of the Constitution. It is of course clear that both types of judicial interventions, curative review and <i>Suo Motu</i> review, possess a similar purpose i.e., to correct a fundamental error in a previous judgment/order. However, the key difference, <i>inter alia</i>, between the two jurisdictions lies mainly in their mode and manner of invocation. Order XLVIII, Rule 2 of the Supreme Court Rules, 2013 mandates that curative review must be invoked by a party:</p> <p style="text-align: center;"><b>"Order XLVIII</b> <b>CURATIVE PETITION</b></p> <p style="text-align: center;">... 2. (1) The <u>petitioner, in the curative petition,</u> <u>shall aver specifically</u> that the grounds mentioned therein had been taken in the Review Petition and that it was dismissed by circulation." <span style="float: right;">(emphasis supplied)</span></p>
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	<p>On the other hand, <i>Suo Motu</i> review can only be invoked by the Court in its discretion, including on the information received from an aggrieved or concerned party. Therefore, the lack of the proceedings being initiated by a party is inconsequential to the Court's exercise of <i>Suo Motu</i> jurisdiction. That does not appear to be the case for curative review petitions filed in the SCI.</p> <p>9. In the present case no Hon'ble Member of the Bench that delivered the Subject Judgment (nor any other Judge of the Court) has so far considered it necessary to re-visit, review or set aside that judgment on the ground that it has had a significant impact on the Fundamental Rights of citizens; or that it is in the interest of the public good; or that it is <i>per incuriam</i>. Consequently, in the absence of such a judicial view and the lack of an enabling jurisdiction that allows an aggrieved or concerned party to file a second review, the appellants curative review petitions appear to be not maintainable.</p> <p>10. In the above circumstances the ordinary course of action would have been to refer the matter to the Court for a conclusive determination on its maintainability. However, the appellants are now seeking the withdrawal of their curative review petitions. This right of the appellants to withdraw their curative review petitions (and generally of parties to withdraw their cases) is acknowledged by the law [ref: <b><u>Reviews on behalf of Justice (Retd.) Abdul Ghani Sheikh</u></b> (PLD 2013 SC 1024)]. Exceptions to the said rule exist for instance public interest litigation filed under Article 184(3) of the Constitution cannot be withdrawn except with the permission of the Court [ref: <b><u>Jurists Foundation Vs. Federal Government</u></b> (PLD 2020 SC 1) at para 6]. But that exception is not applicable to the instant case because it is not litigation in the public interest. Rather the present</p>
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	<p>matter emanates from Article 209 of the Constitution which grants the Supreme Judicial Council, and not the Court, the exclusive power to inquire into the misconduct of a Superior Court Judge. Therefore, the appellants retain the unconditional right to withdraw their curative review petitions filed against the Subject Judgment. This result is, however, without prejudice to what has been noted above, namely, that the pendency of proceedings or the presence of a party is not necessary for the Court to exercise <i>Suo Motu</i> jurisdiction. All that is required for the Court to act is cognizable information.</p> <p>11. The instant Civil Misc. Applications filed by the appellants are accordingly allowed and their curative review petitions are dismissed as withdrawn.</p> <p>Sd/- <b>Umar Ata Bandial</b> Chief Justice</p>
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APPROVED FOR REPORTING