

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

**Present:**

Mr. Justice Qazi Faez Isa, CJ  
Mr. Justice Muhammad Ali Mazhar  
Ms. Justice Musarrat Hilali

**Civil Petition No.4522 of 2023**

Against the judgment dated 27.12.2023 passed  
by Peshawar High Court, Peshawar, in  
W.P.No.6194-P/2023

Election Commission of Pakistan thr. its Secretary,  
Islamabad

...Petitioner

**Versus**

Dawood Shah and others

...Respondents

For the Petitioner:

Mr. Afnan Karim Kundi, ASC  
Syed Rifaqat Hussain Shah, AOR  
a/w Mr. Zafar Iqbal Hussain, Spl.  
Secretary  
Mr. M. Arshad, DG Law  
Mr. Falak Sher, Legal Consultant

For Respondents 1 & 2:

Syed Sikandar Hayat Shah, ASC  
(via video link from Peshawar)

Date of Hearing:

02.01.2024

**ORDER**

**Qazi Faez Isa, CJ.** The Election Commission of Pakistan (**'ECP'**) has filed this petition against an *ad-interim ex-parte* order of the Peshawar High Court dated 27 December 2023, whereby a learned single Judge had suspended the notification dated 25 December 2023 of the ECP through which the returning officer of a constituency was changed. It is submitted that the returning officer was changed on medical ground and on his own request, and referred to the attached medical certificate and the application of the said returning officer requesting that in view of his ill health he cannot undertake the assigned responsibilities. Accordingly, it is submitted that for justifiable reason, the ECP had changed the returning officer.

2. The respondents No.1 and 2 have entered appearance through learned Syed Sikandar Hayat Shah. We enquired from learned counsel

as to why the said respondents had filed the petition before the High Court assailing the change of the returning officer and how were they aggrieved with the change of the returning officer, but did not receive any satisfactory answer from him. He however stated that scrutiny of the said respondents’ nomination papers has not taken place.

3. Learned Mr. Afnan Karim Kundi representing the ECP states that it is on account of their own acts that the scrutiny of nomination papers, scheduled to take place on 28 December 2023, could not take place because the said respondents had the notification suspended on 27 December 2023 and there was no returning officer to scrutinize the nomination papers. He however submits that if the impugned order is set aside, the ECP shall ensure that the scrutiny of nomination papers of the said respondents and the other candidates, whose scrutiny of nomination papers in respect of the Provincial constituency (PK-91 Kohat-II) that could not take place on account of the *ad-interim ex-parte* order will be undertaken as per the following schedule:

**PK-91 KOHAT-II**

SL. NO.	EVENTS	NOTIFIED DATE	REVISED DATE
4.	Last date for Scrutiny of nomination papers by the Returning Officer	25.12.2023 to 30.12.2023	05.01.2024
5.	Last date for filing of appeals against decisions of the Retuning Officer rejecting/accepting the nomination papers.	03.01.2024	09.01.2024
6.	Last date for deciding of appeals by the Appellate Tribunal	10.01.2024	16.01.2024
7.	Publication of revised list of candidates	11.01.2024	17.01.2024
8.	Last date for withdrawal of candidature and publication of revised list of candidates	12.01.2024	18.01.2024
9.	Allotment of election symbols to contesting candidates	13.0.2024	19.01.2024

4. We are satisfied that the ECP, for justifiable reasons, had issued the notification substituting the returning officer. It is also the responsibility of the ECP to conduct elections. Moreover, no allegation against the newly appointed returning officer was made. Therefore, it cannot be stated that the exercise of discretion by the ECP was in any manner illegal or unconstitutional. It is also of concern that an *ad-interim ex-parte* order was passed by the learned Judge of the High

Court without issuance of notice to or hearing the ECP; which would adversely affect the election programme and jeopardise the elections to be held in the said constituency.

5. Under the circumstances, we set aside the impugned order dated 27 December 2023 by converting this petition into an appeal and allowing the same and by dismissing Writ Petition No.6194-P/2023 filed in the Peshawar High Court. However, since the stipulated date for the scrutiny of nomination papers of candidates could not be completed on account of the said *ad-interim ex-parte* order, we direct that the scrutiny of the nomination papers of candidates, including the said respondents, whose scrutiny of nomination papers has not taken place be undertaken as per the given fresh schedule reproduced above.

6. This petition is converted into an appeal and allowed in the said terms.

Chief Justice

Judge

Judge

Islamabad  
2<sup>nd</sup> January 2024  
Hudassar/<sup>☆</sup>

Approved for Reporting