

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ  
MR. JUSTICE IJAZ UL AHSAN

Civil Petition No.2148 of 2020

Against judgment dated 30.07.2020 of  
Islamabad High Court, Islamabad, passed in  
Writ Petition No.2058 of 2020.

Malik Munsif Awan, Advocate,  
Chairman, Pakistan Justice Party, Lahore

Petitioner(s)

VERSUS

Federation of Pakistan through Secretary,  
Law & Justice, Islamabad & others

Respondent(s)

For the Petitioner(s) : Mr. M. Ikram Chaudhry, ASC  
Syed Razaqat H. Shah, AOR

For the Respondents : N.R.

Date of Hearing : 18.12.2020

ORDER

IJAZ UL AHSAN, J.- The petitioner seeks leave to appeal against a judgment of the Islamabad High Court, Islamabad, dated 30.07.2020 through which a Constitutional Petition (W.P.No.2058 of 2020) filed by him challenging the appointments of Respondents No.6 to 13 as Special Assistants to the Prime Minister was dismissed.

2. The appointments in question were made in exercise of power vested in the Prime Minister under Rule 4(6) of the Rules of Business, 1973. The petitioner alleges that the appointments of Respondents No. 6 to 13 were in violation of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") and the methodology and procedure adopted for

such appointments constituted an unreasonable exercise of discretion vested in the Prime Minister.

3. It is argued on behalf of the petitioner that appointments of honest individuals to public offices, in accordance with law, form the foundation of good governance. In this context, reference has been made to Imran Ahmed Khan Niazi v. Mian Muhammad Nawaz Sharif [PLD 2017 Supreme Court 265], in which one of us (*Ijaz ul Ahsan, J*) held as follows:-

*"the people of Pakistan have a fundamental right to be governed in accordance with law, by those who fulfill the requirements of the Constitution and the law and whose financial dealings, earnings and expenditures are open to public scrutiny to show that they meet the test of honesty, integrity, financial probity and bona fide dealings. It is high time that standards were set and systems were put in place to develop a culture of accountability at all levels in order to cleanse our system and institutions from the evils of corruption, money laundering, loot and plunder of national resources by a few, irrespective of their rank or status in the system."*

It is argued that the appointments of Respondents No.6 to 13 have been made in violation and disregard of the benchmarks and parameters settled by this Court in the above and various other judgments.

4. The learned counsel has further argued that Respondents No.6 to 13 have been appointed in exercise of powers vesting in the Prime Minister in terms of Rule 4(6) of the Rules of Business, 1973. In this context, he has argued that where the executive wing of the State has been vested with the discretion to make appointments, such discretion is

to be exercised in a manner that is fair, transparent and in accordance with law. In this context, reference has been made to Tariq Aziz-ud-Din In re: (2011 PLC (CS) 1130). It has further been argued that Article 92 of the Constitution, read with other provisions of the Constitution, contains a general scheme which creates a system of parliamentary democracy whereby the Federal as well as the Ministers of State are required to be picked from the Parliament. Thus, the qualifications for Parliamentarians, as incorporated in Articles 62 & 63 of the Constitution, also ensure that Ministers in a government entrusted to steer the nation towards its desired destination do not suffer from disqualifications postulated in the aforementioned Articles. In this context, the learned counsel submits that there is a bar on Parliamentarians who enjoy dual nationality or acquire citizenship of a foreign State from contesting elections or holding a seat in the Parliament or being appointed as a Minister. In this context, the learned counsel has placed reliance on Article 63(1)(c) of the Constitution and the case of Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 SC 1089) wherein it has been held that a person who takes oath of allegiance to another State at the time of acquiring citizenship suffers from disqualification, divided loyalty, loses some of his rights including the right to be elected as a Member of the Parliament even though he does not lose his Pakistani nationality and other rights granted in the Constitution. Reference in this regard has also been made to Muhammad

Tahir-ul-Qadri v. Federation of Pakistan [PLD 2013 Supreme Court 413].

5. The learned counsel has vehemently argued that the individuals, who possess dual citizenship, are disqualified from becoming Members of the Parliament thereby rendering them disqualified to serve as Federal Ministers or Ministers of State/Advisors with the status of Minister of State. The learned counsel has further argued that at least some out of Respondents No.6 to 13 are admittedly dual nationals and possess no special skills that may have persuaded the Prime Minister of Pakistan to appoint them as Special Assistants. He further submits that the appointments are based on favoritism and cronyism which have been frowned upon by this Court on various occasions in the interest of good governance. In this regard, reference has been made to the case of Muhammad Hanif Abbasi v. Jahangir Khan Tareen [PLD 2013 Supreme Court 114] in which this Court held that..... *"grant of status of a Minister of State to a person, who is constitutionally disqualified from holding the said office is untenable and violative of the Constitution being hit by the provisions of Articles 62 & 63 of the Constitution and various judgments of this Court mentioned above."*

6. We have heard the learned counsel for the Petitioner at length and scrutinized the record. The post of Special Assistant does not find mention in any substantive provision of the Constitution. However, the post has been mentioned in Article 260 of the Constitution in the definition

of "Service of Pakistan". A Special Assistant to the Prime Minister has been excluded from the definition of persons who would be deemed to be in the Service of Pakistan. This shows that the office of a Special Assistant to the Prime Minister is not alien to the Constitution despite the fact that such office is not a creation of the Constitution. In terms of Article 99(3) of the Constitution, the Federal Government is empowered to frame rules for conduct of its business. In exercise of such powers, the Rules of Business, 1973 have been framed which envisage appointment of Special Assistants to the Prime Minister. Although the learned counsel has attempted to argue that Rule 6(3) is ultra vires the Constitution he has not been able to support such assertion by any cogent let alone valid and legally acceptable argument or material that may furnish basis to support a declaration of the nature sought by the petitioner. On the basis of doctrine of trichotomy of powers certain discretionary powers have been vested in the Prime Minister in order to facilitate him in the performance of his functions and conducting business of the State. Respondents No.6 to 13 have been appointed in exercise of such powers and unless it is specifically shown that the said Respondents suffer from any blot or blemish on their names or reputation for having been convicted for an offence of any nature or are under a cloud for having committed an illegality for which they have been convicted by a Court of competent jurisdiction, the exercise of discretion by the Prime Minister is not justiciable



and the flexibility provided by the Constitution to the Prime Minister is best left unfettered.

7. It has not been demonstrated before us that Respondents No.6 to 13 suffer from any disqualification mentioned in the Constitution nor has it been established that they have been appointed on the basis of cronyism or favoritism which may have violated the law laid down by this Court in the case of Jahangir Khan Tareen *ibid*. It has not been established that the said Respondents suffer from any blot or cloud that may have pricked the judicial conscience of this Court, furnishing any valid constitutional basis for interference.

8. The learned counsel for the petitioner has conceded that Respondents No.6 to 13 despite being dual nationals are not disqualified from holding the posts of Special Assistants to the Prime Minister and that the disqualifications mentioned in Articles 62 & 63 of the Constitution read with a large number of judgments of this Court are not attracted to the case of the said Respondents. They are neither Parliamentarians nor persons in the 'Service of Pakistan'. These two categories may contain some restrictions on dual nationals to hold certain positions. Further, the recent judgment of this Court regarding dual nationality mentioned above has elaborately and comprehensively clarified the situation. We are, therefore, in no manner of doubt that Respondents No.6 to 13 are not disqualified on that score from being appointed or holding the

posts of Special Assistants to the Prime Minister. We are fully cognizant of the fact that the scheme of the Constitution envisages a Parliamentary Democracy in which the business of the Government is run by the Prime Minister and his Cabinet consisting of Federal Ministers and Ministers of State who must be elected representatives of the people of Pakistan. However, admittedly, Respondents No.6 to 13 are not Ministers and they are not required to be Parliamentarians in order to be appointed as Special Assistants to the Prime Minister. The post of Special Assistant to the Prime Minister is neither the creation of the Constitution nor can it be termed as a constitutional post. At the same time, the said post is not alien to the Constitution in view of the fact that it is specifically mentioned in Article 260 of the Constitution. In the said definition, amongst other positions to which the Prime Minister has the discretion to make appointments, the post of Special Assistant is also mentioned. It has however specifically been excluded from the definition of the positions which would be deemed to be in the 'Service of Pakistan'.

9. Article 99(3) of the Constitution confers on the Federal Government the power to make Rules for allocation and transaction of its business. It is in exercise of these powers that the Rules of Business, 1973 have been framed in order to facilitate the Prime Minister to run the business of the Government. Rule 4(6) of the Rules of Business, 1973 provides as follows:-

"4. Organization of Divisions ... (6) There may be a Special Assistant or Special Assistants to the Prime

Minister with such status and functions as may be determined by the Prime Minister."

It is in exercise of said powers that the Prime Minister has appointed Respondents No.6 to 13 as his Special Assistants for exercising all or any of the functions in performance of his duties. Further, it is clear to us that the said Respondents are neither Federal or State Ministers nor are they exercising such powers. In fact, they are acting in an advisory capacity to the Prime Minister and exercising only such powers as have been granted to them in accordance with law and in terms of various entries in the Rules of Business, 1973.

10. As far as the question of issuance of writ of *quo warranto* is concerned, a survey of our recent judgments shows that we have considerably extended the scope of the writ of *quo warranto*. Where it is found that any person holding any position in or related to the Government or performing functions directly, indirectly or incidentally in connection with affairs of the Federal or any of the Provincial Governments or any local authority has been appointed on the basis only of political affiliation (as a political favour) and represents an exercise to reward cronies at the expense of public money, this Court has not been remiss in extending its outreach to undo such appointments.

11. However, the vital questions to be answered are under what authority of law Special Assistants to the Prime Minister are holding their present offices? And whether they



are disqualified by reason of their alleged dual nationality from doing so? The answers to these questions are clearly available in the Constitution, the Rule of Business and various judgments rendered by this Court. In terms of Rule 4(6) of the Rules of Business, 1973 read with Sr.No.1A of Schedule-VA of the said rules, the Prime Minister of Pakistan has the power and authority to appoint a Special Assistant and determine his status. The learned counsel for the Petitioner despite our query was unable to point to any restriction or bar on the power of the Prime Minister against conferring of the status of Minister of State on the Special Assistants. We are clear in our minds that merely by reason of being granted the status of a Minister of State a Special Assistant does not become a Minister of State. As such, there is no illegality in conferring on them the status of a Minister of State.

12. Having failed to convince us on this score, it was for the petitioner to show, either that the Respondents No.6 to 13 suffered from any disqualification, as alleged by him in terms of Articles 62 & 63 of the Constitution or that there was a blot of any nature on their names of the nature mentioned in Articles 62 and 63 of the Constitution or were under a cloud that was so blatant as to require interference by this Court as it may prick the judicial conscience of this Court. The petitioner has not been able to establish that Respondents No.6 to 13 suffer from any disqualification under Articles 62 & 63 of the Constitution and in fact has

candidly admitted that the said Respondents are not disqualified under the said Articles. This is on account of the fact that they are neither Parliamentarians nor Federal Ministers. Further, he has not been able to establish that the Respondents have any blot or cloud that may furnish basis for this Court to examine the case of the Respondents any further. It was for the petitioner to satisfy this Court that the appointment of Respondents No.6 to 13 as Special Assistants to the Prime Minister and grant of status of a Minister of State by the Prime Minister was tarnished by favoritism and cronyism. Other than oral assertions and unsubstantiated allegations nothing has been placed on record to support this assertion.

13. We also find that unless specific grounds are asserted and established justifying interference in exercise of discretion by the Prime Minister in making appointments against positions which have been left to the discretion of the Prime Minister by the Constitution, this Court would be slow in interfering in such appointments unless the exercise of discretionary powers by the Prime Minister is blatantly arbitrary, fanciful, unlawful or *ex facie* violative of the settled principles of exercise of discretion.

14. We have repeatedly held that the Constitution does not envisage unstructured, uncontrolled and arbitrary discretion being conferred on any State functionary or holder of a public office. Even if discretion has been conferred, the same has to be exercised honestly, fairly and transparently.

Further, it has to meet the benchmark of being structured in the interest of uniformity, evenhandedness, probity and fairness. It is only if the exercise of discretion meets the above criteria that this Court refrains from interfering and scrutinizing executive actions on the principle of trichotomy of powers. However, at the same time, this Court as guardian of the Constitution, the fundamental rights of the people and the sole interpreter of the Constitution has a constitutional obligation to ensure that the Constitution is read, interpreted and observed in its true letter and spirit. This has to be in accordance with the wishes and aspirations of the people of Pakistan as enshrined in the Constitution and as interpreted by this Court from time to time. Further, no fetter can be placed on the power of this Court to examine and scrutinize executive actions to determine their legality and adherence to the Constitution. This Court has however settled its own benchmarks and parameters to exercise its powers in a structured, uniform and consistent manner.

15. In view of the fact that the qualifications and antecedents for appointment of a Special Assistant to the Prime Minister are neither mentioned in the Constitution nor in the Rules of Business, it appears to have been left at the discretion of the Prime Minister of Pakistan on the basis of his subjective assessment about the ability of a person to perform the functions that the Prime Minister requires him to perform for such appointment. The petitioner has not been successful

in convincing us that the exercise of discretion by the Prime Minister in this case is illegal, arbitrary or fanciful.

16. Further, in view of absence of a settled criteria, standards or benchmarks, it is not possible to test the qualifications, antecedents and experience of Respondents No.6 to 13 against such standards. Therefore, we consider it appropriate to defer to the judgment and discretion of the Prime Minister in the hope that such discretion has been and shall in future be exercised in a fair, transparent and unbiased manner in the interest of better and more efficient functioning of the affairs of the Government. We would however like to observe that the Parliament may at an appropriate time consider laying down some criteria, minimum standards, educational qualifications, fields of expertise and levels of experience for appointment as Special Assistants to the Prime Minister in order to ensure that the exercise of discretion by the Prime Minister in this regard is properly structured, streamlined, circumscribed and systemized.

17. As far as the argument of the learned counsel for the petitioner that a person who is otherwise disqualified to become a Member of the Parliament or ineligible to become a Minister cannot be given the status of a Minister of State by appointing him as Special Assistant to the Prime Minister is concerned, we find that merely by granting the status of a Minister of State to a Special Assistant to the Prime Minister, such person does not by any definition of the words become a

Minister of State. Grant of status merely entitles him possibly to some perks and privileges and nothing more. In this context, reference may be made to Shahid Nabi Malik's case *supra*.

18. Further, in the absence of any specific evidence or material showing favoritism, cronyism or appointment as a matter of political favour, we are not inclined to hold that the appointments of Respondents No.6 to 13 suffer from any legal or procedural defect that may reflect upon the legality of their appointments. *Prima facie*, the notifications for their appointments have been issued in exercise of powers available to the Prime Minister under the Rules of Business, 1973 which enjoy the backing of Article 99 of the Constitution. In addition, by virtue of Article 4(2)(b) of the Constitution, the Prime Minister may not be prevented or hindered from doing that which is not prohibited by law. As such, the argument of the learned counsel for the petitioner that the notifications and appointments are liable to be declared unlawful or without legal effect is misconceived and is found to be without substance.

19. The argument of the learned counsel for the petitioner that Rule 4(6) of the Rules of Business is *ultra vires* the Constitution is misconceived and without substance. We have asked the learned counsel to elaborate which Article of the Constitution has been violated in framing Rule 4(6) of the Rules of Business, he has been unable to point to any such Article and has made generalized assertions without



substantiating them with any law or pronouncement of this Court. Rule 4(6) of the Rules of Business has been framed validly in exercise of powers granted to the Federal Government under Articles 90 & 99(3) of the Constitution and we have not found anything that may suggest that it is in conflict with any provision of the Constitution or the law.

20. We find that Special Assistants are not members of the Cabinet. They stand on a totally different footing compared to Advisors appointed by the President of Pakistan on the advice of the Prime Minister under Article 93(1) of the Constitution. Further, the restrictions provided in Article 63(1)(c) of the Constitution are not attracted or applicable to Special Assistants to the Prime Minister.

21. It may be noted that the Prime Minister is the Chief Executive of the country. He is required to perform multifarious functions and has to give directions and focus to the Government and the country on a macro and policy level. This may require deeper and specialized knowledge, understanding and experience in various areas and fields which he may not possess and is not required to possess. Therefore, to enable the Prime Minister who has been elected on the basis of popular mandate notwithstanding his qualifications or expertise in different areas to run the affairs of the State in an efficient, effective, systematic, methodical, well considered and planned manner, he ought to have access and a free hand to appoint those whose ability, knowledge, experience and expertise he trusts, for assistance in running

the affairs of the State. Rule 4(6) of the Rules of Business provides such powers without placing any specific restrictions as to the number of Special Assistants that the Prime Minister may appoint under the Rules.

22. In addition, there is no restriction or prohibition constitutional or otherwise against appointment of a person holding dual nationality. This Court has repeatedly acknowledged the contributions of Overseas Pakistanis towards Nation building which cannot be ignored, debarred or questioned on basis of frivolous and baseless assumptions and hypothesis which have no constitutional, legal or factual basis just in order to advance personal or political agendas. We, therefore, hold that a person having dual nationality is neither ineligible nor barred from appointment as a Special Assistant to the Prime Minister.

23. Even otherwise, admittedly such appointments fall within the domain of discretionary powers available to the Prime Minister of the country under the Constitution and the law. Unless abuse, excessive exercise, *mala fides* or blatant arbitrariness is clearly demonstrated, casual, routine and frequent judicial interference in the matter would in our opinion be violative of the concept of trichotomy of powers enshrined in the Constitution. This would needlessly interfere with, hamper and obstruct the Prime Minister in the effective and efficient discharge and performance of his constitutional functions and obligations. Therefore, judicial restraint in such matters should be the norm and interference only an

exception and that too in exceptional and rare cases. None of the aforementioned factors has either been pleaded or even remotely established before us and we are not persuaded to take a different view from the one taken by the learned High Court in the matter. No case for interference in the impugned judgment is made out.

24. We have carefully gone through the judgments cited by the learned counsel for the petitioner during the course of his arguments at the bar. However, none of the said judgments advances the case of the petitioner or is relevant to the facts and circumstances of the matter before us.

25. Even otherwise, all the questions raised by the petitioner in this petition have already been dealt with and settled by a three member Bench of this Court (*of which one of us (Ijaz ul Ahsan, J) was a member*) in a judgment rendered in Constitution Petition No.63 of 2018, dated 26.12.2018. The learned counsel for the petitioner has not been able to distinguish the said judgment or to persuade us to take a different view.

26. For reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed, subject to the observations relating to parliamentary deliberations at an appropriate stage and level, regarding structuring of the discretionary powers of the Prime Minister and prescribing qualifications and other requirements for appointment of Special Assistants to the Prime Minister of Pakistan.

27. Above are the reasons for our short order dated 18.12.2020, which for the sake of convenience is reproduced below:-

*"For reasons to be recorded later, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused."*

ISLAMABAD, THE

18<sup>th</sup> of December, 2020

ZR/\*

~~Not Approved For Reporting~~