

**FULL COURT REFERENCE BY MR. JUSTICE GULZAR AHMED CHIEF JUSTICE OF PAKISTAN ON THE EVE OF RETIREMENT OF MR. JUSTICE FAISAL ARAB JUDGE, SUPREME COURT OF PAKISTAN AT ISLAMABAD ON 4<sup>TH</sup> NOVEMBER, 2020**

Mr. Justice Faisal Arab;

Brother Judges;

Mr. Khalid Jawed Khan, Attorney General for Pakistan;

Mr. Azam Nazir Tarar, Chairman, Ex. Committee, Pakistan Bar Council;

Syed Qalb e Hassan Shah, President, Supreme Court Bar Association;

Members of the Bar;

Distinguished guests;

Ladies and gentlemen.

Assalam-o-Alaikum:

We have assembled here today to bid farewell to Mr. Justice Faisal Arab, a distinguished Judge of the Supreme Court of Pakistan, who is laying down the robes of his office on attaining the age of superannuation. It's time to acknowledge Justice Faisal's brilliance in legal field and outstanding contribution to this Court so also to system of administration of justice in the country. It is a common feature that on the retirement of a Judge, we get together to offer valediction to him, but the presence of such glittering array of distinguished guests has made it a special occasion and it shows the respect you have for Justice Faisal.

Justice Faisal was born on 5<sup>th</sup> of November, 1955 in a virtuous family. In 1978, he graduated in commerce from the Government College of Commerce and Economics, Karachi. After completing his LLB in 1989 from S.M. Law College he joined the legal profession in 1990 as an Advocate of lower Courts. He then enrolled as an Advocate of the High Court in 1992 and the Advocate of the Supreme Court in 2005. During legal practice, he earned great recognition from the Bar and the Bench alike. He was appointed as a Standing Counsel for the Federation of Pakistan on 1<sup>st</sup> October, 2004 and remained so till 24<sup>th</sup> October, 2005. His judicial carrier started when he was elevated as an Additional Judge of the High Court of Sindh on 25<sup>th</sup> October, 2005. He was then made a permanent Judge of the High Court on 25<sup>th</sup> of October, 2006. He was appointed as Chief Justice of the High Court of Sindh on 17<sup>th</sup> February, 2015 and a Judge of this Court on 14<sup>th</sup> December, 2015.

I know Justice Faisal for a period spreading over about three decades, since he joined the legal profession. We also remained together for about 6 years on the Bench of the High Court of Sindh before I was elevated to this Court. Thereafter, from the elevation of Justice Faisal to this Court till

today, we remained colleagues for about 5 years being Judges of this Court. During this period, I have had the opportunity to observe him closely, not only while sitting together on the Benches but also within and outside the Court. I have found him humble, polite and upright, well-mannered and no self-affection.

Ladies and gentlemen!

A Judge should exhibit apposite judicial character. Such qualities include integrity, uprightness, firmness, courtesy, patience, open-mindedness, understanding, compassion and humility. A Judge must have capacity to analyze the facts of the cases, ability to understand new legal concepts and socio-economic and political issues, and apply laws accordingly. He should be aware of and follow the personal and professional ethics. He should have courage to do what the law requires him to do without being influenced by the race, creed or gender of the parties before it. The great philosopher 'Socrates' described the essential qualities of a good judge, which are: "to hear courteously; to answer wisely; to consider soberly; and to decide impartially." These words are as true today as they were more than 2,400 years ago.

I must admit that Justice Faisal possessed all those qualities and traits. He was a combination of courtesy, wisdom, soberness, impartiality and uprightness. He always heard the counsel with patience, tolerance and open-mindedness. He had great aptitude to understand complex legal issues and to apply laws in appropriate manner. He always showed courage to do whatever is mandated by the Constitution and the law, and never got influenced by any person or circumstance.

It is often said that a Judge speaks through his judgments. The judicial pronouncements of Justice Faisal are remarkable for their clarity and lucidity, yet for exposition of the law with precision and also meticulousness in resolve of multifaceted and complex legal and factual controversies. His judgments are like a work of art, all beautifully crafted and carefully tailored. Even the judgments he delivered in the cases where it was difficult to interpret law, he dealt with the issues in such a befitting manner that one could not realize the difficulty being faced by him.

There are long list of judgments rendered by Justice Faisal but I shall highlight some of them.

- In the case titled as Collector of Customs v. Messrs. D.G. Khan Cement Co. Ltd. (2016 SCMR 1448), considering the question of total exemption, Justice Faisal observed that the trucks were imported for use in the industrial process of a cement factory, therefore, the same should be

regarded as part of the plant and machinery of the cement factory. However, the trucks were delivered at the port after the cut-off date, as such, the importer-company was not entitled to seek exemption granted under the relevant SRO.

- In the case of Commissioner Inland Revenue Zane-I, RTO Rawalpindi Vs. M/s Khan CNG Filling Station (2017 SCMR 1414) while interpreting sections 122(5) of the Income Tax Ordinance, 2001, Justice Faisal held that for the purpose of determining the correct tax liability, any information falling within the ambit of 'definite information' may not by itself produce an answer unless such information is further processed. The process could be a chemical analysis conducted in a laboratory or the application of some mathematical or scientific formula or simply the use of a calculator.
- In the case of Army Welfare Sugar Mills and others v. Government of Sindh through Secretary Agricultural and others (2018 SCMR 727) while considering the price of the sugarcane, Justice Faisal observed that quality premium is nothing but an additional price which becomes payable to the growers only when a sugar mill achieves sucrose recovery level that crosses the base recovery level of 8.7%. The reason to fix the base recovery level at 8.7% for the purposes of determining the rate of quality premium is that this 8.7% is also taken as base level for fixing the sugarcane procurement price under the sugarcane price fixation formula.
- In the case of Khawaja Muhammad Asif v. Muhammad Usman Dar & others (2018 SCMR 2128), after examining the scope of Article 62(1)(f) of the Constitution, Justice Faisal held that in absence of dishonesty or an element of bad intention with regard to an undeclared asset, Article 62(1)(f) of the Constitution, cannot be invoked to disqualify an elected member for life.
- In the case of Mian Zafar Ali and another v. Mian Khursheed Ali (2020 SCMR 291) Justice Faisal observed that no doubt non-joinder of a party does not amount to dismissal of the suit in terms of Order I, Rule 9, C.P.C., but where the private partition of the property in joint khata took place way back in 1960 and the deceased was survived by appellants and also by two daughters and a widow, it was necessary that they ought to have been made party in the suit.
- In the case of Faqir Ahmed Khan (deceased) through L.Rs. v. Riaz Ahmad and others (2020 SCMR 346) Justice Faisal observed that the word 'whenever' contained in section 3(2) of the NWFP Muslim Personal Law (Shariat) Application Act, 1935 means that whenever a

question relating to succession of a Muslim is raised in any Court, the Muslim Personal Law has to be applied with effect from the time when the death has taken place, irrespective of the fact that at that time some customary law was in force. Further, a right of an heir to claim inheritance does not dissipate with his death as upon his death, it passes on to his heirs and so on and so forth.

- In the case of FBR through Chairman, Islamabad v. M/s Wazir Ali and Company (2020 SCMR 959) Justice Faisal held that whatever method of computing taxable income is applicable to a person, either at the rates specified in the Schedule to the Income Tax Ordinance, 2001 or the advance tax deductions become his final tax liability, the income tax liability is determined on the actual or presumptive income of the whole tax year.

I could continue to mention the judgments of Justice Faisal but it would take long time, therefore, I leave it for the Judge, lawyers and students of law to read and take benefit of the judgments rendered by Justice Faisal.

Ladies and gentlemen!

The Bench and the Bar are the two pillars of the edifice of justice delivery system. It is necessary for the smooth functioning of the system of administration of justice that there exist amiable and congenial relationship between the Bench and the Bar. By his conduct and demeanor, Justice Faisal has played a vital role in improving the cordial relationship between the Bench and the Bar. He always gave due respect to the Bar and in return, got reverence and adoration from the members of the Bar. I hope that in future the relations between the Bench and the Bar will improve further.

In the end, I would say that Justice Faisal is a thorough gentleman with high qualities of modesty, humbleness and humility and will be remembered by us as an exceptional Judge, a respectable colleague and above all, a very humble human being. His presence at the Bench will be missed greatly. I congratulate Justice Faisal on successful completion of his tenure and wish him a healthy and prosperous future life.

Thank you very much.

Pakistan Paindabad!