

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Constitutional Bench:

Justice Muhammad Ali Mazhar
Justice Naeem Akhter Afghan
Justice Shahid Bilal Hassan
Justice Salahuddin Panhwar
Justice Shakeel Ahmad

Constitution Petitions No.22, 20, 23, 25 to 28 of 2025
(Constitutional Petitions U/A 184(3) for declaring Notification No. F.10(2)/2024-A.II dated 1st February 2025 for transfer of Judges to the Islamabad High Court as illegal and unconstitutional)

Justice Mohsin Akhtar Kayani, Judge, Islamabad High Court, Islamabad and others	(in CP 22/25)
Raja Muqsit Nawaz Khan	(in CP 20/25)
Islamabad High Court Bar Association through its President Islamabad	(in CP 23/25)
Imran Ahmed Khan Niazi	(in CP 25/25)
Lahore High Court Bar Association, Lahore through its President	(in CP 26/25)
Lahore Bar Association Lahore through its President and another	(in CP 27/25)
Karachi Bar Association through its General Secretary, Karachi	(in CP 28/25)
	...Petitioners

Versus

The President of Pakistan, Pak Secretariat, Islamabad and others	(in CPs 22, 23, 26 to 28/25)
Federation of Pakistan through, Secretary Ministry of Law, Justice & Parliamentary Affairs, Islamabad and others	(in CPs 20 and 25/25)
	...Respondents

For the Petitioners: (in CP 22/25)	Mr. Muneer A. Malik, Senior ASC Mr. Salahuddin Ahmed, ASC Syed Rifaqat Hussain Shah, AOR
(in CPs 20 & 25/25)	Mr. Idrees Ashraf Malik, ASC
(in CPs 23 & 28/25)	Mr. Faisal Siddiqi, ASC Mr. Riasat Ali Azad, ASC Mr. Anis Muhammad Shahzad, AOR
(in CPs 26 & 27/25)	Mr. Hamid Khan, Senior ASC Mr. Waqar Rana, ASC. Mr. Ajmal Ghaffar Toor, ASC
For the Respondents: (on Court Notice)	Mr. Mansoor Usman Awan, AGP

Date of Hearing: 14.04.2025

O R D E R

At present, seven Constitution Petitions under Article 184 (3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") are before us, calling into question the Notification No. F.10(2)/2024-A.II, dated 1st February 2025, issued by the President of Pakistan ("President") in exercise of powers conferred under Article 200 of the Constitution for the transfer of Judges to Islamabad High Court. All the petitioners, in one voice, sought the declaration in their respective petitions that the aforesaid notification is unconstitutional. Since the Constitution Petition No.22/2025 has been filed by five sitting Honourable Judges of the Islamabad High Court *in personam* against upsetting their original seniority reckoned before the transfer, therefore, their petition will be treated as "leading petition" and the rest will proceed conjointly.

2. In the preliminary arguments, Mr. Munir A. Malik, learned Sr. ASC representing the petitioners in the leading petition, availed the first right of audience. He articulated that even though an explicit provision for the transfer of Judges from one High Court to another High Court is provided under Article 200 of the Constitution, but in tandem, he asserted that for exercising such powers by the President, there must be some justiciable reasons and such discretionary powers should be exercised judiciously and transparently rather than being exercised in an unfettered or unbridled manner without any rhyme or reason. It was further contended that in case of transfer, the transferee Judges are required to administer a fresh oath before resuming their offices in the Islamabad High Court and he referred to Article 194 of the Constitution. According to the understanding of the learned counsel, this crucial requirement of a fresh oath of office is lacking in the case. It was further contended that in order to resolve the issue of seniority, five petitioners as Judges of the High Court had filed their representation before the then Chief Justice of the Islamabad High Court, which was rejected *vide* administrative order dated 08.02.2025 without proper application of mind, therefore, the seniority list compiled as a result of dismissal of their representation is also liable to be set aside and the original seniority should be restored.

3. Mr. Faisal Siddiqi, learned ASC for the petitioners in CPs 23 & 28/2025, argued that the transfer should not be for an unlimited period of time but the notification of transfer must specify the period of transfer to remain in field. It was further averred that even after the transfer, the seniority of the Judges already performing their duties in the Islamabad High Court should not be affected and the Judges who recently joined on the basis of transfer should be at the bottom of the seniority list, and as and when they resume office in their original High Court, their original seniority will be restored in their own High Court.

4. Points raised require consideration, let notices be issued to the respondents in all aforesaid cases. Notice also be issued in terms of Order XXVII-A, Rule 1, of the Code of Civil Procedure, 1908, to the learned Attorney General of Pakistan and all the Advocates General of the Provinces as well as the Advocate General of the Islamabad Capital Territory for 17.04.2025 at 11:30 a.m.

5. Office has raised objections towards maintainability of petitions, which will be taken up on the next date of hearing after serving all respondents and law officers.

CMAAs 2046 & 2047/2025 etc.

6. Subject to all just exceptions, notice be issued in all stay applications in the titled connected cases for 17.04.2025 at 11:30 a.m.

Judge

Judge

Judge

Judge

Judge