

Jamal Khan Mandokhail, J.- I have had the privilege of going through the judgment authored by my learned brother Amin-un-Din Khan, J. Although, I fully subscribe to the conclusions drawn in the judgment, however, I feel it appropriate to add my own opinion to further supplement the resolution of issues involved in these appeals.

Facts:

2. Detailed facts of the instant case have already been given in the main judgment, however, at the expense of repetition, I would like to reiterate some facts of the case. The private appellants (in ICA No. 02 of 2024) filed a complaint on 10 October 2018, before the Supreme Judicial Council (“**SJC**”) against Mr Justice Mian Saqib Nisar, the Hon’ble Chief Justice (“**H CJ**”) of this Court, as he then was. The complaint was unattended and subsequently was dismissed on 08.03.2019 for having become infructuous on account of retirement of the H CJ on 17 January 2019. Feeling aggrieved, the private appellants filed a petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”) against the respondents and the former H CJ, but, by the order of this Court, the name of former H CJ was deleted. The petition was dismissed by a Division Bench of this Court on 27.06.2023. The Federation of Pakistan assailed the said judgment through ICA No 01 of 2024 and so by the private appellants through ICA No. 02 of 2024. In the impugned judgement, a two member Bench of this Court has held as under:

“5. Therefore, it is our conclusion that on any view of the matter Article 209 does not apply to a person who has retired or resigned from the office of a Judge of this Court or a High Court.”

Objection of Limitation:

3. An objection regarding delay in filing of appeals has been discussed by his lordship Amin-ud-Din Khan, J.- in detail, however, I would like to add in support of the reasoning in the main judgment. It is a fact that the petition under Article 184(3) of the Constitution was filed by the private appellants,

but the Federal Government was not arrayed as party to the proceedings. Through the said petition, interpretation of Article 209 of the Constitution was required, therefore, it was mandatory for the Court to have had issued a notice to the Attorney General for Pakistan (“**AG**”) as required by Order XXVII-A Rule 1 CPC. The ground mentioned in the application by the Federation of Pakistan is that the impugned judgment was not within the knowledge of the Federation of Pakistan; and that the learned AG came to know about the said judgment for the first time on 9 January 2024 during the proceedings of the Supreme Judicial Council. The AG states that even otherwise, the question of public importance relating to interpretation of Constitution is involved, therefore, the delay in filing of appeal may be condoned. He relied upon the case reported as Federal Govt. of Pakistan vs. M.D.Tahir Advocate¹. I have no doubt in my mind that the matter involved in these appeals is of great public importance and has great significance. The reasoning advanced by the learned AG is reasonable. Since neither the Federal Government was arrayed as party to the proceedings nor mandatory notice required under Order XXVII-A Rule 1 CPC was issued to the AG, therefore, there is no reason to disbelieve his contention regarding his unawareness of the date of the pronouncement of the impugned judgment. Even otherwise, a Ten Member Bench of this Court through the referred judgment has condoned the delay of 257 days in filing of petition solely on the ground of public importance, therefore, I concur with Amin-ud-Din Khan, J. for condoning the delay in filing of these appeals.

Independence of Judiciary:

4. Judiciary is one of the fundamental pillars of the State, comprising of judges, vested with the authority to preside over, hear, determine legal matters and safeguard the fundamental rights of citizens. The judges also serve to protect the Constitution and democracy and deal with politically sensitive cases, thereby, are exposed to the general public. In order to

¹ 1989 SCMR 2069

perform its judicial functions and deliver justice, an independent, impartial and strong judiciary is essential, without which, the fundamental rights of the citizens guaranteed by the Constitution and the democracy cannot be safeguarded. Preamble of the Constitution, therefore, explicitly states and guarantees that independence of judiciary shall be fully secured. Reliance is placed in the case of Muhammad Aslam Awan², relevant portion whereof is reproduced herein below:

“Judicial independence both of the individual judge and of the judiciary as an institution is essential so that those who bring their causes/cases before the Judges and the public in general have confidence that their cases would be decided justly and in accordance with law. Judicial independence is one of the foundational values of the Constitution of Islamic Republic of Pakistan which is based on trichotomy of powers in which the functions of each organ of the State have been constitutionally delineated. The very Preamble of the Constitution pledges “wherein the independence of judiciary shall be fully secured.” The Constitution makers conferred this independence because they wanted the Judges to “do right to all manner of people” according to law, without fear or favour, affection or ill-will.” (Oath of office of Judges). The fundamental rights guaranteed under the Constitution cannot be secured unless Judiciary is independent because the enforcement of these rights has been left to Judiciary in terms of Articles 184(3) and 199 of the Constitution and the relevant law. Judiciary has not been made part of the Executive or the Legislature (Article 7). The separation of judiciary from the Executive was made a Constitutional mandate (Article 175(3)).” (Emphasis supplied)

5. To ensure independence of judiciary, the judges require protection of their judicial work. Though, the Islamic Law and our Constitution requires absolute equality between men, between the ruler and the ruled, between the rich and the poor and so on, but judicial immunity is the only exception for judges in performance of their judicial work, in order to protect and shield them from any external pressure, harm or from prosecution. Article 68 of the Constitution provides that the conduct of any judge of the

² 2014 SCMR 1289

Supreme Court or of a High Court in the discharge of his duties is immune from discussion in the Parliament. Similarly, section 77 of the Pakistan Penal Code (“PPC”) protects judges from criminal liability for the act, performed during their judicial work. Such protection extended to the judges is not harmful for others. It is not a favour to the judges nor is it for their personal benefit, rather it is essential so that judges could perform their judicial functions independently, freely, without fear or favour, and with peace of mind. The sole purpose of an independent and impartial judiciary as an institution and of a judge is to provide justice to the citizens and to protect their fundamental rights, guaranteed by the Constitution, in order to enjoy the confidence of citizens.

Accountability of Judges:

6. A person who chooses to become a judge has a notion in mind that upon his elevation, he must be God fearing, trustworthy, honest; he has to maintain and enforce high moral and professional standards of conduct, in order to preserve his integrity and ensure independence to serve justice. The public has a right to expect that of him and if he does not choose to impose such a standard on himself, he should not accept judicial appointment. The Prophet Muhammad (PBUH) said that *Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell*³. Basing on such principle of higher morality, a reference is also made to a situation where in the year 763 AD, Abu Jafar Abdullah ibn Mohammad Al-Mansur, the ruler/Khalifa at that time, offered a renowned Muslim Jurist and Scholar Imam Abu Hanifa, the post of Chief Justice of the State, “but the Imam declined the offer because he knew that on becoming a judge, the ruler/Khalifa would pressure him into passing

³ Sunan Abu-Dawud: The Office of the Judge (Kitab Al-Aqdiyah), Book 18, Number 3566

judgments according to his own desire. He refused the offer saying that he would never be able to pass fair judgment according to his conscience”. This regarded the position of a judge so sacred, because justice is one of the most important moral concepts that individuals are to be treated in a manner that is equitable and fair. On becoming a judge, the following Oath is administered to him:

CHIEF JUSTICE OF PAKISTAN OR OF A HIGH COURT
OR JUDGE OF THE SUPREME COURT
OR A HIGH COURT

[Articles 178 and 194]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

(In the name of Allah, the most Beneficent, the most Merciful.)

I, _____, do solemnly swear that I will bear true faith and allegiance to Pakistan:

That, as Chief Justice of Pakistan (or a Judge of the Supreme Court of Pakistan or Chief Justice or a Judge of the High Court for the Province or Provinces of.....), I will discharge my duties, and perform my functions, honestly, to the best of my ability, and faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan and the law :

That I will abide by the code of conduct issued by the Supreme Judicial Council:

That I will not allow my personal interest to influence my official conduct or my official decisions :

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan :

And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

¹[May Allah Almighty help and guide me (A'meen).]

7. An Oath is a public pledge under “Allah Almighty” (God), in presence of witnesses that a person will perform his duty honestly and truthfully; to maintain and restore public confidence in the integrity, independence and impartiality of judiciary. Holding such a prestigious post, a judge is expected to abide strictly by each and every word of the Oath and is supposed to follow the Constitution, law and the Code of Conduct issued by the Council. In this way, a person who becomes a judge imposes a mechanism of self-

accountability. Rule of law is a principle under which all persons, institutions and entities are accountable. In holding the judges of the Supreme Court and a High Court accountable for guilty of misconduct, Article 209 of the Constitution has bestowed upon the Council being the only forum, the power to investigate and inquire into their capacity or conduct. The formation and functions of the Council are as under:

“209. (1) There shall be a Supreme Judicial Council of Pakistan, in this Chapter referred to as the Council.

(2) The Council shall consist of-----

- (a) the Chief Justice of Pakistan;
- (b) the two next most senior Judges of the Supreme Court; and
- (c) the two most senior Chief Justices of High Courts.

Explanation.---For the purpose of this clause, the *inter se* seniority of the Chief Justices of the High Courts shall be determined with reference to their dates of appointment as Chief Justice [otherwise than as acting Chief Justice], and in case the dates of such appointment are the same, with reference to their dates of appointment as Judges of any of the High Courts.

(3) If at any time the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or any other cause, then---

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- (a) if such member is the Chief Justice of the Supreme Court, the Judge of the Supreme Court who is next in seniority below the Judges referred to in paragraph (b) of clause (2), and
- (b) if such member is the Chief Justice of a High Court, the Chief Justice of another High Court who is next in seniority amongst the Chief Justices of the remaining High Courts,

shall act as a member of the Council in his place.

(4) If, upon any matter inquired into by the Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail, and the report of the Council to the President shall be expressed in terms of the view of the majority.

(5) If, on information from any source, the Council or the President is of the opinion that a Judge of the Supreme Court or of a High Court----

- (a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or
- (b) may have been guilty of misconduct,

the President shall direct the Council to, or the Council may, on its own motion, inquire into the matter.

(6) If, after inquiring into the matter, the Council reports to the President that it is of the opinion---

- (a) that the Judge is incapable of performing the duties of his office or has been guilty of misconduct, and
- (b) that he should be removed from office,

the President may remove the Judge from office.

(7) A Judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article.

(8) The Council shall issue a code of conduct to be observed by Judges of the Supreme Court and of the High Courts."

8. The members of the Council are the highest adjudicators of the country, who are independent from legislature and executive, and are under Oath, to perform functions of accountability of their brother judges, honestly, independently and without fear or favour. The concept of

assigning power to the Council to inquire into the capacity or conduct of a judge, is to eliminate a slightest possibility of external interference, or pressure and undue influence from within the judiciary, and to protect judges from frivolous and malicious prosecution to guarantee their independence. Reliance is placed in the case of Justice Shaukat Ali, wherein this Court has determined as under:

Moreover, an inquiry into the conduct of a Judge is neither a criminal indictment nor even a quasi-criminal proceeding but it is mainly an administrative proceeding conducted by a domestic forum to examine the professional fitness of a Judge. The subject-matter of these proceedings is neither civil rights and duties nor criminal liabilities. It is simply the conduct of a Judge which is to be properly reviewed in the interest of the purity and honour of the judiciary. The forum consists of Judges of superior Courts who also belong to the same profession. To be tried by one's peers is a protection because they understand one's difficulties, problems and the situation in which one was. Doctors, architects, accountants and lawyers aim at having and have their domestic tribunals, that is to say, the tribunals which judge their conduct are manned by their own peers⁴.” (Emphasis supplied).

Even otherwise, If the task of inquiring into the conduct of judges is assigned to any institution, other than the Council, it would put the judges in fear of repercussions that could hinder delivery of justice, and independence of judiciary would be undermined. Self-regulating method of supervising judges conferred upon the Council by the Constitution is on account of separation of judiciary from the legislature and executive, as provided by Article 175 of the Constitution. It also reflects the confidence of Constitution makers in the highest constitutional disciplinary body.

Jurisdiction and Power of the Council:

⁴ THE PRESIDENT versus MR. JUSTICE SHAUKAT ALI P L D 1971 Supreme Court 585, reaffirmed in CHIEF JUSTICE OF PAKISTAN IFTIKHAR MUHAMMAD CHAUDHRY Versus PRESIDENT OF PAKISTAN through Secretary and others P L D 2010 Supreme Court 61

9. The moot question before this Court is to consider as to whether the Council can inquire into the capacity or conduct of a judge, who has retired or has resigned from his office? And whether the Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office? Sub-Article (5) of Article 209 of the Constitution provides the following mechanism to inquire into the matter as under:

Article 209(5) If, on information from any source, the Council or] the President is of the opinion that a Judge of the Supreme Court or of a High Court---

(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or

(b) may have been guilty of misconduct,

the President shall direct the Council to, or the Council may, on its own motion,] inquire into the matter.

10. A plain reading of the said provision of the Constitution makes it clear that the Constitution has mandated the President that on information from any source, he shall direct the Council to inquire into the matter. The phrase, '*the President Shall direct the Council*' used in this provision of the Constitution makes it mandatory upon the Council that it has no option, but to initiate inquiry against the judge accordingly in a case the reference is received from the president. Similarly, if the Council deems it appropriate, may on its own motion inquire into the matter. After a preliminary inquiry, the Council may dismiss the complaint for lack of evidence or untrue information. In both circumstances, once the Council invokes its constitutional jurisdiction by initiating inquiry into the matter against a judge, it has to take the proceedings to its logical conclusion. Sub-Article (6) of Article 209 of the Constitution starts with words *if, after inquiring into the matter*, that further shows the intent of the Legislature that before

invoking the said provisions of the Constitution, the Council has to comply the mandate of sub-Article (5) of Article 209 of the Constitution, pursuant to which, it has to conclude inquiry initiated against a judge. Upon completion of the inquiry proceedings, the Council can form its opinion pursuant to sub-Article (6). If, the Council is of the opinion that the judge is incapable of properly performing the duties of his office by reason of physical or mental incapacity or has been guilty of misconduct, shall report to the President with a recommendation that he should be removed from his office; the President may then remove the judge from the office. However, if, after inquiring into the matter upon a reference from the President, the Council opines that nothing adverse was found against the judge, it has to close the proceedings and report to the President with its opinion accordingly. Moreover, upon completion of inquiry initiated by the Council on its own motion on information from any source, nothing adverse could be found against the judge, the Council has to close the inquiry with an observation in this behalf, without report to the President.

11. Without prejudice to above, even otherwise, a judge is appointed for the interest of general public and his judicial conduct is a matter of great public interest. Without the trust and confidence of people, judiciary cannot exist. Therefore, the purpose of inquiring into the conduct of a judge while in office, is to ensure accountability, to preserve the integrity of judicial process, maintain public trust and confidence in the judiciary. As a general rule, the Authority inquiring into the conduct of a judge loses its jurisdiction to initiate proceedings against a person who retires or resigns from his office, before initiation of inquiry proceedings. Whereas, when an inquiry about the conduct of a judge in office is initiated by the Council, it is the constitutional obligation of the Council to conclude the proceedings, form its opinion and report to the President with recommendations. In this provision of the Constitution, the word 'inquiry' has been used. The primary purpose of inquiry is to gather information in order to address a specific issue of public interest and to make recommendations for improvement

and prevention of future occurrences. It is not to focus on enforcing laws or prosecuting individuals as is mandated in investigation, rather to inquire into the ethical violations and misconduct of a judge. It promotes accountability and trust in the process by the public. Reliance is placed in the case of *In re Proceedings before the Common. On Judicial Tenure & Discipline*,⁵ relevant portion whereof is reproduced herein below:

“This statutory scheme enables the commission to regulate the conduct of judges. The regulation of judges is necessary to ensure that judges behave properly and to preserve the public’s confidence in the judiciary. The public’s confidence in the judiciary and the commission would be shaken if the system for the regulation of the conduct of the judiciary could be frustrated simply by the resignation of the judge under investigation. Hence I do not believe that the Legislature intended to allow the frustration of the statutory scheme by denying the commission’s jurisdiction over a judge who has resigned.”

It is for good reason in the public interest that citizens having fundamental right to know about the fate of the proceedings. When an inquiry into conduct of a judge initiated by the Council is terminated without an opinion, on account of retirement or resignation of a judge from his office, it would render Article 209 (5) & (6) of the Constitution redundant and would also give an authority to the judge to make the constitutional body abandoned.

12. Termination of inquiry proceedings upon retirement of a judge would otherwise give an impression that the Council is dependent on the will of the judge, who can overpower the control of the constitutional body. It may create a perception that the judges are above the law. After his retirement or resignation, prior to inquiry initiated, a judge enjoys a status of a retired judge, with lucrative post-retirement benefits from public exchequer. He is also eligible for his re-appointment against some important constitutional, quasi-judicial and administrative posts, for which evaluation

⁵ In re Proceedings before the Commn. on Judicial Tenure & Discipline, 578 A.2d 1387

of his conduct and reputation is essential. The jurisdiction of the Council to inquire into the matter pertaining to misconduct of a judge is a constitutional mandate. In absence of express words or an enactment, preventing the Council from inquiring into the matter upon resignation or retirement of a judge, jurisdiction of the Council cannot be abolished, ousted or terminated. Since there is no express provision in the Constitution, nor is there any enactment, preventing the Council from continuing its proceedings of inquiry in a situation where a judge is retired or resigns before conclusion of the inquiry, it is the constitutional obligation of the Council to conclude the inquiry initiated against a judge and form an opinion regarding his conduct. If after inquiring into the matter, the Council is of the opinion that the judge has been guilty of misconduct, under such circumstances, he shall not be eligible for post-retirement benefits. The purpose of removal of a judge is not a punishment, rather a judge may only be removed in the larger interest of the people. His Removal is to protect the public from an unfit judge and to appoint a better one⁶. It would also be an appropriate way to discourage others from violating oath of office and will be a precedent for the judges. . Reliance is placed on *Steensland v. Ala. Judicial Inquiry Comm'n*⁷. Relevant portion whereof is reproduced herein below:

*"Once the jurisdiction of a court or administrative agency attaches, the general rule is that it will not be ousted by subsequent events." In re Peoples, 296 N.C. 109, 146, 250 S.E.2d 890, 911 (1978). The jurisdiction of the court or administrative agency, thus invoked, continues until the process is completed. See In re Marriage of Clark, 232 Ill. App. 3d 342, 347, 597 N.E.2d 240, 243, 173 Ill. Dec. 532 (1992) ("It is clear that once jurisdiction attaches in a cause, it continues until all issues of fact and law have been finally determined."). Indeed, HN8 the COJ is constitutionally required to convene and to entertain the charges brought by the JIC.4 See In re Fuyat, 578 A.2d 1387, 1388-89 (R.I. 1990) [**19] (HN9 "[A] judge ... who has removed himself or herself from judicial office by resignation [during the pendency of an investigation*

⁶ *In re Seaman*, 627 A. 2d 106, 121 (N.J 1993) And *In re Nowell*, 293 N.C. 235

⁷ *Steensland v. Ala. Judicial Inquiry Comm'n* 87 So. 3d 535

commenced by the 'Commission on Judicial Tenure and Discipline' ('the commission'), but before the 'institution of formal proceedings,'] is not by that fact immune from action by the commission, which may recommend some sanction other than removal.")). In short, we hold that Judge Steensland's retirement during the JIC's pending investigation of the complaints filed against him did not deprive the JIC or the COJ of jurisdiction to adjudicate the charges in the complaint."

Impact of Resignation of a Judge:

13. The person who wishes to resign from his office is mostly on the basis of his personal reasons, including health issues, or on account of instances where he wishes an honourable exit, before initiation of any proceedings regarding his conduct. But, when a judge who is facing inquiry on the allegations of misconduct, initiated by the Council by invoking Article 209 of the Constitution, if senses an adverse outcome of the proceedings, resigns and leaves the Bench in response to credible allegations, it would be an attempt to escape the consequence of inquiry proceedings and bad faith. If the proceedings are made dependent upon the will of the judge on account of his resignation, at any stage before conclusion of inquiry, it would let the judge, who is guilty of misconduct, to go Scott free by defeating the process of accountability. This would damage rule of law norms and public trust in the role of judges and the judiciary. In a situation, where inquiry into the matter in respect of misconduct of a judge is underway, and he considers himself innocent, he would not opt for resignation, rather would like to face the proceedings even after his retirement, to get rid of the baseless and frivolous reference of complaint. He will naturally want to secure his integrity and would prefer to not live with stigma. For these reasons, it is imperative that once the Council in exercise of its constitutional authority, initiates inquiry into conduct of a judge, it cannot terminate or abate upon retirement or resignation of the judge from his office. The citizens have a right to know about the outcome of the complaints.

Procedure for Inquiry:

14. For effective performance of functions and proceedings to give effect to Article 209 of the Constitution, the Council has laid down a procedure called 'the Supreme Judicial Council Procedure of Inquiry, 2005' ("**Procedure of 2005**"). Paragraph 7(1) whereof provides that once information in respect of inquiry into the capacity or conduct of a judge is received by any member of the Council, it shall be presented to the Chairman of the Council for further action. Under Article 209 of the Constitution, if a reference/complaint is received against any of the member, who is a judge of the Supreme Court, the judge of the Supreme Court who is next in seniority shall become a member of the Council in his place. In the present case, admittedly, the complaint was filed by the private appellants against the former HCJ, but he sat upon the same and did not refer the matter to the Council by recusing himself, rather held the Council hostage by not convening a meeting. It was not only his constitutional obligation, but was also moral and ethical responsibility to have had referred the matter to the Council and asked a judge of the Supreme Court who was next in seniority below him to become a member, with further request to the Council to proceed against him accordingly. As a Chief Justice, he was burdened with more responsibility to maintain a high moral and ethical standard by placing himself before the Council for his accountability, but he failed to do so, what was expected from him. Failure to refer his matter to the Council by the former HCJ, not only resulted into undermining the constitutional provisions, but also amounts to preventing the Council from performing its constitutional function. It is a fact that during his tenure, under his chairmanship, the Council conducted proceedings against some other judges, but withholding the complaint filed against him, is a violation of principle of equality regarding accountability amongst the judges. It is important to mention here that it was equally the responsibility of other Hon'ble Members of the Council to have had inquired about

pendency of references or complaints against judges of the Supreme Court or a High Court(s), but unfortunately they also did not vigilantly perform their constitutional duty, which rendered several complaints, including the one against former HCJ as infructuous on account of retirement or resignation of judges. It had shattered the confidence of the appellants and many more, which had a negative impact upon the mechanism and procedure of inquiry proceedings into the conduct of judges. Had that complaint and many more filed against other judges been taken up and decided in time by the Council, before the retirement of the former HCJ and other judges, there would not have been any violation of the relevant provision of the Constitution nor would have created any doubt regarding the working of the Council and integrity of its Chairman and members. The private appellants and the public could have been satisfied and thereby their confidence and trust in the working of the Council would not have been shattered. In any case, it was necessary for the Council to have decided the fate of the complaint before retirement of the former HCJ, but the needful was not done, therefore, after his retirement, the Council cannot proceed.

15. We have observed that in the past, the Hon'ble Members of the Council did not take pain to convene its meeting in time and on regular basis. The complaints remained unattended and institution of new ones was going on, which resulted into increase in the number of complaints manifold. During this period, several judges were retired or resigned from their offices. The petition filed under Article 184(3) of the Constitution by the private appellants and the present appeals poses a valid question on the mechanism of initiating inquiry and working of the Council. The appellants presume that the Council by not taking action on the complaints has facilitated the judges to retire or resign, who were required to be subjected to disciplinary proceedings. No doubt, majority of the complaints against the judges are frivolous and baseless, but still, it is the constitutional obligation of the Council to decide fate of the same as early as possible. The

Procedure of 2005 has empowered the Chief Justice being Chairman of the Council to convene a meeting for the purpose of inquiring into the matter. Empowering the Chairman of the Council alone to convene a meeting would make the Council subservient the Chairman, hence, undermines the independence and authority of the Council. In order to ensure independence of the Council, it is imperative that the Procedure of 2005 is suitably amended in line with the provisions of Article 209 of the Constitution, to introduce a regular vigilant mechanism for convening a meeting of the Council on a regular interval, for initiating and concluding the inquiry proceedings upon a reference or a complaint by the Council before retirement or resignation of a judge. Independent, effective and vigilant Council will strengthen the trust and confidence of the citizens of Pakistan in the disciplinary proceedings, involving judges of the Supreme Court, the Federal Shariat Court and of the High Courts. It will also enable the judges to perform their judicial functions with peace of mind, freely, without any fear or favour and without any external or internal pressure. However, disciplinary proceedings against judges must be based on the rule of law and in accordance with the basic principles of justice and internal safeguards, to ensure judicial independence.

Result:

16. On the basis of what has been discussed herein above, the questions framed by this Court on 12.02.2024 are answered as under:

- A. Whether pending proceedings before the Supreme Judicial Council (the 'Council') do not stand abated on account of retirement and resignation of a Judge?

Answer: My answer to this question is "No". Proceedings, once initiated by the Council, shall not abate upon the retirement and resignation of a judge.⁸

⁸ See Para 10, 11 & 12 of instant note.

- B. Whether a Judge who retires or resigns during pendency of proceedings against him/her before the Council should be allowed to escape the consequences of removal?

Answer: My answer to this question is also in negative.⁹

- C. Whether resignation by a Judge during pendency of proceedings against him/her before the Council tantamount to circumvention/avoidance of accountability enshrined and envisaged under Article 209 of the Constitution of the Islamic Republic of Pakistan, 1973?

Answer: This question is easily answered as “Yes”¹⁰.

- D. Whether circumvention of proceedings under Article 209 of the Constitution would result in erosion of public trust in the Judiciary?

Answer: This question is also answered in affirmative.¹¹

(Jamal Khan Mandokhail)
Judge

ISLAMABAD
K.Anees and Waqas Ahmad, L.C.

APPROVED FOR REPORTING

⁹ See Para 12 & 13 *ibid*.

¹⁰ *ibid*

¹¹ See Para 4,5,6,7 & 12 *ibid*.