

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:
Mr. Justice Khilji Arif Hussain
Mr. Justice Tariq Parvez
Mr. Justice Ejaz Afzal Khan
Mr. Justice Gulzar Ahmed
Mr. Justice Sh. Azmat Saeed

CONSTITUTION PETITION NO.126 OF 2012
[UNDER ARTICLE 184(3) OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973]

Nadeem Ahmed, Advocate

Petitioner(s)

VERSUS

Federation of Pakistan

Respondent(s)

For the Petitioner : Mr. M. Akram Sheikh, Sr.ASC

For the Respondent : Mr. Irfan Qadir, AGP.

Date of Hearing : 14.12.2012

ORDER

Khilji Arif Hussain, J. Through this petition, filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 [*hereinafter referred to as ‘the Constitution’*], the petitioner seeks following relief:-

- “a) to issue appropriate directions to the Respondent for issuance of notifications;
- b) to declare that till issuance of the notifications, being a mere clerical/ministerial formality, the Honourable Judges of Honourable High Court mentioned at (a) and (b) of paragraph above, may continue to function as Judges of Honourable Islamabad High Court without having to depend on issuance of notification(s);
- c) Any other better or more appropriate consequential relief may also be granted in the interest of justice, especially to ensure that in future, the Respondent may not use this kind of hindrance to the smooth functioning of judicial organ.”

2. From the perusal of material made available before us, it appears that the Judicial Commission of Pakistan [*hereinafter referred to as ‘the Commission’*] in its meeting held on 22.10.2012, under the provisions of Article 175-A of the Constitution, recommended Mr. Shaukat Aziz Siddiqui, as a Judge and Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge for a period of six months, of Islamabad High Court, Islamabad, from the date of expiry of their tenure as Additional Judges of the said

High Court. The Parliamentary Committee on receipt of the aforesaid nominations from the Commission, in terms of Article 175-A(13) of the Constitution, after unanimously confirming the same, sent the matter to the Prime Minister of Pakistan to forward the same to the President of Pakistan for appointment. The President of Pakistan apparently not issued orders for appointment allegedly for the reason that one of the participants out of ten was not qualified to attend the meeting of the Commission.

3. We are of the view that even if it is assumed that one of the members, being non entity sat, voted and took part in the proceedings culminating in nomination, but it would not vitiate the proceedings when the Judicial Commission in view of Clause 8 of Article 175A of the Constitution has nominated by majority of its membership. We are supported in our view from the judgment reported as Managing Director, Sui Southern Gas Company LTD, Karachi v. Ghulam Abbas and Others (PLD 2003 SC 724).

4. After hearing Mr. Muhammad Akram Sheikh, learned Sr.ASC, representing the petitioner and the learned Attorney General for Pakistan, and for the reasons to be recorded later, we accept this petition and direct the concerned authorities to issue notifications, thereby appointing Mr. Shaukat Aziz Siddiqui, as a Judge of Islamabad High Court, Islamabad, and Mr. Noor-ul-Haq N. Qureshi, as an Additional Judge of Islamabad High Court, Islamabad, for a period of six months giving effect from the date of expiry of their earlier notifications.

Judge	
Judge	Judge
Judge	Judge

ISLAMABAD