

# **IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

## **PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**Civil Petition No.3988 of 2022**

**AND**

**CMA No.676 of 2023**

Ghulam Mehmood Dogar

**Petitioner(s)**

## **VERSUS**

Federation of Pakistan through  
Secretary Government of Pakistan,  
Cabinet Division, Islamabad and  
others

**Respondent(s)**

For the Petitioner(s) : Mr. Abid S. Zuberi, ASC

For the Federation : Barrister Shehzad Atta Elahi,  
Attorney General for Pakistan  
Ch. Aamir Rehman, Addl.AGP  
Sajid-ul-Hassan, Section Officer,  
Establishment Division

For Punjab Government : Malik Waseem Mumtaz, Addl.AG, Pb.  
Mr. Sattar Sahil, AAG, Pb.

On Court's Call : Mr. Sikandar Sutlan Raja,  
Chief Election Commissioner  
Zafar Iqbal Hussain, Spl. Secretary,  
Election Commission of Pakistan  
Ms. Samia Tariq Janjua, Dy. Director  
(Law), ECP

Date of Hearing : 16.02.2023

## **ORDER**

This is an application (*CMA No.676 of 2023*) under Order XXXIII Rule VI of the Supreme Court Rules, 1980 for placement of additional documents on record. Subject to all just and legal exceptions, the application is allowed.

2. Pursuant to our orders dated 02.12.2022 and 25.01.2023, the learned Attorney General for Pakistan as well

as an Additional Advocate General, Punjab have appeared. The learned Attorney General for Pakistan has pointed out that a notification had been issued for repatriation of the petitioner (*Ghulam Mehmood Dogar*) to the Federal Government which had been suspended by a two member Bench of the Federal Service Tribunal at Lahore vide order dated 10.11.2022. However, another two member Bench of the same Tribunal had suspended the said order through a subsequent order dated 24.11.2022 which was challenged before this Court through the instant CPLA. The order dated 24.11.2022 was suspended by this Court vide order dated 02.12.2022. He maintains that the Federal Government has nothing to do with the latest transfer of the petitioner. He points out that the Notification dated 23.01.2023 regarding transfer of the petitioner with a direction to report to the Services & General Administration Department (S&GAD), Government of Punjab, Lahore for further orders has been issued by the Governor of Punjab.

3. We have asked the learned Additional Advocate General, Punjab how such transfer has been ordered considering the fact that in terms of Section 230 of the Election Act, 2017 (**"the Act"**), there is a specific bar on the caretaker Governments against transfers/postings of public officials unless it is considered expedient and that too after approval of the Election Commission of Pakistan (**"ECP"**). The learned Additional Advocate General has submitted that the

transfer had been undertaken after seeking approval of the ECP.

4. In order to clarify the position of the ECP, we asked the Chief Election Commissioner ("**CEC**") to appear before us in the matter. The CEC appeared and stated that the ECP had deliberated upon the issue of transfers and postings and had issued guidelines/policy for transfers/postings to be undertaken by the caretaker Governments such guidelines were sent to the Provincial Governments. He submitted that a request was received from the Government of Punjab for transfer of the petitioner and permission for such transfer was granted by the ECP. He maintained that the ECP is committed to hold free and fair elections in accordance with law and the Constitution and in order to fulfil its mandate to hold free and fair elections where necessary it has permitted transfers/postings in exercise of its powers under Section 230(2)(f) of the Act.

5. He was not in a position to explain to us without availability of the relevant record whether the case of the petitioner was considered by the ECP separately and if a specific order had been passed after considering the question of expediency. He undertakes to file the requisite documents including minutes of the meeting in which this matter and/or the policy/guidelines for transfers/postings by the caretaker Governments were to be permitted. Let copies of the relevant record be placed on the file alongwith its detailed report. We asked the CEC whether he was aware of the fact that the

matter of transfer of the petitioner was *sub judice* before this Court and interim orders had been passed. The worthy CEC stated that such fact was not brought to his notice either by the Government of Punjab or by the functionaries of the ECP.

6. During the course of arguments it has been submitted that transfers and postings under the facts and circumstances of this case have a direct reference to the elections which are required to be held within 90 days of the dissolution of the Provincial Assembly of Punjab. It was submitted that although transfers/postings were being undertaken, the election date had not been announced which constitutes violation of Article 224(2) of the Constitution of the Islamic Republic of Pakistan, 1973 (**"the Constitution"**). The worthy CEC submitted that the ECP was committed to fulfil its constitutional obligations however it lacked jurisdiction to announce a date for the elections which, according to him, fell within the domain of the Governors of the respective Provinces in the case of Provincial Assemblies. He maintained that the Governor of Punjab had not announced the date on the ground that since the Assembly had not been dissolved on his order, he had no jurisdiction to give the election date and the ECP was not empowered under the Constitution to announce a date. He also maintained that the ECP has moved an application before the Lahore High Court for clarification of its judgment dated 10.02.2023. The High Court rendered a judgment directing the ECP to immediately announce the date of election of the Punjab

Provincial Assembly after consultation with the Governor of Punjab, being the constitutional Head of the Province to ensure that the elections are held not later than 90 days as per the mandate of the Constitution.

7. We note that the Provincial Assembly of Punjab stood dissolved on 14.01.2023 pursuant to the Advice of the Chief Minister, Punjab dated 12.01.2023. As such, elections to the Punjab Provincial Assembly are required to be held within 90 days of the said date in terms of Article 224(2) of the Constitution. However, no progress appears to have taken place in this regard and there is a real and eminent danger of violation of a clear and unambiguous constitutional command.

8. In view of the fact that this matter is not before us in the present *lis*, we are not inclined to pass any order in this regard in view of the principle of law laid down by this Court in its judgment reported as *Suo Motu Case No.4 of 2021: In the matter of* (PLD 2022 SC 306). We are, however, of the view that the matter brought to our notice during these proceedings raises a serious question of public importance with reference to enforcement of Fundamental Rights conferred by Chapter-1 of Part-II of the Constitution. Considering the fact that unless timely steps are taken to remedy the situation, there is an eminent danger of violation of the Constitution which we are under a constitutional, legal and moral duty to defend. We therefore consider it a fit case to refer to the Hon'ble CJP to invoke the *suo motu* jurisdiction

of this Court under Article 184(3) of the Constitution, who may if he considers appropriate after invoking jurisdiction under the said Article constitute a Bench to take up the matter. Let the office place this file before the Hon'ble CJP for appropriate orders.

9. To the extent of Civil Petition No.3988 of 2022 alongwith all miscellaneous applications, the matter shall be taken up tomorrow i.e. **17.02.2023**.

Judge

Islamabad  
16.02.2023  
ZR \*/  
Not approved for reporting

Judge