

IN THE SUPREME COURT OF PAKISTAN
(CONSTITUTIONAL JURISDICTION)

PRESENT

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE IQBAL HAMEEDUR RAHMAN
MR. JUSTICE TARIQ PARVEZ

CONSTITUTION PETITION NOS. 72 & 73 OF 2015

(Constitutional Petition under Article 184(3) of the
Constitution of the Islamic Republic of Pakistan, 1973)

Justice Raja Jilal ud Din, Chief Judge Supreme Appellate Court, Gilgit Baltistan	Petitioner in (C.P.No.72/2015)
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Justice Muzaffar Ali, Judge Supreme Appellate Court, Gilgit Baltistan	Petitioner in (C.P.No.73/2015)
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Versus

Federation of Pakistan through Secretary, Ministry of Law & Justice, Human Rights, Government of Pakistan, Islamabad, etc.	Respondents (in both Petitions)
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For the Petitioners:	Mr. Asaf F. Vardag, ASC with Ch. Akhtar Ali, AOR (in both petitions)
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Respondents:	N. R. (in both cases)
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Date of Hearing:	26.01.2016
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JUDGMENT

TARIQ PARVEZ, J.- Through this consolidated order we intend to dispose of Constitution Petition Nos. 72 of 2015 titled (Justice Raja Jilal-ud-Din, Chief Judge Supreme Appellate Court, Gilgit-Baltistan) and Constitution Petition Nos. 73 of 2015 titled (Justice Muzaffar Ali, Judge, Supreme Appellate Court, Gilgit). The two petitions have been filed by

the two Hon'ble Judges of Supreme Appellate Court of Gilgit-Baltistan with the intent to seek indulgence of this Court by exercising jurisdiction vested in it under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

2. Concise facts relevant for the decision of these two petitions on merits but for providing of background on which these petitions have been instituted are that the two Hon'ble Petitioners were elevated as Judges of the Supreme Appellate Court of Gilgit-Baltistan with effect from the date they entered the offices vide Notification of January 28, 2013. Justice Raja Jalal-ud-Din as per documents attached and recorded in the petitions is holding the office of Chief Justice whereas Justice Muzaffar Ali as Judge of the said Court.

3. The learned counsel appearing for the two petitioners referred to Article 60(8) of the Gilgit-Baltistan (Empowerment and Self-Governance Order, 2009) (hereinafter referred to as the "Order"). He submits that under Clause (8) of the Article the Chief Judge and Judges of the Supreme Appellate Court of Gilgit-Baltistan shall be appointed for a term not exceeding three years and may be appointed for such further term as the Government of Pakistan may determine. He further submits that such fixation of tenure as a Chief Judge and the Judge is contrary to provision of the Constitution of the Islamic Republic of Pakistan and thus

ultravires. He argued that the tenure fixed for the office of Chief Judge and Judge of the Supreme Appellate Court adversely affect the independence of the judiciary which is the fundamental right of each citizen of the State to have the cover and protection of an independent judiciary whereas if a Judge of the Superior Court is appointed on tenure basis and on expiry of the tenure his appointment is at the discretion of the Government for further extension of term, shall militate against the concept of independence of judiciary which goes to the very route of the administration of justice.

4. The learned counsel went on to argue that it is within the domain of this Court to be watchful regarding rights of all citizens. He has referred to notification dated 13.09.1981 issued by the Government of Pakistan, Kashmir Affairs and Northern Affairs Division whereby the Citizenship Act, 1951 has been enforced and adopted within the Northern Areas as such the people living in Northern Areas are entitled to all and same protection of the fundamental rights guaranteed in the Constitution of the Islamic Republic of Pakistan as any other citizen living within Pakistan. He submits that the Hon'ble Chief Judge of the Supreme Appellate Court and a Judge of the said Court are having similar jurisdiction in their respective territorial limits as the Hon'ble Judges of this Court. He has also referred to Article

179 of the Constitution where-under a Judge of the Supreme Court of Pakistan shall hold office until he attains the age of 65 years. He further argued that the petitioner in Constitution Petition No. 73 of 2015 will retire on completion of his term of three years when he will not be even 62 years of age and that the two petitioners would be at the mercy and discretion of the Government of Pakistan which may determine for their appointment for further term. The crux of his submission is that the service tenure of the Chief Justice and Judges of the Supreme Appellate Court of Gilgit-Balistan shall be brought at par with that of the Judges of the Supreme Court of Pakistan and the Chief Judge and Judge of the Azad Jammu & Kashmir.

5. We have all and every respect for the hon'ble two petitioners who are Chief Judge and Judge of the Supreme Appellate Court of Gilgit-Balistan and in that we have refrained ourselves not to make any observation regarding merits or demerits of the case to avoid any aspersion on their person.

6. We posed a question to the learned counsel regarding exercise of jurisdiction by this Court in terms of Article 184(3) of the Constitution which provides as under:-

“(3) Without prejudice to the provisions of Article 199, the supreme Court shall, if it

considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article.”

7. The significant words and the language used has been considered by this Court in a number of judgments which shall be cited and referred in the following lines but for the present, emphasis is placed on “a question of public importance” and “with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved”.

8. In the instant case the two petitioners were incumbent of hon’ble office holders as detailed above have sought indulgence by this Court in respect of tenure of the Chief Judge and a Judge of the Supreme Appellate Court as envisaged and fixed under Article 60 Sub Article (8) of the Order. To us the issue relates to the personal rights of the two petitioners in respect of office they are holding at present. The petitioners have sought to be treated in similar way as Judges of the Supreme Court of Pakistan in terms of Article 179 of the Constitution or as the Judge of the Supreme Court of Azad Jammu & Kashmir.

9. The Judges of this Court including the Hon'ble Chief Justice of Pakistan are appointed through a procedure now envisaged i.e. Article 175(a) of the Constitution whereas the mode of appointment of the Chief Judge and a Judge of the Supreme Appellate Court of Gilgit-Baltistan is provided under Article 60(5) of the Order where the powers of appointment of the Chief Judge or a Judge of the Supreme Appellate Court are vested with the Chairman of the Council on the advice of the Governor Gilgit-Baltistan and other Judges shall be appointed by the chairman on the advice of Governor after seeking views of the Chief Judge. The plain reading of the above two Articles reveals that Article 175(9) of the Constitution and Article 60(5) of the Order are differently framed and constituted. A person who has been appointed as Chief Judge and Judge of the Supreme Appellate Court of Gilgit-Baltistan in terms of Sub-article (5) of Article 60, his term of office has to be governed under Sub-article (8) of Article 60. In no manner such appointment would attract the original jurisdiction of this Court under Article 184(3) because no question of public importance in the first instance and that too with reference to enforcement of any of the fundamental right conferred by Chapter I of Part II is involved. The condition precedent for invoking original jurisdiction under the above referred Article presupposes that

a question has arisen which is of public importance at large, affecting each and every individual/person and that too anyone or more than one fundamental right as given and protected under the Constitution which in any manner is violated but has caused any damage or created hurdle in enforcement of fundamental right of public at large.

10. Regarding securing the independence of judiciary with reference to Hon'ble Judge may it be the Chief Judge or a Judge of the Supreme Appellate Court, the Order has itself provided protection by providing Article 66 regarding establishment of Supreme Judicial Council. Sub-article (3) of Article 66 provides that a Judge of the Supreme Appellate Court or of the Chief Court shall not to be removed from office except as provided by this Article i.e. special procedure has been prescribed there-under which is akin to that as given under Article 209 of the Constitution, thus, the security of the office of a serving Judge in Gilgit-Baltistan is at par with the Hon'ble Judge of the Superior Courts in Pakistan.

11. This Court has been always very careful while invoking its jurisdiction under Article 184(3) of the Constitution both ways i.e. efforts are made to exercise its jurisdiction wherever it finds that a question of law of public importance with reference to the enforcement of any of the Fundamental Rights under the Constitution but also

remained careful not to exercise such jurisdiction where it finds that either the question involved is not a public importance or it has no reference to the enforcement of any of the Fundamental Rights.

12. It was therefore that it was ruled by this court in “**Al-Jehad Trust v President of Pakistan** (PLD 2000 SC 84)” that “If the petitioner succeeds in establishing breach of any of the Fundamental Rights involving a question of “public importance”, he is entitled to the appropriate relief.” In case reported as “**Anwar Aziz v Federation of Pakistan** (PLD 2001 SC 549)” it was held that “cases must be such as give rise to questions affecting the legal rights or liabilities of the public or the community at large, even though the individual, who was the subject-matter of the case, might be of no particular consequence.”. Rule was reframed in “**Al-Jehad Trust v Lahore High Court** (2011 SCMR 1688)” as follow:-

“A bare perusal of Article 184(3) of the Constitution would reveal that it has been couched in a very simple and plain language, thus, it hardly needs any scholarly interpretation. The jurisdiction as conferred upon Supreme Court under Article 184(3) of the constitution can be exercised only where a question of public importance with reference to the enforcement of any of the fundamental rights is involved, meaning

thereby that the question of public importance is sine qua non for exercise of jurisdiction under Article 184(3) of the Constitution.”

13. Conscious of the special jurisdiction and of the fact that a case may not brought before this court for invoking its original jurisdiction under Article 184(3) it was ruled in **Dr. Muhammad Tahir-ul-Qadri v Federation of Pakistan** (PLD 2013 SC 413) that “Burden of proof was upon the petitioner to demonstrate as to which of his Fundamental Rights had been infringed upon but he failed to point out an infraction of any of his Fundamental Rights”. It was also concluded by a larger Bench of this Court in **Abdul Wahab v HBL** (2013 SCMR 1383) that “For the purpose of qualifying the test of “question of public importance”, the issue involved in a matter before the Supreme Court under Article 184(3) of the Constitution must belong and should concern the public at large, the State or the nation...if the proposition/matter involved the alleged violation of the Fundamental rights of an individual or a group of individuals, how so large it might be, but had no concern and effect on the public, then it could not be termed as “question of public importance.”

14. Considering the case law given above and very brief facts regarding the appointment of the two hon’ble

petitioners we find that the cause of grievance if any cannot be specifically highlighted and brought into the purview of anyone of the fundamental rights of any of the petitioner and even if so is not a question of public importance because it will be touching upon as to terms of office of the two hon'ble individuals holding prestigious offices under the Order. We, thus, find no force in these petitions for invoking our jurisdiction under Article 184(3) of the Constitution of the Islamic Republic of Pakistan. The same are, therefore, dismissed.

Judge

Judge

Judge

Islamabad
January 26, 2016
Shirazi/*

"NOT APPROVED FOR REPORTING"