

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, C.J.

Justice Amin-ud-Din Khan

Justice Athar Minallah

Civil Appeal Nos.981, 984 and 985 of 2018

Sardar Confucius Iman Qasrani ...Appellant in CAs 981 & 985 of 2018

Mumtaz Ahmed ...Appellant in CA 984/2018

Versus

Sardar Mir Badshah Khan

Qaisrani and others ...Respondents in CAs 981 & 985 of 2018

Fazal Mehmood, etc. ...Respondents in CA 984 of 2018

For the appellants: Mr. Muhammad Saqib Jillani, ASC
(In CAs 981 & 985/2018)
(via video-link from Lahore)

Sh. Usman Karim-ud-Din, ASC
(in CA-984/2018)

For respondent No.1: Mr. Khalid Ibn-e-Aziz, ASC
(In CA 981/2018)

For ECP: Mr. M. Arshad, D.G. (Law)
Mr. Falak Sher, Legal Consultant

For the Federation: Rana Asadullah Khan, Addl. AGP

Date of hearing: 11 December 2023

ORDER

Qazi Faez Isa, CJ. These appeals pertain to the disqualification of candidates who wanted to contest elections. In Civil Appeals No.981 and 985 of 2018 the parties are the same; one appeal is with regard to a Provincial Assembly seat and the other to a National Assembly seat. In Civil Appeal No.984/2018 the parties are different but the issue is the same. The general elections of 2008 required candidates to have a minimum graduation qualification. Some candidates made misdeclarations in their requisite nomination papers, some produced degrees from unrecognized institutions and others fake degrees to show eligibility of their participation in the general elections. This court had disqualified all such candidates and some also faced criminal prosecution. The respondent No.1 in Civil Appeals No.981 and 985 of 2018 was convicted for a period of two years, and we are informed that his appeal against conviction is pending before the Multan Bench of the Lahore High Court, however, for

the person who purportedly produced a fake degree in Civil Appeal No.984 of 2018 there was no criminal prosecution. In view of the fact that a criminal appeal is pending adjudication before the Lahore High Court, we steered clear of this aspect and only concern ourselves with the question of disqualification of candidates.

2. The learned counsel for the appellants states that disqualification is for life by relying on the decision in the case of *Sami Ullah Baloch v Abdul Karim Nausherwani* (PLD 2018 Supreme Court 405) which held that when Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 (**'the Constitution'**) is attracted, the disqualification is for life. However, the learned counsel for the respondent in Civil Appeal No.981 and 985 of 2018 disputes this and states that the period of disqualification is for five years as per section 232(2) of the Elections Act, 2017, which provision was enacted through the Elections (Amendment) Act, 2023, promulgated on 26 June 2023. The learned Additional Attorney General (**'AAG'**) also relies on the said statutory provision, reproduced hereunder:

'232(2) Notwithstanding anything contained in any other provisions of this Act, and other law for the time being in force and judgment, order or decree of any court, including the Supreme Court and a High Court, the disqualification of a person to be elected, chosen or to remain as a member of the *Majlis-e-Shoora* (Parliament) or a Provincial Assembly under paragraph (f) of clause (1) of Article 62 of the Constitution shall be for a period not exceeding five years from the declaration by the court of law in that regard and such declaration shall be subject to the due process of law.'

3. We inquired from the learned counsel whether section 232(2) of the Elections Acts, 2017 has been challenged and they said that they are not aware of a challenge thereto. However, the learned counsel are unanimous in stating that unless there is a clear pronouncement by this Court on the matter the returning officers in the forthcoming general elections may wonder whether to apply section 232(2) of the Elections Act, 2017, or the said judgment of this Court, which may create needless confusion in the elections and shall not be conducive to democracy. There is also the likelihood of election tribunals and courts being inundated with cases arising out of the uncertainty.

4. The learned AAG points out that the Supreme Court (Practice and Procedure) Act, 2023 (**'the Act'**) requires that where constitutional

interpretation is required a Bench of a minimum of five Judges has to hear it. He further states that the interpretation of a Federal law, the Constitution and applicability of the decision of the Supreme Court is required, which will also impact elections to the provincial assemblies, and as such requisite notices be issued. Therefore, notices under Order XXVII-A of the Code of Civil Procedure, 1908 be issued to the Attorney-General for Pakistan and to all the Advocate Generals of the provinces. Notice be also issued to the Election Commission of Pakistan and public notice be published in a prominent English and Urdu newspaper having wide circulation as the decision in these appeals may also affect those who are not parties hereto.

5. Concise statements attending to the said constitutional and legal questions, without reference to facts and the particulars of individual cases may be filed. It is clarified that the pendency of these appeals and the questions raised herein shall not be used as a pretext to delay the forthcoming general elections scheduled to be held on 8 February 2024.

6. These cases, and any others involving the same question, be fixed for hearing in early January, 2024 before a Bench constituted by the Committee under the Act.

Chief Justice

Judge

Judge

Islamabad

11.12.2023

M. Azhar Malik/Hassan K.W.

APPROVED FOR REPORTING