

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	16 <sup>th</sup> June, 2022	<p style="text-align: center;"><b><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u></b> <b><u>PESHAWAR.</u></b></p> <p style="text-align: center;"><b>Service Appeal No. 607/2022</b></p> <p>Muhammad Kabir S/O Muhammad Feroz R/O Numbal, District Abbottabad (Ex-Cook) Peshawar High Court, Peshawar. .....(Appellant)</p> <p style="text-align: center;"><u>Versus</u></p> <p>1. Peshawar High Court, Peshawar through its Registrar. 2. The Registrar Peshawar High Court, Peshawar .....(Respondents)</p> <p style="text-align: center;"><b><u>ORDER</u></b></p> <p><b><u>KALIM ARSHAD KHAN CHAIRMAN:-</u></b> Learned Counsel for the appellant present and has been heard.</p> <p>02. This appeal has been filed against the order dated 21.03.2022 in appeal No 2/2020 by an Hon'ble Bench of three senior most Hon'ble Judges of Peshawar High Court constituted under Rules-16 of the Peshawar High Court Ministerial Establishment (Appointment and Conditions of Service Rules, 2020. The appeal was filed before the Hon'ble three Member Bench against the order passed by the Chief Justice Peshawar High Court on 23.07.2020.</p> <p>03. At the very outset, the learned counsel for the appellant was confronted as to whether the appellant was a civil servant and whether further right of appeal against the judgment /order passed by the Hon'ble three Member Bench was available and/ or at least to this Tribunal, as according to Rule-16 the right of appeal was given to the member of the establishment of Peshawar High Court against an order effecting the terms and conditions of his service. Rule-16 provided right of appeal from the order of penalty imposed by the Registrar the Hon'ble Chief Justice, and</p>

where any such order was passed or any penalty is imposed by the Hon'ble Chief Justice, otherwise than on appeal from an order of the Registrar, an appeal shall lie to a bench of three senior most judges of the Peshawar High Court, the learned counsel was unable to explain the above situation, he rather referred to Rule-17 of the above rules in which it was provided that in all other matters not expressly provided for in the rules or any other rules hereafter made, the rules made or deemed to have been made by Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act XVIII of 1973), shall *mutatis mutandis* apply to the holders of posts under these rules. It is in this respect observed that Rule-17 would come into play only when there is no express provision of appeal provided in the rules but in this case the provision of appeal has been given in Rule-16 and such remedy of appeal has been availed by the appellant before the Bench of Hon'ble three senior most Judges of the Peshawar High Court. There is nothing provided anywhere in the rules that decision made in appeal preferred under Rule-16, would be appealable before this Tribunal. further  
Q

04. Therefore, this Tribunal cannot entertain this appeal. It is thus directed that this appeal, be returned to the appellant for its presentation before the proper forum. The Original memo and grounds of appeal alongwith copies of the accompaniments shall be returned to the appellant alongwith copy of this order against proper receipt while original order sheets, copy of the memo and grounds of the appeal as well as the accompaniments shall be retained on this file and it be consigned.

05. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 16<sup>th</sup> day of June, 2022.*



(KALIM ARSHAD KHAN)  
Chairman

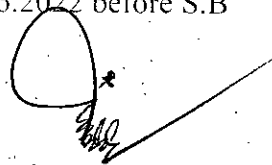
13.05.2022

Learned counsel for the appellant present and requested for adjournment in order to further prepare the brief. Adjourned. To come up for <sup>hearing</sup> before the S.B. <sup>on</sup> 31.05.2022.

  
(Kalim Arshad Khan)  
Chairman

31.05.2022

Learned counsel for the appellant present and requested for adjournment in order to further prepare the brief. Adjourned. To come up for preliminary hearing on 16.06.2022 before S.B

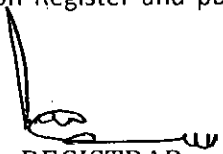
  
(Mian Muhammad)  
Member (E)

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 607/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	21/04/2022	<p>The appeal of Mr. Muhammad Kabir presented today by Mr. Naveed Akhtar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		

**BEFORE THE HON'BLE SERVICE TRIBUNAL,**  
**KHYBER PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 607/2022

Muhammad Kabir S/O Muhammad Feroz R/O Numbal,  
District Abbotabad (Ex-Cook) Peshawar High Court,  
Peshawar.....**Appellant**

Versus

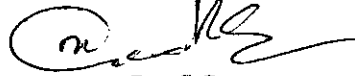


Peshawar High Court, Peshawar through its Registrar &  
Another.....**Respondents**

**INDEX**

S#	Description of Documents	Annex	Pages
1.	Service Appeal		1-6
2.	Affidavit		7
3.	Addresses of Parties		8
4.	Copy of the appointment order	A	0-9
5.	Copy of the show cause notice dated:13.07.2020	B	10
6.	Copy of the reply to the show cause notice	C	11
7.	Copy of the order dated:23.07.2020	D	12
8.	Copy of the appeal and order dated:24.08.2020	E	13-14
9.	Copy of the Rules	F	15-36
10.	Copy of the Review petition	G	37-40
11.	Copy of the order dated:21.03.2022	H	41-42
12.	Copy of the judgment	I	43-67
13.	Wakalatnama		68

Appellant

Through

  
**Naveed Akhtar**  
 &   
**Babar Khan**  
 &   
**Munir Ud Din Ghouri**  
 Advocates, High Court  
 Peshawar  
 Cell#0300-9596181

Dated: 21.04.2022

**BEFORE THE HON'BLE SERVICE TRIBUNAL,**  
**KHYBER PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 607 /2022

Muhammad Kabir S/O Muhammad Feroz R/O Numbal,  
District Abbotabad (Ex-Cook) Peshawar High Court,  
Peshawar.....**Appellant**

*Versus*

1. Peshawar High Court, Peshawar through its Registrar.
2. The Registrar Peshawar High Court, Peshawar

.....**Respondents**

**APPEAL U/S 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL  
ACT, 1974 AGAINST THE ORDER  
DATED:21.03.2022 OF THE HON'BLE  
THREE MEMBER BENCH OF  
RESPONDENT NO.01 CONSTITUTED  
UNDER RULE 16 OF THE PESHAWAR  
HIGH COURT MINISTERIAL  
ESTABLISHMENT (APPOINTMENT OF  
TERMS AND CONDITIONS OF SERVICE)  
RULES 2020 WHEREBY THE ORDER OF  
REMOVAL OF SERVICE  
DATED:23.07.2020 OF RESPONDENT  
NO.02 WAS MAINTAINED AND**

**DEPARTMENTAL APPEAL OF THE  
APPELLANT WAS DISMISSED.**

**Prayer in Appeal:-**

**On acceptance of the instant appeal, the impugned order of removal from service dated:23.07.2020 and 23.03.2022 of Respondent no.01 may kindly be set aside and the appellant may kindly be re-instated into service with all back benefits.**

**Respectfully Sheweth:-**

**Brief Facts:-**

1. That the appellant was inducted into service as Cook in Peshawar High Court, Peshawar vide order dated:19.09.2013. (Copy of the appointment order is annexed as Annexure "A").
2. That the appellant performed his duties with due diligence and to the entire satisfaction of his immediate seniors and gave no chance of complaint for years.
3. That lastly the appellant was on duty as a Cook with Hon'ble Mr. Justice ® Afsar Shah when a

show cause notice was issued to the appellant for the alleged absence without leave for 10 days. **(Copy of the show cause notice dated:13.07.2020 is annexed as Annexure "B")**.

4. That the show cause notice was duly replied on 18.07.2020. **(Copy of the reply to the show cause notice is annexed as Annexure "C")**.
5. That the appellant was removed from service by Respondent No.02 vide order dated:23.07.2020. **(Copy of the order dated:23.07.2020 is annexed as Annexure "D")**.
6. That the appellant referred Departmental Appeal to Hon'ble Chief justice Peshawar High Court, Peshawar on 30.07.2020 which too was rejected on 24.08.2020. **(Copy of the appeal and order dated:24.08.2020 is annexed as Annexure "E")**.
7. That it is pertinent to mention here that the Peshawar High Court Ministerial Establishment (Appointment and terms and conditions of Service) Rules 2020 had already been notified on 02.07.2020 and published on 20.07.2020. **(Copy of the Rules are attached as annexure "F")**.
8. That the appellant in view of the above rules was again advised to file a Review petition against the



order dated:24.08.2020 and accordingly a Review petition was filed. **(Copy of the Review petition is annexed as Annexure "G")**.

9. That vide the impugned order dated:21.03.2022 the Review petition of the appellant was treated as Departmental Appeal by the Hon'ble three Members Bench of the Respondent No.01 under rules 16 of the Rules and the Departmental Appeal was dismissed. **(Copy of the order dated:21.03.2022 is annexed as Annexure "H")**.
10. That left with no other adequate and efficacious remedy the appellant files instant appeal inter alia on the following grounds;-

**GROUND:**

- A. That the impugned order dated:23.07.2020 as well as 21.03.2022 in the Departmental Appeal are against the facts on the file and the law on the subject too was ignored while passing the same orders.
- B. That under rule 17 of the Rules of 2020 this Hon'ble Tribunal has the jurisdiction to entertain the instant appeal.
- C. That in a recent judgment in Gul Taiz Marwat case reported in PLD 2021 Supreme Court 391 the august Supreme Court vide interpreting Article 199 (5) has held that no writ can be issued against the High Court hence this appeal before this Hon'ble Tribunal. **(Copy of the judgment is annexed as Annexure "I")**.

- D. *That while passing the impugned orders both the respondents ignored the meritorious services, of the appellant for 8 long years and on a mere allegation of absence without leave for 10 days the appellant was removed from service without conducting any formal inquiry or making any probe into the allegations.*
- E. *That even when the inquiry was dispensed with, the appellant in reply to the show cause notice tendered unconditional apologies and placed himself at the mercy of the competent authority but the treatment mitted out to a low paid employee by an Hon'ble Authority at the highest pedestal in the federation was uncalled for and the appellant deserved to be treated leniently and with mercy.*
- F. *That on the one hand the vested rights of the appellant have been infringed by denying him a right of defense in a proper inquiry and on the other hand the maximum punishment under the law was imposed upon him on allegations which could not be proved.*
- G. *That even no complaint against the appellant was filed neither the period for which the appellant allegedly remained absent was mentioned in the show cause notice or in any of the impugned orders but the appellant has been subjected to suffer for the same.*
- H. *That the impugned order of removal from service is not sustainable under the law and is liable to be set aside.*
- I. *That any other ground will be raised at the time of arguments with the prior permission of this Hon'ble Tribunal.*




***Therefore, it is humbly submitted that***  
***On acceptance of the instant appeal, the***  
***impugned order of removal from service***

dated:23.07.2020 and 23.03.2022 of Respondent no.01 may kindly be set aside and the appellant may kindly be re-instated into service will all back benefits.

Any other remedy which deems fit and proper may also be granted in favour of the appellant.

Appellant

Through

  
Naveed Akhtar  
&   
Babar Khan  
&   
Munir Ud Din Ghouri  
Advocates, High Court  
Peshawar  
Cell#0300-9596181

Dated: 21.04.2022

**VERIFICATION:-**

It is to certify that no appeal has been submitted on the subject earlier to the instant appeal.

  
DEPONENT

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2022

Muhammad Kabir.....**Appellant**

Versus

Registrar Peshawar High Court, Peshawar

.....**Respondent**

**AFFIDAVIT**

I, Muhammad Kabir S/O Muhammad Feroz R/O Galain P/O Nambal District Abbotabad (Ex-Cock Peshawar High Court, Peshawar), do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

*Kabir*

**DEPONENT**

**CNIC#13101-4962453-9**

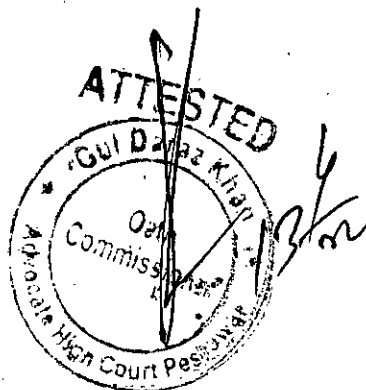
**Cell#\_0346-9530263**

**Identified by**

*Naveed Akhtar*

**Naveed Akhtar**

**Advocate, Supreme Court**



**BEFORE THE HON'BLE SERVICE TRIBUNAL,  
KHYBER PAKHTUNKHWA, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2022

Muhammad Kabir S/O Muhammad Feroz R/O Numbal,  
District Abbotabad (Ex-Cook) Peshawar High Court,  
Peshawar.....**Appellant**

Versus

Peshawar High Court, Peshawar through its Registrar &  
Another

.....**Respondents**

**ADDRESSES OF PARTIES**

**APPELLANT:**


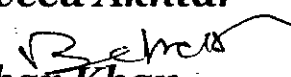

Muhammad Kabir S/O Muhammad Feroz R/O Numbal,  
District Abbotabad (Ex-Cook) Peshawar High Court,  
Peshawar

**RESPONDENTS:**

1. Peshawar High Court, Peshawar through its Registrar.
2. The Registrar Peshawar High Court, Peshawar

Appellant

Through

  
**Naveed Akhtar**  
 &   
**Babar Khan**  
 &   
**Munir Ud Din Ghouri**  
 Advocates, High Court  
 Peshawar  
 Cell#0300-9596181

Dated: 21.04.2022

Am with A (9)

(Am A) (6)  
**PESHAWAR HIGH COURT, PESHAWAR**

**ORDER**

Dated Peshawar the 19<sup>th</sup> September, 2013

In pursuance of the recommendations of Departmental Selection Committee/Examination Committee, the following candidates are appointed as Cook-cum-Bearer (BPS-04), against the vacant posts in the Peshawar High Court, Peshawar, with immediate effect: -

1. Mr. Muhammad Kabir s/o Muhammad Feroz.
2. Mr. Misbah Ullah s/o Fazal Ullah.
3. Mr. Tariq Khan s/o Nawab Khan.

The appointment shall be subject to the following terms and conditions: -

1. The appointment shall be purely on temporary basis.
2. The appointment is subject to antecedent verification of the appointees.
3. The appointees shall produce Medical Fitness Certificates before the assumption of charge.
4. Their services shall be governed by the Peshawar High Court Ministerial Establishment (Appointment & Conditions of Service) Rules, 1989.
5. No TA/DA will be allowed for joining the service.
6. The appointees shall report for duty within 15 days falling which the appointment shall stand withdrawn.

(MUHAMMAD ARSHAD)  
**REGISTRAR**

Encl: No. 10317-1096/Adm:

Dated Pesh the 19/9/2013

Copy forwarded to:

1. All the Members of Departmental Selection/Examination Committee.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Registrar (Accounts), Peshawar High Court, Peshawar.
4. The Court Officer, Peshawar High Court, Peshawar.
5. The officials concerned by name.

(MUHAMMAD ARSHAD)  
**REGISTRAR**

Amr B)

10

Amr B) 7

### SHOW CAUSE NOTICE

I, Khawaja Wajih-ud-Din, Registrar, Peshawar High Court, Peshawar, as Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, do hereby serve you, Mr. Muhammad Kabir, Cook with Hon'ble Mr. Justice (Rtd) Syed Afsar Shah, former Judge of Peshawar High Court Peshawar as follows:

WHEREAS, you remained absent without leave for ten days from duty with Hon'ble Mr. Justice (Rtd) Syed Afsar Shah as reported by his lordship. It has also been reported that due to your misconduct, extreme displeasure has been expressed about your work and your retention in service is not desired by his lordship.

2. Your acts and omissions enumerated herein above make it evident that you are guilty of misconduct which is a valid ground for disciplinary action as prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you one or more penalties as provided under Rule 4 of the said Rules by dispensing the inquiry as sufficient documentary evidence is available on the file.

3. You are, therefore, required to show cause, as to why the aforesaid penalties should not be imposed upon you, and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within Seven (07) days of its delivery, it shall be presumed that you have no defence to put in, and in that case, an ex-parte action shall be taken against you.

Competent Authority

(Khawaja Wajih-ud-Din)

REGISTRAR

Peshawar High Court, Peshawar

N/O 12109-Admn  
Dated 13-07-2010

137

11

Amrullah e Cs

Amrullah e Cs

To

The worthy Registrar / Competent Authority,  
Peshawar High Court, Peshawar.

Subject:- REPLY TO THE SHOW CAUSE NOTICE

Hon'ble Sir,

In response to the Show Cause Notice dated 13.07.2020 with regard to absence from duty without prior permission of Hon'ble Mr. Justice (Retrd) Syed Afsar Shah, I have the honour to state that neither in past nor in the present case, I availed any leave without the prior permission of the Hon'ble Judge. However, if the Hon'ble Judge has faced any inconvenience, I bow my head and surrender myself at the mercy of your goodness and also request for apology.

2. It is, therefore, requested that the subject show cause notice may please be withdrawn.

3. I shall be very thankful to you for your this act of kindness and oblige.

Dated: 18.07.2020

Your Obedient Servant,

*Kabir*

(MUHAMMAD KABIR)

Cook,

Peshawar High Court, Peshawar



Annul D. 12

Ann D. 9

**PESHAWAR HIGH COURT, PESHAWAR**

**ORDER**

Dated Peshawar the 23<sup>rd</sup> July, 2020

WHEREAS upon receiving complaint against Mr. Muhammad Kadir, Cook, Peshawar High Court, Peshawar, attached with Mr. Justice (Rtd) Syed Afsar Shah, Former Judge of Peshawar High Court, disciplinary proceedings were initiated against the accused/official under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

AND WHEREAS the accused/official was served with show cause notice wherein charges against him were intimated with the directions to submit his reply within seven days time. On receipt of the show cause notice, the accused/official submitted reply in which he requested for withdrawal of the Show Cause notice. However, he was personally heard in detail. During personal hearing the accused/official admitted his absence from duty for six days. There was nothing on record regarding leave of the accused/official for the said period. The Hon'ble Judge has expressed extreme displeasure about his conduct; therefore, the accused/ official is found guilty of misconduct.

NOW, THEREFORE, the undersigned in the capacity of Competent Authority imposes major penalty of removal from service under rule-4(1)(b)(iii) of the ibid Rules and hence the accused/official is removed from service with immediate effect.

  
(KHAWAJA WAJIH-UD-DIN)  
REGISTRAR

Ends: No. 12975-83 / Admn.

Dated Peshawar the 25/7/2020

Copy forwarded to:

1. The Member Inspection Team, Peshawar High Court, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The Director (IT), Peshawar High Court, Peshawar.
4. The Director (B&A), Peshawar High Court, Peshawar.
5. The AR (Confidential), Peshawar High Court, Peshawar.
6. The AR (Management), Peshawar High Court, Peshawar.
7. The Assistant Protocol Officer, Peshawar High Court, Peshawar.
8. The Establishment Assistant, Account Branch, Peshawar High Court, Peshawar.
9. The official concerned by name.

(KHAWAJA WAJIH-UD-DIN)  
REGISTRAR

Annul E (13)

TO

The Worthy Chief Justice,  
Peshawar High Court, Peshawar.

(Appellate Authority)

8823

Peshawar High Court, Peshawar	
Date	30/7/2020
Action	
File	

**SUBJECT: APPEAL AGAINST THE ORDER DATED 25.07.2020**  
**WHEREBY THE MAJOR PENALTY OF REMOVAL**  
**FROM SERVICE HAS BEEN IMPOSED IN A**  
**SLIPSHOD MANNER**

SIR,

1. Most profoundly it is submitted that I was appointed as Cook in the Year 2013. Since my appointment I never absented myself without permission of the high-ups.
2. I was served with a Show Cause Notice on 13.07.2020 for absence "Without Permission" for 10-days while deputed with Worthy Justice (Rtd) Syed Afsar Shah. I strongly refused/denied the allegation because I left the duty with the prior permission of his good self (Justice Retired Syed Afsar Shah Sb). But despite my categorical denial I have been removed from service on 25.07.2020 in a slipshod manner.
3. The competent authority has not given any reason nor passed a speaking order regarding dispensing with inquiry.
4. As I denied absence without permission therefore, in such case a regular inquiry was necessary and also because, the Apex Court has held that major penalty could not be imposed without conducting regular inquiry.
5. As I am a poor Class-IV employee and cannot even think to annoy the worthy Judge and to left duty station without permission.

Therefore keeping in view the poverty and previous unblemished service record, I may be re-instated with all back benefits by setting aside Removal from Service order being harsh and not commensurate.

I shall be thankful for your kindness.

  
APPELLANT

Muhammad Kabir  
Ex-Cook PHC, Peshawar.

Dated 30-7-2020  
mob: 0346-9530263  
mob: 0314-9565621



Ammal F. (15)

EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. PIII  
GAZETTE

## **KHYBER PAKHTUNKHWA**

Published by Authority

PESHAWAR, THURSDAY, 20TH JULY, 2020.

### **PESHAWAR HIGH COURT, PESHAWAR**

#### **NOTIFICATION**

Peshawar, dated 2nd July, 2020.

No. 142-J.- In exercise of the powers conferred by Article 208 of the Constitution of the Islamic Republic of Pakistan and in supersession of all previous rules made in this behalf, the Peshawar High Court, with the approval of the Governor of the Khyber Pakhtunkhwa Province, is pleased to make the following rules providing for the appointment of officers and servants of the High Court and the terms and conditions of their employment, namely:

#### **THE PESHAWAR HIGH COURT MINISTERIAL ESTABLISHMENT (APPOINTMENT AND CONDITIONS OF SERVICE) RULES, 2020.**

#### **PART-I PRELIMINARY**

1. - Short title, application and commencement.--(1) These rules may be called the Peshawar High Court Ministerial Establishment (Appointment and terms and Conditions of Service) Rules, 2020.

(2) They shall apply to all persons appointed to the posts borne on the Establishment except those on deputation from any other Department, service or post.

(3) They shall come into force at once.

2. Definitions.--In these rules, unless there is anything repugnant in the subject or context-

(a) "Appendix" means the Appendix to these rules;

(b) "Appointing Authority" means the Chief Justice and includes any other Judge or the officer authorized or designated by the Chief Justice in this behalf;

- (c) "Board" means a Board of Intermediate and Secondary Education established by law in Pakistan or any other educational authority or institution declared by Government to be a Board for the purpose of these rules;
- (d) "Chief Justice" or "Judge" shall respectively mean the Chief Justice or a Judge of the Peshawar High Court;
- (e) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;
- (f) "Departmental Selection Committee" and "Departmental Promotion Committee" means such committees as constituted under rule 7 of these rules;
- (g) "Establishment" means the Ministerial Establishment as defined in rule 3 of these rules;
- (h) "Government" means the Government of the Province of Khyber Pakhtunkhwa;
- (i) "High Court" means the Peshawar High Court, Peshawar and its benches;
- (j) "holder of post" means a person appointed to any post specified in Column No. 2 of the Appendix, but does not include a person appointed on deputation;
- (k) "initial appointment" means appointment made otherwise than by promotion, transfer or deputation;
- (l) "post" means a post specified in column 2 of the Appendix and includes such other posts as may, from time to time, be added to it;
- (m) "prescribed" means prescribed by these rules;
- (n) "recognized University" means any University incorporated by Law in Pakistan or any other University declared by Government to be a recognized University; and
- (o) "Zone" means the area for the time being notified by Government for Principal Seat of the Peshawar High Court and its Benches respectively.

17

**PART-II**  
**ESTABLISHMENT AND APPOINTMENT**

3. **Establishment.**---The Establishment shall consist of posts specified in the Appendix and shall include such other posts as may be added to it from time to time.

4. **Appointment.**---(1) Appointment to the posts of Establishment shall be made through initial recruitment, promotion, transfer or deputation by the Appointing Authority.

(2) No person shall be appointed to a post unless he is a resident of Khyber Pakhtunkhwa and possesses the prescribed educational qualification, experience and fulfills other conditions as enumerated in the Appendix.

5. **Age and qualification.**---(1) No person shall be appointed to a post by initial recruitment who is of less than the age mentioned in column No. 4 or does not possess the qualifications prescribed for the post in column No. 3 of the Appendix.

(2) Where recruitment is to be made on the basis of written examination, the age shall be reckoned on the 1st January of the year in which the examination is proposed to be held and in other cases, on the last date fixed for submission of application for appointment:

Provided that the Appointing Authority may, in the case of upper age limit, grant such concession to a candidate as may be admissible to him for appointment to Government service under any general rules or specific policy of Government for the time being in force.

(3) No person, if not already in Government service, shall be appointed to a post unless he produces a certificate of character from the principal officer of the academic institution last attended and also certificate of character from two other responsible persons not being his relatives, who are well acquainted with his character and antecedents.

6. **Appointment of child of deceased member of the Establishment.**---Where a member of the Establishment of the High Court dies or is rendered incapacitated or invalidated permanently during service or retired on medical grounds, notwithstanding the procedure provided for in sub-rule (3) of rule 8, the Appointing Authority may appoint one of the children of such member or if the child has not attained the age prescribed for appointment in the establishment, the widow or wife as the case may be, of such member, to a post in BPS-01 to 16:

Provided that the child or the widow or wife, as the case may be, possesses the minimum qualification prescribed for appointment to the post:

Provided further that if there are two widows or wives of such member, as the case may be, preference shall be given to the elder widow or wife:

Provided also that appointment under this rule is subject to availability of vacancy and if more than one vacancies, in different pay scales, are available at a time and the child or the widow or wife, as the case may be, possesses the qualifications eligible for appointment in more than one post, such child or the widow or wife, as the case may be, shall ordinarily be appointed to the post carrying higher pay scale.

**7. Departmental Selection Committee and Departmental Promotion Committee.**---(1) The Appointing Authority may constitute from time to time one or more Departmental Selection Committees to make selection for appointment by initial recruitment, and one or more Departmental Promotion Committees for appointment by promotion to the posts to be filled by promotion:

Provided that where the Chief Justice deems it fit to fill a post through Commission, he may dispense with the requirement of sub-rule (1).

(2) The recruitment policy of the High Court formulated for appointments in district judiciary shall *mutatis mutandis* be applicable to the Departmental Selection Committee and Departmental Promotion Committee constituted under this rule.

### PART-III PROCEDURE FOR APPOINTMENT

**8. Initial recruitment.**---(1) All posts meant for initial recruitment shall be advertised by the Registrar with the approval of the Appointing Authority.

(2) In case it is decided that a post is to be filled through the Commission, the Appointing Authority shall place a requisition on the Commission.

(3) The method of appointment and other conditions applicable to a post shall be such as mentioned in the Appendix:

Provided that where the Appointing Authority deems it necessary to fill a post by transfer, notwithstanding the requirement of this rule, it may direct for appointment by transfer through Departmental Selection Committee after inviting the expressions of interest from the holders of the post in the same basic scale in the district judiciary.

**9. Observance of quota.**---While filling in posts through initial recruitment, the quota as prescribed by the Government from time to time for female, disabled and minorities shall be observed.

**10. Appointment through promotion.**---Appointment by promotion to posts in the Establishment shall be made on the recommendation of the Departmental Promotion Committee.

11. **Probation.**---(1) A person appointed to a post shall remain on probation for a period of two years, if appointed by initial recruitment, and for a period of one year, if appointed otherwise.

**Explanation:** Period spent on officiating service and on deputation to a corresponding or a higher post shall count towards the period of probation.

(2) If the work or conduct of a holder of post during the period of probation has, in the opinion of the Appointing Authority, not been satisfactory, the Appointing Authority may, notwithstanding that the period of probation has not expired-

- (a) dispense with his services, if he has been appointed by initial recruitment; or
- (b) if he has been appointed otherwise, revert him to his former post; or
- (c) if there be no such post, dispense with his services.

(3) On completion of the period of probation of a holder of the post, the Appointing Authority may confirm him in his appointment or if his work or conduct has, in the opinion of the Appointing Authority, not been satisfactory, the Appointing Authority may-

- (a) in case he has been appointed by initial recruitment, dispense with his services; or
- (b) in case he has been appointed otherwise, revert him to his former post, and if there be no such post, dispense with his services.
- (c) extend the period of probation by a period not exceeding two years in all, and during or on the expiry of such period pass such orders as it could have passed during or on the expiry of the initial probationary period.

**Explanation-I:** If no orders have been made by the day following the completion of the initial probationary period, the period of probation shall be deemed to have been extended in accordance with sub-rule (1).

**Explanation-II:** If no orders have been made by the day on which the maximum period of probation expires, the probationer shall be deemed to have been confirmed in his appointment.

**Explanation-III:** A probationer who has satisfactorily completed his period of probation shall be confirmed with effect from the date of his continuous appointment to the post; provided that where the period of his probation has been extended under the provisions of clause (c) of this sub-rule, the date of confirmation shall, subject to the other provisions of this rule, be the date on which the period of probation was last extended.



PART-IV  
**SENIORITY**

12. **Seniority.**---(1) The seniority inter-se of the holders of posts shall be determined-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the authority on whose recommendation the appointment is made; provided that persons selected in an earlier selection shall rank senior to persons selected in a latter selection; and
- (b) in the case of persons appointed otherwise, with reference to the date of their continuous regular appointment; provided that persons selected for promotion in one batch shall retain their inter-se seniority as held by them in the lower cadre.

**Explanation-I:** If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted, the person promoted first shall rank senior to the person promoted subsequently.

**Explanation-II:** A junior person appointed to a higher post shall be deemed to have superseded a senior person if both the junior and senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority of the holder of posts appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their continuous regular appointment to the post:

Provided that if the date of continuous regular appointment in the case of two or more persons is the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

PART-V  
**MISCELLANEOUS**

13. **Pay and allowances and other fringe benefits.**---Members of the Establishment shall be entitled to the same pay and allowances (including the scale of pay) and other fringe benefits as are admissible to Government servants of the equivalent status or rank in accordance with the rules made by Government from time to time:

Provided that the Chief Justice, whenever he thinks fit, may grant a special allowance to any officer or member of the Establishment keeping in view the nature of the services that he is required to perform.

14. **Retirement from service.**---(1) A member of the Establishment shall retire from service-

- (a) on such date after he has completed twenty five years of service qualifying for pension or other retirement benefits as the Appointing Authority may, in public interest, direct; or
- (b) where no direction is given under clause (a), on the completion of the sixtieth year of his age.

(2) No direction under clause (a) of sub-rule (1) shall be made until the member of the Establishment has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

15. **Liability of transfer.**---Holders of posts shall be liable to transfer from the principal seat of the High Court to any of its Benches and vice versa.

16. **Appeal.**---Where any order affecting the terms and conditions of service of a member of the Establishment is passed or any penalty is imposed by the Registrar, an appeal shall lie from his order to the Chief Justice, and where any such order is passed or any penalty is imposed by the Chief Justice, otherwise than on appeal from an order of the Registrar, an appeal shall lie to a bench of three senior most Judges of the Court:

Provided that an appeal may be filed within thirty days from the date of order complained of.

17. **General rules.**---In all other matters not expressly provided for in these rules or any other rules hereafter made, the rules made or deemed to have been made by Government under the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act XVIII of 1973), shall *mutatis mutandis* apply to the holders of posts under these rules.

18. **Relaxation.**---Any of these rules may, for reasons to be recorded in writing, be relaxed in individual cases, if the Chief Justice is satisfied that a strict application of the rule would cause undue hardships to the individual concerned.

19. **Power to create, upgrade or abolish posts.**---The power to create, abolish, upgrade or down grade a post, temporary or permanent, shall vest in the Chief Justice.

20. **Delegation.**---The Chief Justice may delegate all or any of his powers under these rules to a Judge or officer of the High Court.

21. **Powers of the Chief Justice to safeguard rights of holders of posts.**---Whenever in the application of these rules, the terms and conditions of service of a

22

78 KHYBER PAKHTUNKWA GOVT: GAZETTE, EXTRAORDINARY, 20<sup>TH</sup> JULY, 2020

holder of post, as guaranteed by any law for the time being in force are likely to be adversely affected, the Chief Justice shall make appropriate orders to safeguard the legal rights of such person in accordance with law.

**22. Repeal.**---The Peshawar High Court ministerial establishment (Appointment and Condition of Service) Rules, 1989 are hereby repealed, but such repeal shall not affect anything duly done or suffered under those rules.

23

APPENDIX

(See rules 2(a), 3 and 5)

S#	Nomenclature of the post	Minimum qualification for appointment by initial recruitment or by transfer	Age limit	Method of recruitment
1	2	3	4	5
1.	Registrar (BPS-22)			By transfer of a District and Sessions Judge.
2.	Member Inspection Team (BPS-21)			By transfer of a District and Sessions Judge.
3.	Additional Registrar (Admin)(BPS-21)			By transfer of a District and Sessions Judge.
4.	Additional Members Inspection Team (BPS-21)			By transfer of a District and Sessions Judge.
5.	Additional Registrar (Judicial) (BPS-21)			(i) By transfer of a District and Sessions Judge; or (ii) By promotion on merit with particular reference to fitness for higher responsibilities from amongst holders of posts in BPS-20.
6.	Additional Registrar (Legal) (BPS-21)			By transfer of a District and Sessions Judge.
7.	Incharge NJPIC (BPS-21)			By transfer of a District and Sessions Judge.
8.	Principal Staff Officer, to the Chief Justice (BPS-21)			(i) By transfer of a District and Sessions Judge; or (ii) By transfer of Additional Registrar (Judicial), subject to suitability determined by the Chief Justice.

(24)

80 KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 20TH JULY, 2020

9.	Director HRC (BPS-21)			By transfer of a District and Sessions Judge.
10.	Deputy Registrar (Legal) (BPS-19)			By transfer of a Senior Civil Judge.
11.	Deputy Registrar (BPS-19)			<p>By promotion on the basis of seniority-cum-fitness, from amongst the holders of posts of Assistant Registrars, Readers and Private Secretaries, having a bachelor degree from a recognized University, on the basis of the following ratio/quota:</p> <p>(i) two-third from amongst holders of the posts of Assistant Registrars /Readers; and</p> <p>(ii) one-third from amongst the holders of the posts of Private Secretaries.</p> <p>The seats on the basis of the above mentioned ratio/quota shall be filled in the following manner:</p> <p><b>First vacancy:</b> Assistant Registrars/ Readers.</p> <p><b>Second vacancy:</b> Private Secretaries.</p> <p><b>Third vacancy:</b> Assistant Registrars/ Readers.</p> <p><b>Fourth vacancy:</b> Assistant Registrars/ Readers.</p> <p><b>Fifth vacancy:</b> At the discretion of the Chief Justice.</p>
12.	Assistant Registrar (Legal) (BPS-18)			By transfer of a Civil Judge.

13.	Director Planning and Development (BPS-18)			Civil Servant of the Provincial or Federal Government, having experience of not less than ten (10) years in the relevant field, on deputation in consultation with the Provincial or Federal Government, as the case may be.
<b><u>RESEARCH WING</u></b>				
14.	Senior Director (Research) (BPS-21)			By transfer of a District and Sessions Judge.
15.	Director Research-I (BPS-20)			By transfer of an Additional District and Sessions Judge.
16.	Director Research-II (BPS-20)			By promotion on the basis of seniority-cum- fitness, from amongst the holders of the post of Senior Research and Reference Officer-II.
17.	Senior Research and Reference Officer-I (BPS-19)			By transfer of a Senior Civil Judge.
18.	Senior Research and Reference Officer-II (BPS-19)			By promotion, on the basis of seniority-cum- fitness, from amongst the holders of posts of Research and Reference Officer-II.
19.	Research and Reference Officer-I (BPS-18)			By transfer of a Civil Judge, having LL.M or other higher qualification.
20.	Research and Reference Officer-II (BPS-18)			By promotion, on the basis of seniority-cum- fitness, from amongst the holders of posts of Assistant Research and Reference Officer.
21.	Assistant Research and Reference Officers (BPS-17)	Degree of LLB from a recognized University with 1 <sup>st</sup> Division; provided that preference will be given to holders of degree of LL.M.	25 to 35 years.	(i) Fifty percent (50%) by promotion, on the basis of seniority- cum-fitness, from amongst the holders of posts of Judicial Assistant; and

(26)

82 KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 20<sup>TH</sup> JULY, 2020.

				(ii) fifty percent (50%) by initial recruitment.
22.	Judicial Assistant (BPS-16)	LLB degree from a recognized University.	25 to 30 years.	By initial recruitment.
<b><u>RECORD</u></b>				
23.	Director Records and Automation (BPS-20)			By transfer of an Additional District and Sessions Judge.
24.	Deputy Director Record Rooms (BPS-19)			(i) By transfer of a Senior Civil Judge; or (ii) a Deputy Registrar.
25.	Assistant Director Record Room High Court (BPS-18)			(i) By transfer of a Civil Judge; or (ii) An Assistant Registrar.
26.	Assistant Director Record Rooms, District Judiciary (BPS-18)			(i) By transfer of a Civil Judge; or (ii) An Assistant Registrar.
<b><u>IT WING</u></b>				
27.	Director I.T (BPS-19)			By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Deputy Director I.T.
28.	Deputy Director I.T (BPS-18)			By promotion, on the basis of seniority-cum-fitness from amongst the holder of the posts of Computer Programmer, Network Administrator and Database Administrator having experience in computer programming, Network Developing and Administration and Database Administration.  <b>Note:</b> Joint seniority list of the Computer Programmer, Database Administrator and Network Administrator be maintained for the purpose of promotion.

(27)

KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 20<sup>TH</sup> JULY, 2020 83

29.	Computer Programmer (BPS-17)	Bachelor of Computer Science (four years)/ M.Sc Computer Science with three years experience in VB/Dot, Net/ Java/ Oracle and Computer Programming in a reputed public or private organization.	25 to 35 years.	(i) seventy five percent (75%) by promotion on the basis of seniority-cum-fitness from the holders of the posts of Computer Operators having qualification prescribed for initial recruitment; and (ii) Twenty five percent (25%) by initial recruitment.
30.	Network Administrator (BPS-17)	Bachelor of Computer Science (four years)/ Bachelor of Information Technology (4 years)/ M.Sc Computer Science, Network Administration, System Engineering with three years of experience of networking with firewalls, trouble shooting, problem resolution, backup and recovery software and methodologies in a reputed public or private organization.	25 to 35 years.	(i) seventy five percent (75%) by promotion on the basis of seniority-cum-fitness from the holders of the posts of Computer Operators having qualification prescribed for initial recruitment; and (ii) Twenty five percent (25%) by initial recruitment.
31.	Database Administrator (BPS-17)	Bachelor of Computer Science (four years)/ Bachelor of Information Technology (4 years)/ M.Sc Computer Science, with three years experience of networking, Database standards, database software, Web applications, end user applications and knowledge of database design, data backup documentation and coding, recovery, security and integrity of data.	25 to 35 years.	(i) seventy five percent (75%) by promotion on the basis of seniority-cum-fitness from the holders of the posts of computer operators having qualification prescribed for initial recruitment; and (ii) Twenty five percent (25%) by initial recruitment.

32.	Computer Operator (BPS-16)	Bachelor of Computer Science (four years)/ Bachelor of Information	25 to 35 years.	By initial recruitment.
-----	----------------------------	--	-----------------	-------------------------



		Technology (4 years) / M.Sc Computer Science or equivalent Qualification from a recognized University with 40 WPM of typing speed.		
<b>ACCOUNTS BRANCH</b>				
33.	Director Budget and Accounts (BPS-19)	Chartered Accountant (ACA/ACMA/FCA) qualified from a reputable CA firm. Preference will be given to candidates who have completed their articles from one of the big four CA firms from Pakistan or abroad, or; MBA (Accounting and Finance)/M.Com from recognized University, having post qualification experience of 08 to 10 years preferably in a government or semi government institution.	30 to 40 years.	(i) By promotion on the basis of seniority-cum-fitness, from amongst the holders of post of Deputy Director Budget and Accounts; or  (ii) if no suitable candidate is available for promotion from the Deputy Director, Budget and Accounts, then by initial recruitment.
34.	Deputy Director Budget and Accounts (BPS-18)	Chartered Accountant /ICMA or MBA (Accounting and Finance) from a recognized University, having 06 to 08 years experience including at least 04 years of job specific experience.	30 to 35 years.	(i) By promotion on the basis of seniority-cum-fitness, from amongst the holders of post of Account Officer (BPS-17); or  (ii) if no suitable candidates is available from amongst the holders of the post of Account Officer, then by initial recruitment.
35.	Account Officer (BPS-17)	Chartered Accountant /ICMA or MBA (Accounting and Finance)/ from a recognized University, having 03 to 05 years experience including at least 02 years of job specific experience.	25 to 35 years.	(i) By promotion on the basis of seniority-cum-fitness, from amongst the holders of post of Budget and Accounts Assistant (BPS-16), Procurement Assistant (BPS-16) and Accountant (BPS-16) having the required

29

KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 20<sup>TH</sup> JULY, 2020 85

				<p>qualification; or</p> <p>(ii) if no suitable candidates is available from amongst the holders of the post of Budget and Accounts Assistant (BPS-16), Procurement Assistant (BPS-16) and Accountant (BPS-16) then by initial recruitment.</p> <p><b>Note:</b> A joint seniority list of Budget and Accounts Assistant, Procurement Assistant and Accountant shall be maintained for the purpose of promotion.</p>
36.	Budget and Accounts Assistant (BPS-16)	Chartered Accountant /ACCA/MBA (Accounting and Finance)/ M.Com/B.S Hons or Graduate degree from a recognized University, with Commerce, Economics, or Mathematics/Statistic as special subjects from recognized University with 03 years experience in relevant field.	25 to 30 years.	By initial recruitment.
37.	Procurement Assistant/ Accountant (BPS-16)	Chartered Accountant /ACCA/MBA (Accounting and Finance)/ M.Com/B.S Hons or Graduate degree from a recognized University, with Commerce, Economics, or Mathematics/Statistic as special subjects from recognized University with three (03) years experience in relevant field.	25 to 30 years.	By initial recruitment.
<b><u>PRIVATE SECRETARIES</u></b>				
38.	Private Secretary (Admin)	Bachelor Degree from a recognized University.		By promotion, on the basis of seniority-cum-fitness, from amongst the

30

	(BPS-19)			holders of the post of Private Secretaries, having a Bachelor Degree from a recognized university.
39.	Private Secretary (BPS-18)	(i) Bachelor Degree from a recognized University;  (ii) a speed of 120 words per minute in shorthand and 40 words per minute in typing.	25 to 30 years.	(i) By promotion on the basis of seniority-cum-fitness, from amongst the holders of posts of Stenographers, having a Bachelor Degree from a recognized University; or  (ii) if no suitable Stenographer is available for promotion, then by initial recruitment.
40.	Senior Scale Stenographer (BPS-16)	(i) Bachelor Degree or equivalent qualification from a recognized University;  (ii) a speed of 100 words per minutes in shorthand and 40 words per minute in typing; and  (iii) computer literate.	25 to 30	(i) By promotion on the basis of seniority-cum-fitness, from amongst the holders of post of Steno typist; or  (ii) if no suitable Steno typist is available for promotion, then by initial recruitment
41.	Steno Typist (BPS-14)	(i) Bachelor Degree or equivalent qualification from a recognized University;  (ii) a speed of 80 words per minute in shorthand and 35 words per minute in typing; and  (iii) computer literate.	25 to 30 years.	By initial recruitment.

<b><u>PROTOCOL WING</u></b>				
42.	Protocol Officer (BPS-18)	Master in Public Administration or Master in Mass Communication or.	25 to 30 years.	(i) By promotion, on the basis of seniority-cum-fitness, from the holders of the posts of

31

		Journalism from a recognized University		Assistant Protocol Officer; or  (ii) if no suitable Assistant Protocol Officer is available for promotion, then by initial recruitment.
43.	Assistant Protocol Officers (BPS-17)	Master in Public Administration or Master in Mass Communication or Journalism from a recognized University.	25 to 30 years.	(i) Twenty five percent (25%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Caretakers; and  (ii) seventy five percent (75%) by initial recruitment.
44.	Caretaker (BPS-16)	Bachelor degree from a recognized University with three years' experience in the relevant field.	25 to 30 years.	By initial recruitment.
<b><u>LIBRARY</u></b>				
45.	Librarian (BPS-18)	Master Degree in Library Sciences from a recognized University with five (5) years of experience in the relevant field.	25 to 35 years.	(i) Seventy five percent (75%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of posts Additional Librarian ; and  (ii) twenty five percent (25%) by initial recruitment.
46.	Additional Librarian (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Assistant Librarian.
47.	Assistant Librarian (BPS-16)	Master Degree in Library Science from a recognized University.	25 to 30 years.	By initial recruitment.
<b><u>ASSISTANT REGISTRARS/ READERS/ OTHERS</u></b>				
48.	Assistant Registrar/ Readers (BPS-18)			By promotion on the basis of seniority-cum-fitness, from amongst the holders of post of Assistants, having a

32

88 KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 20<sup>TH</sup> JULY, 2020

				Bachelor Degree from a recognized University
49.	Assistant (BPS-16)	Bachelor degree from a recognized University.	25 to 30 years.	(i) Seventy five percent (75%) by promotion on the basis of seniority-cum-fitness, from amongst the holders of posts of Senior Clerk, who are graduates; and  (ii) twenty five percent (25%) by initial recruitment.
50.	Senior Clerk (BPS-14)			By promotion on the basis of seniority-cum-fitness, from amongst the holders of post of Junior Clerks, having a Bachelor Degree from a recognized University.
51.	Junior Clerk (BPS-11)	(i) Higher Secondary School Certificate or equivalent qualification from a recognized Board;  (ii) computer literate; and  (iii) typing speed of 30 wpm.	18 to 30 years.	(i) Thirty three percent (33%) by promotion, on the basis of seniority-cum-fitness, from amongst the holders of posts of Naib Qasid, Head Mali, Mali Chowkidar, Head Sanitation Attendant and Sanitation Attendant, who possesses the qualification prescribed for initial recruitment. For the purpose of promotion separate common seniority list of the holder of the above mentioned posts shall be maintained;  (ii) Seven percent (7%) by promotion, on the basis of seniority cum fitness from amongst the holders of the posts of Bailiff, Process Server, Lift Operator, Book Binder, Daftari and Record Lifter, who possesses the qualification prescribed for initial

33

				recruitment. For the purpose of promotion separate common seniority list of the holder of the above mentioned posts shall be maintained; and  (iii) sixty percent (60%) by initial recruitment.
52.	Cook-cum-Bearer (BPS-06)	Secondary School Certificate with at least having experience of cooking of five (5) years in reputed hotel/ Government rest house.	18 to 30 years.	By initial recruitment.
53.	Bailiff (BPS-06)	Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 30 years.	By promotion, on the basis of seniority cum fitness, from amongst holders of the post of process server.
54.	Process Server (BPS-05)	Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 30 years.	By initial recruitment.
55.	Head Mali (BPS-04)	Middle standard, having experience in the relevant field.		By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Mali.
56.	Head Sanitation Attendant (BPS-04)	Preferably literate.		By promotion, on the basis of seniority-cum-fitness, from amongst the holders of posts of Sanitation Attendant.
57.	Lift Operator (BPS-04)	Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 30 years.	By initial recruitment.
58.	Book Binder (BPS-04)	Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 35 years.	By initial recruitment.
59.	Daltari (BPS-04)	Secondary School Certificate or equivalent	18 to 35 years.	By initial recruitment.

34

		qualification from a recognized Board.		
60.	Record Lifter (BPS-04)	Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 35 years.	By initial recruitment.
61.	Chowkidar (BPS-03)	Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 35 years.	By initial recruitment.
62.	Naib Qasid (BPS-03)	Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 30 years.	By initial recruitment.
63.	Mali (BPS-03)	Middle standard, having experience in the relevant filed.	18 to 35 years.	By initial recruitment.
64.	Sanitation Attendant (BPS-03)	Preferably literate.	18 to 30 years.	By initial recruitment.
<b><u>CCTV OPERATORS</u></b>				
65.	CCTV Supervisor (BPS-14)	(i) D.A.E in Electrical/ Electronics/ Computer Science with four years experience in relevant field; and  (ii) computer literate.  Note: Preference will be given to persons having experience in security/ disaster/ emergency management.	25 to 30 years.	(i) Seventy five percent (75%) by promotion from the holders of the posts of CCTV Technician and CCTV Camera Operator.  Note: A Joint seniority list of CCTV Technician and CCTV Camera Operator be maintained for promotion; and  (ii) Twenty five percent (25%) by initial recruitment.
66.	CCTV Technician (BPS-12)	(i) D.A.E in Electrical/ Electronics/ mechanical with two years experience in the relevant field; and  (ii) computer literate.  Note: Preference will	25 to 30 years.	By initial recruitment.

35

		be given to persons having experience in security/ disaster/ emergency management.		
67.	CCTV Camera Operator (BPS-12)	(i) D.A.E in Electrical/ Electronics with two years experience in the relevant field; and  (ii) computer literate.  Note: Preference will be given to persons having experience in security/ disaster/ emergency management.	25 to 30 years.	By initial recruitment.
<b><u>DRIVERS</u></b>				
68.	Garage Superintendent (BPS-11)	Secondary School Certificate or equivalent qualification from a recognized Board.		By promotion, on the basis of seniority-cum-fitness, from amongst the holders of posts of Drivers.
69.	Driver (BPS-06)	(i) Secondary School Certificate or equivalent qualification from a recognized board; and  (ii) HTV License; or  (iii) LTV License with at least five years' experience as such.	25 to 35 years.	By initial recruitment.

<b><u>OTHERS</u></b>				
70.	Pesh Imam (BPS-16)	Sanad <i>Dars e Nizami</i> or equivalent from a recognized Board/Wifaq.	30 to 40 years.	By initial recruitment.
71.	Khadim (BPS-03)	Preferably literate.	30 to 40 years.	By initial recruitment.



36

92 KHYBER PAKHTUNKWHA GOVT: GAZETTE, EXTRAORDINARY, 20<sup>TH</sup> JULY, 2020

72.	Security Supervisor (BPS-8)	Ex-serviceman, retired from armed forces or para military forces, after completing fifteen (15) years of service as sepoy and not more than two (2) years have lapsed since retirement.	30 to 40 years.	(i) By promotion on the basis of seniority cum fitness, from amongst the holders of posts of security guards; or  (ii) through initial recruitment, if no suitable person is available from those holding the posts of security guards.
73.	Security Guard (BPS-04)	Preferably ex-serviceman.	30 to 40 years.	By initial recruitment.
74.	Telephone Operator (BPS-07)	Higher Secondary School Certificate or equivalent qualification from a recognized Board with experience of one (1) year as Telephone Operator at any recognized origination.	25 to 30 years.	By initial recruitment.

Sd/-xxx

BY ORDER OF THE CHIEF JUSTICE AND JUDGES

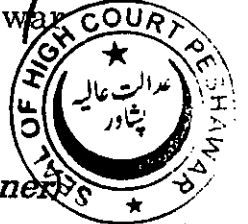
Amnuk S

37

**BEFORE THE HON'BLE CHIEF JUSTICE,  
PESHAWAR HIGH COURT, PESHAWAR**

Peshawar High Court, Peshawar  
11089  
28/9/2020  
For action  
Signature

Muhammad Kabir D/o Muhammad Feroz R/o Galani,  
P/O Nambal District Abbottabad (Ex Cock Peshawar  
High Court, Peshawar.



-----*(Petitioner)*

**VERSUS**

1. Registrar, Peshawar High Court, Peshawar.

-----*(Respondents)*

**REVIEW PETITION AGAINST THE ORDER**  
**/ NOTIFICATION NO. 12975-83/ADMN**  
**DATED: 25/07/2020 WHEREBY THE**  
**PETITIONER WAS REMOVED FROM**  
**SERVICE AND THE ORDER OF**  
**COMPETENT AUTHORITY DATED:**  
**24/08/2020, WHEREBY DEPARTMENTAL**  
**APPEAL FILED BY PETITIONER AND**  
**DISMISSED.**

**Prayer:**

**ON ACCEPTANCE OF THE REVIEW**  
**PETITION THE IMPUGNED ORDERS OF**  
**RESPONDENT "APPELLATE" MAY**  
**GRACIOUSLY BE SET-ASIDE AND THE**  
**PETITIONER MAY BE REINSTATED TO**  
**SERVICE WITH ALL BACK BENEFITS.**

**ATTESTED**  
EXAMINER  
Peshawar High Court

28

**Respectfully Sheweth;**

1. That the Petitioner was inducted as Clerk as per Peshawar High Court Peshawar Vide Order dated: 1-09-2013

***(Copy is Annex "A")***

2. That from the day first Petitioner performed his duty to the entire satisfaction of immediate superior on a permanent basis and left no room for any complaint. It is pertinent to mention here that I Petitioner was on duty with Justice Retired "Syed Afsar Shah" when Petitioner was served the show cause notice dated: 13/07/2020.

***(Copy is Annex "B")***

3. That the Petitioner submitted reply to the show cause notice.

***(Copy of the Reply Annex "C")***

4. That after personal hiring the Petitioner was removed from service by Respondent vide notification dated: 23/07/2020.

***(Copy is Annex "D")***

5. That Petitioner preferred appeal to the Hon'ble Court Chief Justice Peshawar, High Court Peshawar, on 30/07/2020 with plausible reason, however, the appeal was rejected vide the order no. 10573 dated: 24/08/2020. (Copy of the departmental appeal and notification dated: 24/08/2020 as

***(Annex "E & F")***

**TESTED**  
EXAMINER  
PESHAWAR HIGH COURT

37

6. That the Petitioner is before this your Honour for his reinstatement on the following grounds inter-alia.

**Grounds:-**

- A. That the impugned orders are against the alw facts and principles of natural justice hence not tenable.
- B. That throughout the service records of the petitioner speaks clearly and loudly about his performance to the satisfaction of the bosses.
- C. That petitioner never remained absent from his duty and never gave any room for any complaint against him.
- D. That during his duty with Justice Retired Afsar Shah, the petitioner remain punctual and left the duty with prior permission and petitioner categorically explained the things in replay to show cause notice and departmental appeal but the same were not considered, which needs sympathetic consideration of your honor.
- E. That the penalty imposed against petitioner harsh even if the petitioner was not on duty for few days, keeping his service record in view. Said period should have been converted in to leave.

**ATTESTED**  
EXAMINER  
Peshawar High Court

40

F. That the petitioner belongs to poor family and is the only bread earner for his family, therefore, pray for leniency and mercy of your honor.

G. That without conducting the regular inquiry, petitioner was removed from service and as such he was not only condemned unheard but his fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan 1973 were infringed.

*It is, therefore, prayed on acceptance of the review / petition the impugned orders may be set-aside and petitioner one be reinstated to service with all back benefits.*

Dated: 22/09/2020

Petitioner

*Kabir*

Muhammad Kabir

13101-4962453-9

0346 9530263

**ATTESTED**  
EXAMINER  
Peshawar High Court

1

(41)

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**[Judicial Department].**

**Departmental Appeal No.2/2020**

Muhammad Kabir s/o Muhammad Feroz,  
Ex-Cook Peshawar High Court,  
Peshawar.

Appellant (s)

**VERSUS**

The Registrar,  
Peshawar High Court, Peshawar.

Respondent (s)

Appellant (s) :-  
For Respondent (s).

In person.  
Mr. Khalid Rehman, Advocate along with Syed  
Shakir Hussain Shah, Assistant (litigation),  
Peshawar High Court.

Date of hearing:

21.03.2022

**ORDER**

**ROOH-UL-AMIN KHAN, J:-** Through the instant Departmental Appeal, Muhammad Kabir, the appellant, has questioned order dated 23.07.2020, passed by Hon'ble the Chief Justice Peshawar High Court, Peshawar/Competent Authority, whereby he has been removed from service.

2. Facts in brief forming the background of the instant appeal are that appellant while serving as Cook in the Establishment of the Peshawar High Court, Peshawar was attached with Mr. Justice Syed Afsar Shah, Hon'ble the former Judge of this Court. The appellant remained absent from his duties for ten days without any application for leave as reported against him by the Hon'ble Judge. Besides, due to his misconduct extreme displeasure was expressed by the Hon'ble Judge. Show cause notice was given

**ATTESTED**  
EXAMINER  
Peshawar High Court

*Syed Afsar Shah*

(42)

to the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules 2011 to which he filed reply. He was also given an opportunity of personal hearing. The reply and explanation of the appellant being unsatisfactory, Hon'ble the Competent Authority by awarding him major penalty, removed him from service vide order dated 23.07.2020, which is impugned in the instant appeal.

3. Appellant present in court was heard personally.
4. The appellant failed to give any explanation, much less plausible, so as to warrant his exoneration from the charge against him. Sufficient material is available on file which shows that appellant remained absent from his duties for ten days without any leave application. Besides, reportedly appellant is disobedient, ill mannered and rude with the family members of the Hon'ble judge.
5. Accordingly, this appeal stands dismissed.

Announced:

21.03.2022

M. Siraj Afridi CS

*Rooh ul Amin*  
Senior Puisne Judge

*Jour*  
JUDGE

*Maw*  
JUDGE

Larger Bench of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge:  
Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Justice Ms. Musarrat Hilali

EMPHATICALLY TO BE TRUE  
 Authority of Court  
 The District Court, Peshawar

06 APR 2022

PLD 2021 Supreme Court 391

*AmnAR. 2/21*

43

Present: Gulzar Ahmed, C.J., Sardar Tariq Masood, Faisal Arab, Ijaz ul Ahsan and Sajjad Ali Shah, JJ

**GUL TAIZ KHAN MARWAT---Appellant**

**Versus**

**The REGISTRAR, PESHAWAR HIGH COURT, PESHAWAR and others--Respondents**

Civil Appeals Nos.353-355 of 2010, 130 of 2013, 176 of 2018, Civil Petitions Nos.4750-4751 of 2017, Civil Miscellaneous Application No.6310 of 2018 in Civil Miscellaneous Application No.4233 of 2017, Civil Petition No.3039 of 2015, Civil Miscellaneous Applications Nos.218, 413, 1718 of 2016 in Civil Petition No.3039, Civil Petition No.3040 of 2015, Civil Miscellaneous Applications Nos.222, 219 and 1177 of 2016 in Civil Petition No.3040 of 2015, Civil Petitions Nos.1439, 3280 of 2018 and Civil Miscellaneous Application No.8193 of 2017 in Civil Appeal No.1163 of 2017, decided on 16th March, 2020.

(Against the judgments dated 06.03.2009 passed by the Peshawar High Court, Peshawar in W.P. No.376 and 384 of 2008 and 1065 of 2007, 20.09.2012 passed by the Peshawar High Court, Peshawar in W.P. No.958 of 2009, 02.11.2017 passed by the Lahore High Court, Lahore in W.P. No.99511 of 2017, 27.09.2017 passed by the Islamabad High Court, Islamabad in W.Ps. Nos.3249 and 3250 of 2016, 08.10.2015 passed by the Peshawar High Court, Peshawar in W.Ps. Nos.931-P and 3378-P of 2015, 22.03.2018 passed by the Lahore High Court, Lahore in W.P. No.10229/04 of 2017 and 28.06.2018 passed by the Islamabad High Court, Islamabad in W.P. No. 856 of 2018).

**(a) Constitution of Pakistan---**

---Arts. 176, 192(1), 199 & 208---Constitutional jurisdiction of the High Court---"But for" test---Scope---Executive, administrative or consultative actions of the Chief Justices or Judges of a High Court---Such actions were not amenable to the constitutional jurisdiction of a High Court under Art. 199 of the Constitution---Superior courts judges did not come under the definition of "persons" in view of Art.199(5) of the Constitution and therefore writ petitions filed against their executive, administrative or consultative actions were not maintainable---Judges of the superior courts did not act as persona designata while exercising executive, administrative or consultative actions---Framers of the Constitution did not intend that the remedy of a writ be available against a High Court or the Supreme Court.

Bare reading of Article 199(5) of the Constitution showed that as a general rule for the purposes of Article 199, the Supreme Court and High Courts had been excluded from the term 'person', and therefore no writ could be issued by a High Court under Article 199 to the Supreme Court or to itself by any of the said Courts.Framers of the Constitution did not intend that the remedy of a writ be available against a High Court or the Supreme Court.

Perusal of Articles 176 and 192(1) of the Constitution made it clear that a High Court and the Supreme Court both comprised of the respective Chief Justices and judges, therefore the argument that there could be no Court without the Chief Justice and Judges was necessarily true. Furthermore, the definitions under the said Articles of the Constitution did not draw any distinction between the judicial orders of a Court and its administrative, executive or consultative orders.

Keeping in view Articles 176, 192, 199 and 208 of the Constitution, and upon a harmonious interpretation thereof, no distinction whatsoever had been made between the various functions of the Supreme Court and High Courts in the Constitution and the wording was clear, straightforward and unambiguous. There was no sound basis to the argument that Judges acting in their judicial capacity fell within the definition of a 'person' (Article 199(5) of the Constitution) and Judges acting in their administrative, executive or consultative capacity did not fall within such definition.

Ch. Muhammad Akram v. Registrar, Islamabad High Court and others PLD 2016 SC 961 overruled, held needed to be revisited.



The 'but for' test, was pivotal in determining whether or not a particular act or function carried out by a Judge was immune to challenge under writ jurisdiction of the High Court under Article 199 of the Constitution. Question was 'but for' the person's appointment as a judge (thereby constituting a part of a High Court or the Supreme Court under Articles 192 and 176 of the Constitution), would the function in issue be exercised? If the answer to such question was yes, then such function would not be immune to challenge under Article 199. With respect to the administrative, executive or consultative acts or orders of the Chief Justices or Judges of a High Court, the answer to the "but for" test was an unqualified no, therefore such acts or orders would be protected by Article 199(5) of the Constitution and thereby be immune to challenge under the writ jurisdiction of the High Court.

Abrar Hassan distinguished.

Malik Asad distinguished.

Chief Justices or Judges of a High Court exercising their executive, administrative or consultative actions did not act as *persona designata*, rather acted for and on the behest of, and as a High Court as defined in Article 192 of the Constitution and were therefore not amenable to the constitutional jurisdiction of a High Court under Article 199 thereof.

Suleman Ali Haideri and another v. Government of Balochistan and others 2004 SCMR 354 ref.

Principle of judicial comity was another reason why the executive, administrative or consultative actions of the Chief Justices or Judges of a High Court were not amenable to the constitutional jurisdiction of a High Court under Article 199 of the Constitution.

Mujibur Rahman Shami and another v. A Judge of the High Court, Lahore PLD 1973 Lah. 778; Mian Jamal Shah v. The Member, Election Commission and others PLD 1966 SC 1; Federation of Pakistan v. Muhammad Akram Shaikh PLD 1989 SC 689; Muhammad Iqbal and others v. Lahore High Court through Registrar and others 2010 SCMR 632; Asif Saeed v. Registrar, Lahore High Court and others PLD 1999 Lah. 350; Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others PLD 2010 SC 61; Asif Naz v. Government of Punjab and others PLD 2017 Lah. 271 and Water and Sanitation Agency, Lahore through M.D. v. Lottee Akhtar Beverages (Pvt.) Ltd. Lahore and others 2019 SCMR 1146 ref.

#### (b) Interpretation of Constitution---

---Constitutional provisions---Causus ommissus, doctrine of---Applicability---Doctrine of causus ommissus did not apply to Constitutional provisions and nothing could be "reading into" the Constitution---Strict and faithful adherence to the words of the Constitution, specially so where the words were simple, clear and unambiguous was the rule---Any effort to supply perceived omissions in the Constitution being subjective could have disastrous consequences

#### (c) Appeal---

---Right of appeal---Scope---Such right was a creature of the statute and it was not to be assumed that there was a right of appeal in every matter brought before a Court for its consideration---Right of appeal was expressly given by a statute or some authority equivalent to a statute such as a rule taking the force of a statute---Existence of right of appeal could not be assumed on any 'a priori' ground

Ibrahim v. Muhammad Hussain PLD 1975 SC 457; Habib Bank Ltd. v. The State and 6 others 1993 SCMR 1853; Muhammad Yar Buttar and 4 others v. Board of Governors, Overseas Pakistanis Foundation, Islamabad and another 1999 SCMR 819; Chairman, Central Board of Revenue, Islamabad and 3 others v. Messrs Pak-Saudi Fertilizer Ltd. and another 2001 SCMR 777; Syed Masroor Shah and others v. The State PLD 2005 SC 173; President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others 2020 SCMR 260 and Malik Shakeel Awan v. Sheikh Rasheed Ahmed and 21 others PLD 2018 SC 643 ref.

#### (d) "Judicial comity", principle of---

---Scope---Said principle, albeit informal and discretionary, was essentially the respect and deference

that one Court (or a Judge thereof) showed to another---Purpose of said principle was to stimulate a national interest in the finality of judicial decisions through a concerted effort by the judiciary of maintaining their hierarchy; this instilled faith in the public regarding the judiciary and in turn bolstered the rule of law, which was essential for the functioning of any democratic society.

**(e) Constitution of Pakistan---**

---Arts. 199 & 203-C---Constitutional jurisdiction of the High Court---Scope---Administrative acts or orders of the Judges of the Federal Shariat Court---Such acts or orders were not amenable to the writ jurisdiction of the High Court under Art. 199 of the Constitution.

Amjad Ali v. Federal Shariat Court through Registrar PLD 2016 SC 767 and M. R. Najmi v. The Registrar, Federal Shariat Court, Islamabad PLD 1992 Lah. 302 ref.

For the Appellants/Petitioners/Applicants:

Saleem Ullah Ranazai, Advocate Supreme Court along with Appellant in-person ((in C.As. Nos. 353-355 of 2010).

Abdul Lateef Afridi, Advocate Supreme Court and Khalid Anwer Afridi, Advocate Supreme Court along with Asif Hamid Qureshi, Appellant in-person ((in C.A. No. 130 of 2013).

Amjad Ali, Petitioner in-person (in C.Ps. Nos. 4750 and 4751 of 2017).

Fawad Saleh, Advocate Supreme Court ((in C.P. No. 3039 of 2015 and C.M.As. Nos.218, 413 and 1718 of 2016).

Nemo (in C.P. No. 3040 of 2015).

Ch. Faisal Fareed, Addl. AG Punjab Zohaib Alam, PA for Addl. Dir. (in C.P. No. 1439 of 2018).

Dr. G. M. Chaudhry, Advocate Supreme Court (in C.P. No. 3280 of 2018).

Muhammad Munir Paracha, Advocate Supreme Court (in Const. P. No. 4 of 2016)

Abdur Rashid Awan, Advocate Supreme Court (in Const. P. No. 12 of 2016).

Amjad Ali, Advocate Supreme Court (in Const. P. No. 143 of 2012)

Mian Shah Abbas, Advocate Supreme Court (in Crl. O. P. No. 125 of 2019)

For the Respondents:

Khalid Rehman, Advocate Supreme Court (appeared on behalf of PHC w/o POA in C.A. No. 353 of 2010, etc.)

Shumail Ahmed Butt, A.G. KPK and Barrister Qasim Wadood, Addl. A.G. KPK.

Khalid Javed Khan, Attorney General and Ch. Aamir Rehman, Addl. Attorney General.

Ch. Faisal Fareed, Addl. A.G. Punjab Khalid Mehmood.

Ayaz Khan Swati, Addl. A.G. Balochistan.

Barrister Shabbir Shah, Addl. A.G. Sindh (appeared via video-link from Karachi).

Mohammad Kassim Mirjat, AOR for Sindh.

Niaz Ullah Khan Niazi, A.G., Islamabad.

Muhammad Akran Gondal, Advocate Supreme Court (on behalf of F.S.C. in C.Ps. Nos. 4750 and 4751 of 2017).

Faiz Rasool Jalbani, Advocate Supreme Court (on behalf of Respondent No.1 in C.P. No. 1439 of 2018).

Date of Hearing: 16th March, 2020.

**JUDGMENT**

**IJAZ UL AHSAN, J.**---The basic question involved in these cases is whether the executive, administrative or consultative actions of the Chief Justices or Judges of a High Court are amenable to the constitutional jurisdiction of a High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution").

2. As various cases are involved in the matter, their facts shall be discussed separately. In Civil Appeals Nos.353 to 355/2010, the appellant, an employee of the Peshawar High Court, filed three writ petitions: (i) challenging his removal from service; (ii) seeking amendment in the Peshawar High Court Ministerial Establishment (Appointment and Condition of Service) Rules, 1989 to provide Court employees a remedy of appeal; and (iii) seeking issuance of directions to the Registrar, Peshawar High Court to grant the appellant TA/DA for certain periods in relation to his posting. Vide consolidated judgment dated 06.03.2009, the learned Peshawar High Court dismissed all three writ petitions as being not maintainable against the order(s) of the Chief Justice of the Court. Aggrieved, the appellant filed the instant appeals in which leave was granted vide order dated 19.04.2010 in the following terms:

"Inter alia contends that the Peshawar High Court Ministerial Establishment (Appointment and Conditions of Service) Rules, 1989, do not provide any right of appeal and the learned High Court of Peshawar has dismissed petitioner's constitution petition without adverting to this aspect; that although petitioner was in the Ministerial Staff of the High Court but he was posted in the office of District and Sessions Judge Kohistan; that the said District is at a distance of 800 miles from D.I. Khan; that the alleged absence without leave is relatable to that period; that petitioner had sent his application in time but that reached to the Competent Authority late; that petitioner was under stress as his son was mentally disabled and without considering the applications for leave and the circumstances alluded to above, petitioner has been awarded major penalty of compulsory retirement from service although he had an unblemished record of service stretching over a period of 25 years. He added that the remaining two charges were not serious enough to warrant the said penalty.

2. Having heard petitioner's learned counsel at some length, leave is granted to consider whether the petitioner could have been awarded major penalty in the circumstances to which reference has been made above..."

3. The facts of Civil Appeal 130/2013 are that the appellant sought a writ against the Peshawar High Court and the members of its Administrative Committee for re-evaluation of his written test for the post of Additional District and Sessions Judge ("ADJ") advertised by the Peshawar High Court which was dismissed vide impugned judgment dated 20.09.2012 on the ground that a writ was barred against the administrative orders of a High Court under Article 199(5) of the Constitution. Aggrieved, the appellant filed the instant appeal in which leave was granted vide order dated 22.01.2013 which reads as under:

"The petitioner impugns the judgment of the High Court dated 20.09.2012 whereby W.P. No. 958 of 2009 filed by the petitioner has been dismissed. The reason given is that the petition is not maintainable in view of the ratio in the case titled Muhammad Iqbal and another v. Lahore High Court through Registrar and others (2010 SCMR 632).

2. It is contended by the learned counsel for the petitioner that the precedent is distinguishable because in the present case the question of appointment of the petitioner had arisen based on his better performance in the examination for selection of Additional District Judges for appointment to the Provincial Judicial Service. It is submitted that the reasoning that a writ could not be issued to a Judge of the High Court, was not attracted.

3. To consider the above question leave to appeal is granted..."

4. In Civil Appeal No.176/2018, the appellant filed a writ against the Administrative Committee of the Lahore High Court against deferral of the appellant's promotion, his posting as an officer on special duty and notice for retirement. It was held vide impugned judgment dated 02.11.2017 that decisions of the Administrative Committee of a High Court are the decisions of the High Court itself

which is not a 'person' under Article 199(5) *ibid* thus the writ was not maintainable. Aggrieved, the appellant filed the instant appeal in which leave was granted *vide* order dated 25.01.2018 in the following terms:

"The applicants had earlier challenged the judgment of this Court dated 26.9.2016 passed in Constitution Petition No.3 of 2014 reported as Ch. Muhammad Akram v. Registrar, Islamabad High Court and others (PLD 2016 SC 961) through a Review Petition No.474 of 2016 which was dismissed *vide* judgment dated 20.1.2017. Now this application has been filed under Section 12(2) of the Code of Civil Procedure, 1908 (C.P.C.) challenging both the aforesaid judgments. After hearing the learned counsel for the applicants, we find that the application is absolutely incompetent and not maintainable because a person having lost a case in review does not have any right to file any application under Section 12(2) of the C.P.C., particularly when absolutely no element of fraud misrepresentation or lack of jurisdiction is claimed to vitiate the judgment. Also the applicants cannot challenge the judgment under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973. Rather if any judgment is *per incuriam*, then for the purpose of laying down the correct law, it is this Court which in the exercise of its own inherent jurisdiction can correct any error in the law that is noticed or pointed out in any matter which comes before the Court. In light of the above, this application under Section 12(2) of the C.P.C. is dismissed.

2. However, while considering that paragraph No.45 of the judgment under consideration may require reconsideration and be revisited, we on our own are inclined to take up this matter to consider the said paragraph wherein it has been declared that a writ would be competent against the order of a Judge of the High Court while exercising executive, administrative and consultative function/authority. Accordingly, we issue notices to all the Registrars of the High Court in this regard. Although, the application under Section 12(2) of the C.P.C. filed by the applicants has been dismissed but we shall hear their learned counsel Syed Iftikhar Hussain Gillani, learned Sr. ASC as *amicus curiae* in this matter. The matter to be listed for hearing later.

C.Ps. 4312 to 4317 of 2017

3. Leave in all these petitions is granted to consider, *inter alia*, whether in terms of Article 199(5) of the Constitution of Islamic Republic of Pakistan, 1973, the executive, administrative and consultative actions of the learned Chief Justice/Judges or the Registrar of the High Court are amenable to the Constitutional jurisdiction of the learned High Court..."

5. The petitioner in Civil Petitions Nos.4750 and 4751/2017 filed two writ petitions challenging: (i) his order of dismissal from service issued by the Chief Justice of the Federal Shariat Court; and (ii) the order of dismissal of appeal issued by the Departmental Appellate Authority comprised of three Judges of the Federal Shariat Court. *Vide* consolidated judgment dated 15.11.2017, the Islamabad High Court dismissed the writ petitions as being barred against administrative orders issued by the Federal Shariat Court.

6. In Civil Petition No.3039/2015, the petitioner challenged, through a writ petition, certain conditions for the post of ADJ before the Peshawar High Court, whereas in Civil Petition No.3040/2015, the petitioner sought a writ for relaxation in the age limit for the post of ADJ. In both cases, after discussing the merits of the case, the learned Court dismissed the petitions in *limine* *vide* separate orders both dated 08.10.2015.

7. The facts of Civil Petition No.1439/2018 are that the respondent was charged of misconduct and removed from service in the Punjab Judicial Academy after which she filed a departmental appeal and then a writ petition. *Vide* impugned judgment dated 22.03.2018, the learned Lahore High Court held the writ to be maintainable on the ground that the bar in Article 199(5) *ibid* only applied to judicial orders and not administrative, executive or consultative orders of the Chief Justice of the Lahore High Court, and reinstated the respondent.

8. In Civil Petition No.3280/2018, the petitioner, an employee of the Islamabad High Court, applied for the post of reader but did not qualify. His representation before the Chief Justice, Islamabad

High Court was dismissed. Subsequently his writ petition was also dismissed vide impugned judgment dated 28.06.2018 as being not maintainable by placing reliance upon the earlier consolidated judgment of the Islamabad High Court on the same issue dated 15.11.2017 (see paragraph five above). 48

9. In Constitution Petitions Nos.4 and 12/2016, the petitioners seek their appointment as ADJs by challenging the decision and notification dated 15.02.2016 issued by the Selection Committee of the Peshawar High Court appointing ADJs, while in Constitution Petition No.143/2012, the petitioner seeks, inter alia, a writ for the establishment of an appellate authority for High Court employees.

10. Through Criminal Original Petition No.125/2019, the petitioner prays for contempt proceedings to be initiated against the respondents comprising of various learned High Courts and its employees for non-implementation of Ch. Muhammad Akram v. Registrar, Islamabad High Court and others (PLD 2016 SC 961).

11. Civil Miscellaneous Application No.6310/2018 is the suo motu matter for reconsideration of Ch. Muhammad Akram's case supra vide order dated 25.01.2018 passed by a five member bench of this Court reproduced above in paragraph four of this opinion. Through Civil Miscellaneous Applications Nos.218, 413 and 1718/2016, the applicants request for impleadment in Civil Petition No.3039/2015, whereas the applicants request for impleadment in Civil Petition No.3040/2015 vide Civil Miscellaneous Applications Nos.222, 219 and 1177/2016.

12. For the sake of brevity, the arguments are broadly divided into two categories - those who have answered the question identified in the first paragraph of this opinion in the affirmative, and those who have answered it in the negative. Learned counsel for all the appellants/ petitioners and the appellants/petitioners appearing in-person (except Civil Petition No.1439/2018 in which it is the respondent) and the learned Advocate General of Sindh fall within the former category and the crux of their case is as under:

- (a) The bar contained in Article 199(5) supra is only to the extent of judicial orders and not administrative orders. Judges acting in their administrative capacity or as persona designata under the rules framed pursuant to Article 208 of the Constitution fall within the term 'authority' used in Article 199(5) *ibid* as they are exercising statutory powers which are amenable to writ jurisdiction;
- (b) The principle of comity cannot override the constitutional provisions from which two fundamental principles emerge, i.e. the power of judicial review and the power to enforce the fundamental rights;
- (c) The phrase 'unless the context otherwise requires' in the definition of 'person' contained in Article 199(5) supra dilutes its effect. The legislature envisaged that there will be a situation where a writ could be issued by a High Court to itself, e.g. under Article 199(2) of the Constitution for the enforcement of the fundamental right not to be left without a remedy, which forms part of the basic structure of the Constitution;
- (d) The executive and judicial sides of the armed forces have been separately excluded under Articles 199(3) and 199(5) of the Constitution respectively, and the fact that there is no equivalent of Article 199(3) supra for the judiciary indicates that the bar contained in 199(5) supra is restricted to its judicial functions only;
- (e) If this Court is of the view that an administrative order of the High Court is an order of the High Court and it is protected by virtue of Article 199(5) supra, then the remedy of filing a petition for leave to appeal before this Court under Article 185(3) of the Constitution would be open; and
- (f) The Federal Shariat Court is not mentioned in the definition of 'person' under Article 199(5) *ibid* therefore the orders of the Judges of the Departmental Appellate Authority of the Federal Shariat Court can be challenged in writ jurisdiction of the High Court.

13. Learned counsel for all the respondents (except Civil Petition No.1439/2018 in which it is the petitioner), the learned Attorney General for Pakistan and the learned law officers for all the Provinces

(except for Sindh) fall within the latter category. The core of their case is as follows:

- (a) 'High Court' is defined as a combination of the Chief Justice and other Judges. Therefore, the test to be applied is the 'but for' test, i.e. is this a function which was performed by the Judge as a Judge and he could not have done so 'but for' his position as a Judge? For the types of orders under challenge, the answer to the 'but for' test is an emphatic one no;
- (b) The appellants /petitioners want the word 'Court' to be read in place of 'person' in Article 199(1)(a)(i) of the Constitution. If this was the intention of the framers, they would not have used two different words;
- (c) The entire scheme of the Constitution needs to be looked at. An anomalous situation would arise should an order of the administrative committee of the Supreme Court be set aside by a Single Judge of the High Court;
- (d) The High Court of Balochistan has created a Tribunal and the relevant rules have been framed this year; and
- (e) Article 203G of the Constitution bars the issuance of writs against the Federal Shariat Court.

14. The learned amicus, Syed Iftikhar Hussain Gillani, Sr. ASC, while explaining the genesis of Article 199 of the Constitution, submitted that the only purpose of sub-Article (5) thereof is to protect the non-judicial actions or orders of the Supreme Court and High Courts in Pakistan which have been granted a special status as per the scheme of the Constitution. He added that the scope of Article 199(5) supra has been considered and dilated upon by this Court in numerous judgments which were not considered by the Bench in Ch. Muhammad Akram's case supra, therefore, the said judgment ought to be revisited.

15. We have heard the learned counsel for the parties and the learned law officers at length and perused the record. During the course of arguments, reference was made to numerous cases which shall be discussed in the later part of this opinion. The superior Courts of Pakistan have been entrusted with the power of judicial review which is an important feature of our Constitution. Article 199 of the Constitution empowers a High Court to issue writs of mandamus, prohibition, certiorari, quo warranto and habeas corpus (without using the said terms) as long as the respective conditions contained in Article 199 supra are met. A similar power is conferred upon the Supreme Court of Pakistan by Article 184(3) of the Constitution, as long as the matter involves a question of public importance with reference to the enforcement of any of the fundamental rights.

16. Article 199 supra is quite comprehensive. A pivotal question in this regard is who can a writ be issued to by a High Court. In this regard, sub-Article (1) is germane which is reproduced below for ease of reference:

"199. Jurisdiction of High Court.

- (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-
  - (a) on the application of any aggrieved party, make an order?
    - (g) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
    - (h) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or
  - (b) on the application of any person, make an order?
    - (i) directing that a person in custody within the territorial jurisdiction of the Court be brought

before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II."

[Emphasis supplied]

The key word used in this context is 'person' which has been defined in sub-Article (5) and reads as follows:

(5) In this Article, unless the context otherwise requires,-

"person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan;

[Emphasis supplied]

For the sake of clarity, the definition of 'person' includes, but is not limited to, any:

- i. Body politic;
- ii. Body corporate;
- iii. Authority of the Federal Government or of a Provincial Government;
- iv. Authority under the control of the Federal Government or of a Provincial Government;
- v. Court or tribunal, except:
  - a. The Supreme Court;
  - b. A High Court; or
  - c. A Court or tribunal established under a law relating to the Armed Forces of Pakistan.

From a bare reading of the foregoing sub-Article, there is no cavil to the proposition that as a general rule for the purposes of Article 199 of the Constitution, the Supreme Court and High Courts have been excluded from the term 'person', and therefore no writ can be issued by a High Court under Article 199 supra to, the Supreme Court or to itself by any of the said Courts.

17. A critical question that arises is what exactly does 'Supreme Court' or 'High Court' as used in Article 199(5) supra mean? In other words, does this provision only refer to the Judges of the Supreme Court and High Courts when they pass judicial orders? Or does it provide blanket immunity to all acts and orders of the Supreme Court and High Courts, including those of administrative, executive and consultative nature, particularly in matters pertaining to employment in the High Court or Supreme Court establishment or appointment in the lower judiciary as is the situation in the instant cases? Articles 192(1) and 176 of the Constitution describe what constitutes a High Court and the Supreme Court respectively and are reproduced below for ease of reference: "192. Constitution of High Court.

(1) A High Court shall consist of a Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President.

176. Constitution of Supreme Court.

The Supreme Court shall consist of a Chief Justice to be known as the Chief Justice of Pakistan and so many other Judges as may be determined by Act of Majlis-e-Shoora (Parliament) or,

until so determined, as may be fixed by the President."

[Emphasis supplied]

51

It is clear from the aforementioned provisions that a High Court and the Supreme Court both comprise of the respective Chief Justices and Judges, therefore the reverse that there can be no Court without the Chief Justice and Judges is necessarily true. Furthermore, the definitions do not draw any distinction between the judicial orders of a Court and its administrative, executive or consultative orders.

18. Be that as it may, the judgment delivered in Ch. Muhammad Akram's case supra directly dealt with this issue. This case involved a constitution petition under Article 184(3) of the Constitution instituted by the Appellant, a practicing Advocate, challenging various appointments, absorptions and transfers made by the Administration Committee of the Islamabad High Court, claimed to have been made in violation of the Services Rules of the Islamabad High Court, in which a three member bench of this Court held as follows:

"42. ...It is our considered view that the Constitution confers judicial powers (jurisdiction) on the High Court only under Article 199 and the administrative, consultative or executive powers are conferred on the High Court by virtue of the rules framed under Article 208. Rules framed by the High Court or Supreme Court further require approval of the Governor or President as the case may be. It needs to be highlighted that Article 199(5) excludes a High Court and Supreme Court from the definition of 'person'. High Court is defined under Article 192, the relevant part of which is reproduced as under:

"192. Constitution of High Court. (1) A High Court shall consist of a Chief Justice and so many other Judges as may be determined by law or, until so determined, as may be fixed by the President."

This definition does not include the Registrar or any other officer of a High Court Establishment, who is appointed by the Chief Justice or the Administration Committee under the Rules. The executive / administrative / consultative powers conferred on the Chief Justice or an Administration Committee are drawn from the Rules; whereas the judicial powers (jurisdiction) conferred upon the High Court and exercised by the judges are embedded in Article 199 itself; hence, both the powers are different and unparalleled.

43. We, for the aforesaid reason, are of the considered view that the view of learned Lahore High Court and maintained by this Court in the cases of Asif Saeed (Supra) and Muhammad Iqbal is against the language of Article 192 and Article 199 of the Constitution. Moreover, the provisions of Article 208 which empowers the High Court or Supreme Court to frame Rules for their establishments have been completely overlooked. As a result, the judicial powers and the powers which are administrative/ consultative / executive in nature have been mixed up leading to denial of remedy to an aggrieved person even in a case where codal formalities or eligibility or other mandatory requirements have been blatantly disregarded.

44. Even the plain reading of Article 199(5) leads to the conclusion that by excluding a High Court and Supreme Court from the definition of 'person', the framers of Constitution envisaged judicial jurisdiction and not the extraneous administrative/executive/consultative matters pertaining to the Establishment of the Courts. The reason obviously lies in the conferment of powers through the rules which are subject to the approval of the executive. Hence, in our view, a Judge acts in two different domains, when he performs judicial functions under Article 199 and when he performs administrative/ executive/consultative functions under the Rules which cannot be mixed with each other. In other words, there is a grading of power: the parameters of judicial powers exercised by a judge under the provisions of the Constitution are distinct from the non-judicial powers he exercises under the Rules framed under the provision of the Constitution. The judgment rendered in the case of Mohammad Iqbal (supra) approving the case of Asif Saeed (supra) being against the provisions of the Constitution is per incuriam and is not a good law.

45. We for the aforesaid reasons conclude that the provisions of Article 199(5) would bar a writ against a High Court if the issue is relatable to judicial order or judgment; whereas a writ may



lie against an administrative/consultative/ executive order passed by the Chief Justice or the Administration Committee, involving any violation of the Rules framed under Article 208, causing infringement of the fundamental rights of a citizen."

[Emphasis supplied]

The learned Bench relied on Articles 199 and 208 of the Constitution to read into the Constitution a distinction between the judicial function of a Judge on one hand and the administrative, executive and consultative functions on the other, holding that only the former was immune to issuance of a writ by virtue of Article 199(5) of the Constitution whereas a writ could be issued with respect to the latter. The conclusion drawn from a comparison of both provisions that both the powers thereunder were "different and unparalleled".

In the above context, let us consider Article 208 of the Constitution which provides as follows:

"208. Officers and Servants of Courts.

The Supreme Court and the Federal Shariat Court, with the approval of the President and a High Court, with the approval of the Governor concerned, may make rules providing for the appointment by the Court of officers and servants of the Court and for their terms and conditions of employment."

[Emphasis supplied]

19. We differ with the view taken in the said judgment in the meaning, interpretation, scope, extent and interplay of Articles 199 and 208 of the Constitution. Keeping in view Articles 176, 192, 199 and 208 of the Constitution, and upon a harmonious interpretation thereof, in our humble opinion, no distinction whatsoever has been made between the various functions of the Supreme Court and High Courts in the Constitution and the wording is clear, straightforward and unambiguous in this regard. There is no sound basis on which Judges acting in their judicial capacity fall within the definition of 'person' and Judges acting in their administrative, executive or consultative capacity do not fall within such definition. In essence, the definitions of a High Court and Supreme Court provided in Articles 192 and 176 supra respectively are being split into two when the Constitution itself does not disclose such intention. It is expressly or by implication a settled rule of interpretation of constitutional provisions that the doctrine of casus omissus does not apply to the same and nothing can be "read into" the Constitution. If the framers of the Constitution had intended there to be such a distinction, the language of the Constitution, particularly Article 199 supra, would have been very different. Therefore to bifurcate the functions on the basis of something which is manifestly absent is tantamount to reading something into the Constitution which we are not willing to do. In our opinion, strict and faithful adherence to the words of the Constitution, specially so where the words are simple, clear and unambiguous is the rule. Any effort to supply perceived omissions in the Constitution being subjective can have disastrous consequences. Furthermore, the powers exercisable under the rules framed pursuant to Article 208 supra form a part and parcel of the functioning of the superior Courts. In other words, the power under Article 208 supra would not be there but for the existence of the superior Courts. This 'but for' test, as mentioned by the learned Attorney General, is pivotal in determining whether or not a particular act or function carried out by a Judge is immune to challenge under the writ jurisdiction under Article 199 supra. This test is employed by Courts in various jurisdictions to establish causation particularly in criminal and tort law - but for the defendant's actions, would the harm have occurred? If the answer to this question is yes, then causation is not established. Similarly in the instant matter, but for the person's appointment as a Judge (thereby constituting a part of a High Court or the Supreme Court under Articles 192 and 176 supra respectively), would the function in issue be exercised? If the answer to this question is yes, then such function would not be immune to challenge under Article 199 supra. In this case with respect to the administrative, executive or consultative acts or orders in question, the answer to the "but for" test is an unqualified no, therefore such acts or orders would in our opinion be protected by Article 199(5) of the Constitution and thereby be immune to challenge under the writ jurisdiction of the High Court.

20. It is in this context that the ratio of the cases of Abrar Hassan supra and Malik Asad Ali supra, heavily relied on by the learned counsel for the appellants/petitioners and the learned Advocate

General of Sindh, ought to be understood. The case of Abrar Hassan supra involved an appeal from the order of a Division Bench of the High Court of Sindh and Baluchistan, Karachi dismissing a constitution petition filed by the Appellant, Abrar Hassan, challenging the appointment of Mr. Justice Abdul Kadir Shaikh, a Supreme Court Judge, as the Chief Justice of the High Court of Sindh and Baluchistan. Though the learned High Court discussed the merits of the case, it dismissed the constitution petition as being not maintainable against the Chief Justice of the High Court. A four member bench of this Court ultimately dismissed the appeal, although split equally in terms of reasoning. The moot point in Abrar Hassan's case supra was whether a writ of quo warranto was maintainable against the Chief Justice of a High Court. As noted by Justice Salahuddin Ahmad in Abrar Hassan's case supra, "The present petition does not seek any writ against the act or order of a Judge of a High Court as a Court, but questions his authority or right to act as such Judge..." An interpretation of Abrar Hassan's case supra was very aptly provided in Malik Asad Ali's case supra in which a ten member bench of this Court delivered a detailed judgment in three constitution petitions filed before this Court challenging the appointment of Mr. Justice Sajjad Ali Shah as the Chief Justice of Pakistan which were ultimately allowed. Justice Saiduzzaman Siddiqui in Malik Asad Ali's case supra observed that while there was unanimity in the views of all the four learned members of the bench in the case of Abrar Hassan supra that the appointment of a Judge of a superior Court could be brought under challenge before a Court, it was the exact nature of proceedings which can be filed to challenge such appointment that was in question and on which the learned members of the Bench were equally divided. Chief Justice Yaqub Ali and Justice Anwarul Haq were of the view that a writ petition under Article 199 supra could not be filed to question the appointment of a Judge of a superior Court keeping in mind the bar contained in sub-Article (5) thereof, however it could be collaterally challenged in properly constituted proceedings. Whereas Justice Salahuddin Ahmad and Justice Muhammad Gul held that proceedings in the nature of quo warranto could be filed against the Judge of a superior Court under Article 199 of the Constitution to challenge the legality of his appointment. It was in this context that Justice Salahuddin Ahmad and Justice Muhammad Gul had drawn a distinction between the judicial acts and orders of a Judge and his private acts and it is in respect of the latter that he would not enjoy immunity and be subject to the laws of the land like every other citizen, hence the oft-quoted example of a Judge illegally confining his domestic servant for misbehavior. To put it differently, but for the person's appointment as a Judge, would the domestic servant have been illegally confined? The answer is obviously yes, as it has nothing to do with the official capacity of the Judge rather has nexus to his person. Thus, such an act would not enjoy any immunity under the law and the Judge would be subject to the laws of the land as would any other citizen. Therefore, the fact that the ten member bench in Malik Asad Ali's case supra adopted the viewpoint of Justice Salahuddin Ahmad and Justice Muhammad Gul over that of Chief Justice Yaqub Ali and Justice Anwarul Haq does not turn on anything, because the precise question as to whether the executive, administrative or consultative acts or orders of the Chief Justices or Judges of a High Court can be challenged through a writ petition was neither in issue nor examined in any detailed or meaningful manner in either case.

21. In Ch. Muhammad Akram's case supra it was found that the conflation of judicial powers and those that are administrative, consultative or executive in nature had led to the denial of a remedy in the form of a writ petition to an aggrieved person. With the greatest respect, we are unable to subscribe to such view. It has been held in numerous judgments of this Court, albeit in varying contexts, that the right of appeal is a creature of statute. The judgments reported as Ibrahim v. Muhammad Hussain (PLD 1975 SC 457), Habib Bank Ltd. v. The State and 6 others (1993 SCMR 1853), Muhammad Yar Buttar and 4 others v. Board of Governors, Overseas Pakistanis Foundation, Islamabad and another (1999 SCMR 819), Chairman, Central Board of Revenue, Islamabad and 3 others v. Messrs Pak-Saudi Fertilizer Ltd. and another (2001 SCMR 777), Syed Masroor Shah and others v. The State (PLD 2005 SC 173) and President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others (2020 SCMR 260) are relevant in this regard. Particularly in Ibrahim's case supra, wherein the question was whether an appeal was maintainable under Section 15(1) of the West Pakistan Rent Restriction Ordinance, 1959 against an order containing a finding about the existence of relationship of landlord and tenant, it was held that:

"It is well settled principle that right of appeal is a creature of the statute and it is not to be assumed that there is right of appeal in every matter brought before a Court for its

consideration. The right is expressly given by a statute or some authority equivalent to a statute such as a rule taking the force of a statute. Therefore, existence of right of appeal cannot be assumed on any a priori ground. This is in sharp contrast with the right to sue..."

[Emphasis supplied]

In the case of Habib Bank Ltd. supra which involved the question as to whether an appeal/revision against an order of acquittal under the Offences in Respect of Banks (Special Courts) Ordinance, 1984 was maintainable or not, this Court held as follows:

"The right of appeal is a creature of statute and it must be specified in clear terms that the appeal against an order is competent. This right cannot be supplemented by implications. The Ordinance does not expressly give any right of appeal against the order of acquittal. Section 10(1) of the Ordinance provides appeal against the order of Special Court to the High Court against the sentence passed by such Court. No inference can be drawn from this provision that an appeal against the order of acquittal is competent. There is no other provision in the Ordinance empowering the State or the complainant to file an appeal against the order of acquittal. The right to review the judgment of acquittal must be conferred by statute. In the absence of such right in the statute there does not exist any right."

[Emphasis supplied]

The case of President, All Pakistan Women Association supra involved petitions for leave against the order of the Peshawar High Court dismissing the constitution petitions filed against an interlocutory order passed by the Additional Rent Controller, Peshawar Cantt. This Court observed that:

"It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court."

[Emphasis supplied]

In the case of Muhammad Ikram Chaudhry and others v. Federation of Pakistan and others (PLD 1998 SC 103) in which constitution petitions filed under Article 184(3) assailing the orders passed by other Benches of this Court were held not to be maintainable, it was observed as under:

"8. There seems to be unanimity of view among the superior Courts on the question that a High Court or the Supreme Court cannot in exercise of its Constitutional jurisdiction under Article 199 of the Constitution interfere with an order passed by another Judge or another Bench of the same Court.

9. Then it was urged that the petitioners would have no remedy against a patently illegal order. The factum that an aggrieved party may have no other legal remedy simpliciter will not bring his case within the purview of Article 199 of the Constitution if otherwise it does not fall within its compass..."

[Emphasis supplied]

Finally, in the case of Malik Shakeel Awan v. Sheikh Rasheed Ahmed and 21 others (PLD 2018 SC 643) this Court held that:

"...we cannot read a right of appeal into the Constitution against a judgment/order passed by this Court under Article 184(3) by adding a provision to the Constitution."

In light of the foregoing, with respect to Article 199 of the Constitution read as a whole and bearing in mind the specific bar contained in sub-Article (5) thereof, we find that the framers did not intend that the remedy of a writ be available against a High Court or the Supreme Court as mentioned above in this opinion. It cannot be assumed that there must necessarily be a right of appeal in cases involving administrative, executive or consultative acts or orders of the Judges or Chief Justice of a High Court or the Supreme Court, which right must have been expressly mentioned in clear and unequivocal terms in the Constitution if that was the intention and no inference can be drawn from Article 199 supra that

a writ petition against the aforesaid orders is competent. For the foregoing reasons, we find that the judgment rendered in Ch. Muhammad Akram's case supra needs to be revisited and is hereby overruled.

22. We now advert to the contention raised by the learned Advocate General of Sindh that according to the phrase "In this Article, unless the context otherwise requires" in the definition of 'person' contained in Article 199(5) supra, the word 'person' used in sub-Article (1)(c) is the context which requires the said definition to be diluted by removing the phrase "other than the Supreme Court, a High Court" therefrom based on Article 199(2) of the Constitution for the enforcement of the fundamental right not to be left without a remedy, which forms part of the basic structure of the Constitution. A plain reading of Article 199(5) supra makes it clear that the definition of 'person' given therein is to be used for the purposes of Article 199 of the Constitution, unless the context in Article 199 supra itself requires otherwise. In this regard it is pertinent to note that the term 'person' has been defined only twice in the Constitution. The general definition applicable to the whole of the Constitution is found in Article 260(1) thereof which reads as under:

"260. Definitions.

- (1) In the Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say,

"person" includes any body politic or corporate;"

[Emphasis supplied]

At the risk of repetition, the definition of 'person' specific to Article 199 supra appears in sub-Article (5) which is reproduced below for ease of reference:

- (5) In this Article, unless the context otherwise requires,-

"person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan;

[Emphasis supplied]

It is important to note that both definitions are inclusive in nature. Article 199(5) supra borrows the first six words 'includes any body politic or corporate' from Article 260(1) supra and adds "any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal", but then goes on to exclude "the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan" from the phrase "any Court or tribunal".

23. The learned Attorney General argued that the phrase "unless the context otherwise requires" appearing in Article 199(5) supra refers to a context that appears anywhere else in the Constitution outside of Article 199 supra, and that the intention was to not read into Article 199 ibid the definition of 'person' as it would appear in other provisions of the Constitution read with Article 260(1) supra. As convincing as this argument may initially seem, it is pertinent to note that this interpretation does not sit well with the fact that "unless the context otherwise requires" is mentioned after "In this Article" in Article 199(5) supra as it renders the former phrase absolutely redundant. If the intention of the framers was that as stated by the learned Attorney General, then the opening part of sub-Article (5) would have simply read:

- (5) In this Article,-

"person" includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan;

[Emphasis supplied]

According to such interpretation, there was no need to mention "unless the context otherwise requires". This begs the question regarding the purpose of using this phrase in the said Article, and as has been held in numerous judgments of this Court, every word used by the lawmaker has to be given a meaning such that it is not rendered redundant. It appears that the submission of the learned Advocate General of Sindh that the 'context' needs to be found within Article 199 supra itself has force. However his contention that the definition of 'person' in Article 199(5) supra be diluted by removing the phrase "other than the Supreme Court, a High Court" is misplaced. He referred to Article 199(2) supra in this regard to contend that the right to a remedy is a fundamental right. We find that while Article 10-A of the Constitution provides a right to a fair trial and due process, there is no fundamental right to an appeal, particularly when the Constitution or the law does not specifically provide so and there is no sound justification to read such right into the Constitution. Furthermore, it is unclear as to the basis on which he pleads to remove the phrase "unless the context otherwise requires", and not "any authority of or under the control of the Federal Government or of a Provincial Government" or "a Court or tribunal established under a law relating to the Armed Forces of Pakistan". We cannot pick and choose the parts of the definition we wish to exclude, which ought to be done in its true context. To our mind, a possible context which requires a narrower and diluted definition of 'person' can be found in Article 199(1)(b)(i):

"199. Jurisdiction of High Court.

(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

(b) on the application of any person, make an order?

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or"

[Emphasis supplied]

In the foregoing provision, 'person' is undoubtedly intended to mean natural person and therefore does not include "any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan". This context in Article 199 supra requires a definition of 'person' other than that provided in sub-Article (5). Therefore, this contention of the learned Advocate General of Sindh is rejected.

24. While referring to Article 199(1)(c) of the Constitution, the learned Advocate General of Sindh submitted that in the alternative if a High Court or the Supreme Court do not fall within the definition of 'person' in the context of Article 199(2) supra, then they would constitute an 'authority'. Although 'authority' has not been defined anywhere in the Constitution, he contended that a Judge acting in his administrative capacity would necessarily be an 'authority' under Article 199(1)(c) of the Constitution supra which is different from the one under Article 199(1)(a)(i) supra. To our minds, where a High Court or the Supreme Court has been clearly defined and referred to as such, there is no logic or necessity to stretch the definition, scope and ambit of the word 'authority' to encompass certain administrative, executive or consultative acts or orders of the Judges of such Courts rendering them amenable to the writ jurisdiction of a High Court under Article 199 supra. If that were the intention, again, the language of Article 199 supra would have been very different and this proposition would have been specifically attended to by the framers.

25. Learned counsel supporting the appeals/petitions also argued that Judges of the High Court who pass orders pursuant to departmental appeals under the relevant rules do so as *persona designata* and according to the judgments of this Court, are amenable to writ jurisdiction under Article 199 supra. A few cases are worth noting in this regard. The case of *Mian Jamal Shah v. The Member Election Commission, Government of Pakistan, Lahore and others.* (PLD 1966 SC 1) pertained to an election dispute which involved important questions regarding the scope of the jurisdiction conferred upon the High Courts by Article 98 of the Constitution of the Islamic Republic of Pakistan, 1962, in relation to election disputes under Article 171 of the said Constitution, and the laws made thereunder, i.e. the

National and Provincial Assemblies (Elections) Act, 1964. Although each Judge penned down his own opinion, a five member bench of this Court unanimously allowed the appeals against the order of the Full Bench of the learned High Court which had set aside the order of the Member of the Election Commission, Mr. Justice Mushtaq Hussain. Chief Justice, A. R. Cornelius was of the view that:

"The learned Judges of the Full Bench next proceeded to consider the contention raised before them that as the Election Commission was constituted of persons having the status of Superior Judges, and as in particular the Member whose order was placed before the Full Bench for judicial review was himself a Judge of the High Court, no writ could be issued to him. The learned Judges agreed that no writ could issue to a Superior Court, and this is clearly in accordance with the direction derivable from the definitive provision in Article 98, that no order under that Article shall issue to the Supreme Court or a High Court. But they found that the Member was *persona designata* in the case, and did not act as a Judge of the High Court and relying on two cases from the English jurisdiction in which it was held that *certiorari* could issue in respect of an order of a High Court Judge acting as a Tribunal, they came to the conclusion that the Member was "subject to the control of the High Court under Article 98 and is amenable to an order passed by it under that Article". In the two decisions from the English Courts, which have been cited, there was an express provision to the effect that a decision by the Tribunal will not be deemed to be a decision by the High Court, but for the interpretation of Article 98, in respect of this question that consideration is not of appreciable weight. The learned Judges were in all probability right in considering the Member to be *persona designata*, and not the High Court or a Judge of the High Court, when acting under section 53, but one may be pardoned for referring here to a small observation in one of the judgments cited by the Full Bench with reference to the idea of a Superior Court issuing a writ to itself, viz.:-

"the process involves the rather ludicrous position that Judges are called upon themselves to show cause to themselves"

why their orders should not be quashed. In the present case, the order in question is made by a Single Judge of the High Court acting as the relevant authority, but it is conceivable that a statute may appoint a Tribunal of say two or three High Court Judges to adjudicate matters arising thereunder, and then indeed the aspect of 'ludicrousness' might arise if a writ were sought from a Single Judge of the High Court to avoid actions by such Tribunals. In a number of statutes in the United Kingdom express provisions are included which avoid the writ jurisdiction in relation to such adjudications, and it is a matter for consideration whether such provisions should not be made use of in Pakistan as well. Quite apart from the aspect of 'ludicrousness' there are other and more weighty considerations involved, such as the necessity of maintaining a high degree of comity among the Judges of the Superior Courts, which could be urged in support of such a provision.

The case of Muhammad Ikram Chaudhry *supra* pertained to constitution petitions challenging certain interim orders passed in the main petition involved in Malik Asad Ali's case *supra*. The main question that arose was how a constitution petition filed under Article 184(3) of the Constitution assailing the orders passed by other Benches of this Court in exercise of jurisdiction under the said Article was maintainable. While dismissing the constitution petition, a five member bench of this Court observed as under while making reference to, *inter alia*, the cases of Mian Jamal Shah *supra* and Abrar Hussain *supra*:

"5. We tried to impress upon them that the above facts would not attract. Article 184(3) of the Constitution if otherwise the aforesaid petitions are not sustainable in view of well-settled proposition of law, firstly, that a Bench of this Court cannot sit as a Court of Appeal over an order or a judgment of another Bench of this Court and, secondly, Article 184(3) confers jurisdiction on this Court of the nature contained in Article 199 of the Constitution, clause (5) of which excludes *inter alia* the Supreme Court and the High Courts. In other words, no writ can be issued by a High Court or the Supreme Court against itself or against each other or its Judges in exercise of jurisdiction under Article 199 of the Constitution, subject to two exceptions, namely, (i) where a High Court Judge or a Supreme Court Judge acts as *persona designata* or as a Tribunal or (ii) where a *quo warranto* is prayed for and a case is made out.

[Emphasis supplied]

The aforementioned paragraph from Muhammad Ikram Chaudhry's case *supra* was cited with approval by a three member bench of this Court in the judgment reported as Suleman Ali Haideri and another v. Government of Balochistan and others (2004 SCMR 354). In the case of Chief Justice of Pakistan

Iftikhar Muhammad Chaudhry supra, it was observed that while:

"...writs should not issue from one High Court to another High Court or from one Bench of a High Court to another Bench of the same High Court because that could seriously undermine and prejudice the smooth and harmonious working of the Superior Courts...this should never be understood to mean that no writ could ever issue to a Judge in his personal capacity or where a Judge was working as a PERSONA DESIGNATA..."

In the case of Ahmad Farooq Khattak v. Chairman, Election Tribunal and others (Civil Appeals Nos. 1307 and 1308 of 2015), an election dispute regarding membership of the KPK Bar Council ultimately reached the Election Tribunal presided over by a learned Judge of the Peshawar High Court which passed an unfavourable order against the appellant who challenged the same through a writ petition before the learned High Court which was dismissed on the ground of maintainability. In this context, while allowing the appeals and setting aside the impugned judgments, a three member bench of this Court held as under:

"...it is clear that when a matter is being adjudged by a forum which has been created by some special law and such forum is presided over by a learned Judge of the High Court, it is not the High Court performing its judicial function under the Constitution or under the general law of the land, such as jurisdiction of appeal, revision, review or supervisory jurisdiction of any nature or a specific jurisdiction which is conferred upon the High Court as per Article 175(2) of the Constitution, rather the jurisdiction vests in the special forum and the only prominent feature is that such forum is being presided over by the learned Judge of the High Court. In the later situation the learned Judge is not performing its function as the High Court but as the persona designata..."

From the above it is clear that the judgments reported as Asif Saeed v. Registrar, Lahore High Court and others (PLD 1999 Lah. 350) and Muhammad Iqbal and others v. Lahore High Court through Registrar and others (2010 SCMR 632) are absolutely distinguishable on their own facts because in that case the administrative orders/acts of the Lahore High Court were questioned in the writ and while considering the definition of the "person" provided in Article 199 of the Constitution it was held that the High Court does not fall within the purview thereof. Whereas in the instant case as per Rule 3(c)(i) of the Pakistan Legal Practitioners and Bar Councils Rules, 1976 which reads as under...the High Court has not been conferred with any jurisdiction in terms of Article 175(2) of the Constitution rather a special forum (Election Tribunal) for a specific and limited purpose has been created to be presided over by a learned Judge of the High Court to be nominated by the Chief Justice; thus for all intents and purposes such learned Judge was to act as persona designata and not as the High Court. This therefore brings the case within the exception highlighted in the case law cited above..."

[Emphasis supplied]

26. According to the aforementioned judgments, there is no cavil to the proposition that a Judge of a High Court who acts as a persona designata would be subject to writ jurisdiction under Article 199 of the Constitution. However the said cases are distinguishable. In this context, the following extract from the judgment of the Lahore High Court in Asif Saeed's case supra is noteworthy:

"21. Now attending to the arguments pertaining to "persona designata", it may be stated that if due to distribution of work, a Judge has been assigned duty to act as a High Court, for the purpose of section 27(C), it cannot be said that such person is "persona designata". The expression "persona designata" has not been defined in our statute books. However, according to its meaning given in "Law Lexicon with Legal Maxims" (Second Edition) page xxiv and in the Hand book of Legal Terms and Phrases, page 531, respectively it means:-

"A person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filing a particular character. "

"The expression 'persona designata' means a person described in the status or legal instrument by his official designation, and the function may be judicial or otherwise. If the function is a



judicial function, then he is a Court, though he is described not as Court but by official designation. There is no real antithesis between the expression 'persona designata' and 'Court' in other words, even a persona designata may be a Court. Whether he is a Court or not depends upon his power and the functions which he has to discharge."

22. In the instant cases, under section 27(c), no individual Judge has been mentioned by name or designation to act as a person for the grant of necessary approval, rather the mention of the High Court conspicuously dispels any such impression. Thus, the argument that any Judge acting on behalf of the High Court to exercise power under section 27(c), acts as "persona designata" is not impressive or well-founded.

Even from the letter issued by the Registrar of this Court, (containing different reason in each case) which reads as under:

'Sir

I am directed to refer to your Letter No. 1270 Pb.BC/Ent., dated 17-2-1998, on the subject noted above, and to say that the Chief Justice and judges have been pleased to observe:

'SHOULD ADHERE TO THE PRESCRIBED PROCEDURE BY WORKING IN A BUSY CHAMBER TO HAVE THE LICENCE AND ATTAIN EXPERIENCE. 'Enrolment file in original' and other papers are returned herewith, please acknowledge and receipt.

Your obedient servant

DEPUTY REGISTRAR (ADMN.)  
for REGISTRAR. "

It is clear that the power exercised under section 27(c) and the order conveyed to the petitioner through this letter, is not some personal act of an individual Judge of the High Court but an act of the Court.

25. In Writ Petition No. 14168 of 1995, the argument that as the Administrative Judge has been defined under relevant rules and the action impugned is of such Judge, therefore, he acts as persona designata and amenable to the writ, is also devoid of any force. Reason being that such Administrative Judge does not act in his unofficial or personal capacity, but performs function for and on behalf of the Court and acts as a High Court.

26. The arguments of Mr. Hamid-Khan, learned counsel that according to the different provisions of the Legal Practitioners and Bar Councils Act, 1973, the High Court, acts as a consultative forum and not as a Court, therefore, the writ would be competent, is not well-conceived. May it be, any function of the High Court, executive, judicial, or even consultative, the basic point to be noted is, whether the act or the order is of the High Court or otherwise. If it is so, irrespective of the nature of jurisdiction, no writ would lie."

We are clear in our minds that Chief Justices or Judges of a High Court exercising their executive, administrative or consultative actions in the context of the instant matters do not act as persona designata, rather act for and on the behalf of, and as a High Court as defined in Article 192 of the Constitution and are therefore not amenable to the constitutional jurisdiction of a High Court under Article 199 thereof.

27. One of the learned counsel supporting the appeals/petitions referred to Article 199(3) of the Constitution which reads as under:

"(3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law."

He stated that it specifically excludes the application of Article 199(1) supra to "a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to



any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law." According to him, this is an exclusion of the executive functions of the Armed Forces from the writ jurisdiction, whereas the judicial functions of the Armed Forces have been specifically excluded under Article 199(5) according to which a 'person' "includes...any Court or tribunal, other than...a Court or tribunal established under a law relating to the Armed Forces of Pakistan." He argued that since there is no equivalent to Article 199(3) supra with respect to a High Court or the Supreme Court, therefore the executive functions of such Courts have not been excluded from the ambit of writ jurisdiction as is the case with the Armed Forces. We find no merit in this contention. The very fact that Article 199 supra has not created a distinction with respect to the superior Courts meant that all the acts or orders undertaken or passed are to be protected and if this were not the case then as mentioned above, the framers would have mentioned so.

28. The principle of judicial comity is another reason why the question mentioned in the opening paragraph of this opinion ought to be answered in the negative. This principle has been referred to in a number of judgments albeit in varying contexts. In Mian Jamal Shah's case supra, Chief Justice A. R. Cornelius discussed the issue of comity of judges which is reproduced below for ease of reference:

"The learned Judges of the Full Bench next proceeded to consider the contention raised before them that as the Election Commission was constituted of persons having the status of Superior Judges, and as in particular the Member whose order was placed before the Full Bench for judicial review was himself a Judge of the High Court, no writ could be issued to him...The learned Judges were in all probability right in considering the Member to be persona designata, and not the High Court or a Judge of the High Court, when acting under section 53, but one may be pardoned for referring here to a small observation in one of the judgments cited by the Full Bench with reference to the idea of a Superior Court issuing a writ to itself, viz.:-

"the process involves the rather ludicrous position that Judges are called upon themselves to show cause to themselves"

why their orders should not be quashed. In the present case, the order in question is made by a Single Judge of the High Court acting as the relevant authority, but it is conceivable that a statute may appoint a Tribunal of say two or three High Court Judges to adjudicate matters arising thereunder, and then indeed the aspect of 'ludicrousness' might arise if a writ were sought from a Single Judge of the High Court to avoid actions by such Tribunals. In a number of statutes in the United Kingdom express provisions are included which avoid the writ jurisdiction in relation to such adjudications, and it is a matter for consideration whether such provisions should not be made use of in Pakistan as well. Quite apart from the aspect of 'ludicrousness' there are other and more weighty considerations involved, such as the necessity of maintaining a high degree of comity among the Judges of the Superior Courts, which could be urged in support of such a provision."

[Emphasis supplied]

In the judgment reported as Mujibur Rahman Shami and another v. A Judge of the High Court, Lahore (PLD 1973 Lahore 778), a seven member bench of the Lahore High Court made reference to the aforementioned opinion of Justice Cornelius and observed as under:

"In Mian Jamal Shah v. The Member, Election Commission and others (PLD 1966 SC 1), while examining the question as to whether a High Court could issue writs to its own self or against decisions of its own Judges, the Supreme Court quoted with approval an observation which appeared in one of the judgments quoted by the High Court itself in Khan Nasrullah Khan v. The Member, Election Commission, Pakistan and 2 others (PLD 1966 Lah. 850), that, the process involves the rather ludicrous position that Judges are called upon themselves to show "cause to themselves". They further held that, quite apart from the aspect of 'ludicrousness', there are other and more weighty considerations involved, such as the necessity of maintaining a high degree of comity among the Judges of the Superior Courts, which could be urged in support of such a provision..."

[Emphasis supplied]

In Abrar Hassan's case supra, Chief Justice Muhammad Yaqub Ali held as under:

"Another reason why writs should not issue from one High Court to another High Court and from one Judge to another Judge of the same High Court is that such a course will destroy the traditional high degree of comity among the Judges of superior Courts which is essential for the smooth and harmonious working of the superior Courts. Observation to this effect will be found in the judgment delivered by the Court in Mian Jamal Shah v. The Member, Election Commission and others. This is one of the cases on which Mr. Mumtaz Hassan relied in the course of his address. The respect and amity which the Judges should extend to each other will certainly be diminished if they were to issue writs to each other."

[Emphasis supplied]

Concurring with the Chief Justice on the point of maintainability, Justice Anwarul Haq observed as follows:

"On behalf of the appellant it was submitted that the need for preserving comity among the Judges of the superior Courts could at best be described as a principle of law, which could not be permitted to derogate from the true meaning of the relevant constitutional provision. The reply to this argument appears to me to be two-fold:-

(a) That the principle in question is being invoked only as an aid to interpretation, by explaining the purpose underlying the exclusion of the High Courts and the Supreme Court from the definition of 'person' as given in Paragraph 5 of Article 199 of the Constitution, and not in derogation of the true meaning of the said provision; and

(b) That if effect is to be given to the other principle prohibiting a challenge to the position of a de facto Judge in collateral proceedings then considerations underlying that principle ought to be weighed and considered side by side with the imperatives of maintaining comity among the Judges of the superior Courts, a requirement essentially in the public interest and not for the benefit of the Judges themselves..."

[Emphasis supplied]

Justice Salahuddin Ahmad and Justice Muhammad Gul dismissed the appeal on merit but held the writ to be maintainable against the Chief Justice of the High Court. The latter was of the following opinion:

"I am also of the view and I say so with the greatest respect, that it would not be right to lay down that to preserve the high degree of comity in the Superior Judiciary, the plain meaning of Article 199(1)(ii) of the Constitution should be curtailed or abridged. Maintenance of comity among the Superior Judiciary is at the highest, a rule of propriety and not a rule of law and therefore cannot erode a constitutional provision more so when it is germane to the jurisdiction of the High Courts..."

[Emphasis supplied]

In the judgment reported as Federation of Pakistan v. Muhammad Akram Shaikh (PLD 1989 SC 689), the Appellant had moved a petition expressed to be under Order XXXIII Rule 6 of the Supreme Court Rules, 1980 and all other enabling provisions in this behalf, praying that "three Honourable Judges who had been affected by the judgment, dated 10.3.1989 of this Hon'ble Court and by the judgment under review, one way or the other; may not participate in the adjudication of the matter." The 12 member bench of this Court rejected the application objecting to the constitution of the Bench. Justice Abdul Kadir Shaikh, in his separate note, made the following observations:

"Now it may be noticed that the Supreme Court, as a body under the Constitution, consists of a Chief Justice and the Judges of that Court, and each Judge is vested with the judicial powers equal to any other Judge, even for that matter, the Chief Justice. There is, therefore, equal distribution of judicial power among the Judges. According to the Rules of the Court, the cases before the Court are heard and decided by a Bench consisting of not less than three Judges, to

be nominated by the Chief Justice, except for certain categories of cases which may be heard and decided by a Bench of two Judges nominated by the Chief Justice. The question that has agitated my mind is whether nine out of twelve Judges of this Bench constituted by My Lord the Chief Justice should deal with the prayer that nine Judges of the Bench should direct the remaining three Judges of the Bench not to participate in the hearing of the Review Petition. I may refer to a well-settled position in law that a writ under the Constitutional jurisdiction cannot be issued by a High Court to itself, or a Judge of that Court on the principle of necessity of maintaining a high degree of comity among the Judges of the Superior Courts. This Court highlighted this principle in the case of Mian Jamal Shah v. Election Commission (PLD 1966 SC 1)."

[Emphasis supplied]

In the case of Muhammad Iqbal and others v. Lahore High Court through Registrar and others (2010 SCMR 632) the petitioners challenged their non-selection against the post of Additional District and Sessions Judge through writ petitions before the Lahore High Court which were dismissed as being barred under Article 199(5) supra. While citing with approval the judgment delivered by the Lahore High Court in the case of Asif Saeed v. Registrar, Lahore High Court and others (PLD 1999 Lah. 350), a two member bench of this Court observed as follows:

"8. If a Chief Justice of a High Court transfers a subordinate officer, so to say, in his administrative capacity and if the same is set aside by another Bench of the same High Court, one can well imagine the devastating consequences. This can be visualized about any order of the High Court and the resultant consequences thereof. It runs diametrically opposed to the principles of comity and can lead to the complete destruction of judicial as well as administrative fabric of the institution."

In the seminal judgment reported as Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others (PLD 2010 SC 61), a thirteen member bench of this Court made the following observations albeit vis-à-vis the jurisdiction of the Supreme Court under Article 184(3) of the Constitution and the bar contained in Article 211 thereof:

"101. As has been mentioned above, the principle of maintaining comity among the Judges of the Superior Courts was also canvassed to screen the proceedings before the S.J.C. from scrutiny by this Court. A passing reference to this principle was made by this Court in MIAN JAMAL SHAH'S CASE (PLD 1966 SC 1 at 38). But then it was subsequently clarified that the said principle could never be stretched to deprive people of what was due to them. What emerges from the provisions of clause (5) of Article 199 of the Constitution as also from some precedent cases is that writs should not issue from one High Court to another High Court or from one Bench of a High Court to another Bench of the same High Court because that could seriously undermine and prejudice the smooth and harmonious working of the Superior Courts. But this should never be understood to mean that no writ could ever issue to a Judge in his personal capacity or where a Judge was working as a PERSONA DESIGNATA..."

102. Having thus looked into the question of jurisdiction of this Court vis-a-vis the Supreme Judicial Council, I would conclude as under...

(e) that the principle of comity among Judges of the Superior Courts is only a rule of propriety and could never be considered an impediment in the way of providing justice to an aggrieved person."

[Emphasis supplied]

In Asif Naz v. Government of Punjab and others (PLD 2017 Lah. 271), the petitioner had challenged an order passed on behalf of the Registrar, Lahore High Court, Lahore and notification containing the names of the Civil Judges-cum-Magistrates appointed at the Lahore High Court, Lahore through a writ petition which was dismissed in limine by the learned Single Judge of the Lahore High Court on the following grounds:

"It is also added that propriety demands that a decision of the Hon'ble Chief Justice or the Administrative Committee be challenged in a higher forum that is before the august Supreme

Court of Pakistan because invoking Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against Senior Coordinate Judges of this Court will affect the comity and concordance amongst the Judges and upset their administrative working. Hence the august Supreme Court of Pakistan in the case cited at Abrar Hassan v. Government of Pakistan and another (PLD 1976 SC 315) has held that all actions and orders taken by the High Court or has been that order by any Judge thereof in exercise of functions and powers of his office are not amenable to writ jurisdiction."

[Emphasis supplied]

An Implementation Bench comprising of three members of this Court passed the following order in the case of Water and Sanitation Agency, Lahore through M.D. v. Lottee Akhtar Beverages (Pvt.) Ltd. Lahore and others (2019 SCMR 1146):

"2. The LDA notification dated 18.01.2019 levies a water tariff in the purported compliance of the directions contained in our order dated 06.12.2018. The private respondents are aggrieved by the tariff charged under the LDA notification. However, instead of bringing their objections before the Implementation Bench, the respondents chose to file Writ Petitions before the learned Lahore High Court to express their misgivings. By the impugned order dated 28.02.2019 the learned High Court suspended the LDA notification. We consider that any flaws or deficiencies in the steps taken by the Provincial Governments for the enforcement of this Court's directions are to be highlighted in the proceedings of SMC No.26 of 2018 before the Implementation Bench of this Court. By entertaining and adjudicating such a challenge to the LDA notification, the learned High Court has surprisingly and to our disappointment assumed jurisdiction over a lis that is sub judice before this Court. Such course of action clearly offends the settled norms of judicial propriety and comity, which is disapproved.

[Emphasis supplied]

29. It was contended by the learned Advocate General of Sindh that while comity of judges is a well-settled principle, it cannot be placed at a higher pedestal than the constitutional provisions itself. In this regard he referred to the cases of Abrar Hassan and Chief Justice of Pakistan Iftikhar Muhammad Chaudhry supra reproduced hereinabove. At this juncture it would be pertinent to discuss the case of Asif Saeed supra in which the Petitioners had applied for a licence to practice as an Advocate in the Lahore High Court, under the provisions of Section 27(c) of the Legal Practitioners and Bar Councils Act, 1973 which was declined by the Punjab Bar Council for the reason that the Lahore High Court in terms of the aforementioned provisions had not granted the requisite approval which was a condition precedent. Alongside, one of the petitioners who was a junior clerk in the High Court Establishment challenged the order compulsorily retiring him from service. The petitioners challenged the orders/actions of the High Court as being administrative in nature and hence amenable to writ jurisdiction. A three member bench of the Lahore High Court, with Mian Saqib Nisar, J (as he was then) as the author, highlighted the importance of the principle of comity in our judicial system:

"14. The contention from the petitioners' side that the administrative function of the High Court can be subjected to writ, can lead to ludicrous situations which can be well illustrated.. .

It is clear that the Supreme Court of Pakistan has also been excluded from the definition of the word "person" clubbed, together with the High Court. Undoubtedly, it is inconceivable that the order of the Supreme Court on its judicial side can be challenged before the High Court in writ, irrespective of sub-Article (5). Now if the interpretation of the petitioners that administrative order of the High Court can in writ be challenged is accepted, the same rule would also apply to the Supreme Court, situation may arise where a full Court of the apex forum takes a non-judicial decision than on the basis of above reasoning a Single Judge of this Court may issue writ to quash the same which would be just preposterous. This also applies to the administrative decision taken by the Full Court of a High Court, particularly, when the same Judge/Judges are party to such a decision. There can be numerous examples cited to show fallacy of such an interpretation. If the same rule is allowed to prevail, rules made by the Supreme Court, under Article 191 and by the High Courts, under Articles 203 and 208 are not safe from attack and may become subject of every day's litigation leading to a hazardous situation."

[Emphasis supplied]

This principle, albeit informal and discretionary, is essentially the respect and deference that one Court (or a Judge thereof) shows to another. Although commonly adopted as an international law concept, it is also employed, to a great extent, amongst State Courts in the United States of America. Its purpose

is to stimulate a national interest in the finality of judicial decisions through a concerted effort by the judiciary of maintaining their hierarchy. This instills faith in the public regarding the judiciary and in turn bolsters the rule of law, which is essential for the functioning of any democratic society. The importance of this principle cannot be understated. Moreover we find it pertinent to point out that this principle is, in the words of Justice Anwarul Haq in Abrar Hassan's case supra, "being invoked only as an aid to interpretation, by explaining the purpose underlying the exclusion of the High Courts and the Supreme Court from the definition of 'person' as given in Paragraph (5) of Article 199 of the Constitution, and not in derogation of the true meaning of the said provision."

30. An argument was made that since the Federal Shariat Court is not excluded from the definition of 'person' given in Article 199(5) supra, therefore the administrative acts or orders of the Judges of the Federal Shariat Court are amenable to the writ jurisdiction of the High Court under Article 199 of the Constitution. In this regard it is pertinent to note two judgments. In the case of Amjad Ali v. Federal Shariat Court through Registrar (PLD 2016 SC 767), a three member bench of this Court held as follows:

"The impugned judgment passed by the Federal Shariat Court had been passed in two service appeals filed by the present appellant and the said judgment has been assailed by the appellant before this Court by invoking Article 203F(2B) of the Constitution of the Islamic Republic of Pakistan, 1973. We have gone through the provisions of Article 203-F of the Constitution as a whole and have found that in the said Article different remedies have been provided which include an appeal before this Court against a judgment or order passed by the Federal Shariat Court in its jurisdiction pertaining to Islamization of laws, an appeal before this Court in respect of a judgment, final order or sentence passed by the Federal Shariat Court in the matter of convictions, acquittals and sentences in cases of Hudood laws and it has been provided in Article 203-F(2B) that where an appeal does not lie to this Court as provided in the other clauses of Article 203-F there an appeal may lie to this Court after obtaining leave to appeal. According to our understanding of Article 203-F of the Constitution no appeal lies before this Court against a judgment or order passed by the Federal Shariat Court in service matters of its employees and likewise the matter of leave to appeal contemplated by the provisions of Article 203-F(2B) of the Constitution is also not relevant to the judgments or orders of the Federal Shariat Court passed in the service matters of its employees. The appellant appearing in person has drawn our attention towards Article 212 of the Constitution and we have noticed that the said Article provides for establishment of administrative courts or tribunals but clauses (a), (b) and (c) of Article 212(1) of the Constitution deal with specific subjects or areas regarding which an administrative court or tribunal may be established. We do not find an administrative court or tribunal established for administrative matters of the employees of the Federal Shariat Court to be falling within any of the said clauses of Article 212(1) of the Constitution and, thus, from a judgment or order passed in a service appeal by the Federal Shariat Court no appeal or petition for leave to appeal lies before this Court even by invoking clause (3) of Article 212 of the Constitution. Be that as it may clause (3) of Article 212 of the Constitution may even otherwise not be attracted because the case of the appellant essentially raises issues which are purely factual and personal to the appellant and the same do not involve any substantial question of law of public importance."

[Emphasis supplied]

In the case of M. R. Najmi v. The Registrar, Federal Shariat Court, Islamabad (PLD 1992 Lah. 302), against abolition of his post in the Federal Shariat Court, the Petitioner addressed an appeal to its Registrar under Rule 11(2) of the Federal Shariat Court (Terms and Conditions of Service of Staff) Rules, 1982. Since the Registrar did not place the appeal of the petitioner either before Hon'ble Chief Justice of the Court or a three member bench of the Court for hearing, despite reminders, the Petitioner filed a writ petition before the Lahore High Court seeking a direction compelling the Registrar to place the appeal as required by law. The Lahore High Court held as follows:

"Upon principle, authority and propriety, I feel reluctant to issue a writ of a commanding nature to the Federal Shariat Court or in respect of its working. Provisions regarding Federal Shariat Court; its constitution; jurisdiction, binding nature of its judgments in the field allotted to it, under the Constitution and appeals from its judgments to Shariat Appellate Bench of the Supreme Court; its revisory jurisdiction from the cases decided by the Criminal Courts dealing with any law relating to enforcement of Hudood are provided in Chapter 3-A of the Constitution of Islamic Republic of Pakistan. Article 203-G provided for a bar of jurisdiction including the Supreme Court and the High Court. Article 203-GG observed that decision of the

Federal Shariat Court in exercise of its jurisdiction under Chapter 3-A shall be binding on the High Court, and, on all Courts subordinate to the High Court. Article 203-A provided a non-obstante clause in the Constitution regarding Chapter 3-A. Writ jurisdiction conferred on the High Court is subject to the Constitution and availability of other adequate remedy for regulating the exercise of writ jurisdiction by the High Court. In sub-Article (5) of the Article 199 of the Constitution, definition of "person" excluded Supreme Court, High Court or a Court or Tribunal established under a law relating to Armed Forces of Pakistan. There, is neither doubt nor dispute that the High Court cannot issue a writ unto itself, nor to the Supreme Court. It is not only clear from the language in Article 199 of the Constitution, but is supported by the high authority of Supreme Court in case of Mian Jamal Shah reported as PLD 1966 Supreme Court 1, and number of other judgments, which in view of an absolute clarity, on the point is unnecessary to make a reference to. As said above, Chapter 3-A of the Constitution was a later amendment to it. There was no corresponding amendment in sub-Article (5) of Article 199 of the Constitution for excluding Federal Shariat Court from the purview of the Constitutional jurisdiction of the High Court. However, upon harmonious construction of the various parts of the Constitution; status of Federal Shariat Court in it and amenability of its decisions to appeal before the Shariat Appellate Bench of Supreme Court only, leads to an inevitable corollary that a writ of mandamus ought not to issue from the High Court to it in regard to the sphere earmarked for it by the Constitution of Pakistan. Service rules regarding the staff of the Court were framed under Article 208 of the Constitution. Rule 11 provided for imposition of the penalties on any officer or servant or the staff attached to the Federal Shariat Court. In case, penalty was imposed by Honourable, the Chief Justice of the Court, sub-rule (2) provided that appeal shall lie to a Bench of not less than three Judges of the Federal Shariat Court. Appeal was addressed to the Registrar of Federal Shariat Court. Registrar is not an appellate authority. Appellate Authority was a Bench of Federal Shariat Court. Presumably, constitution of the appellate Bench lay in the decision of Honourable, the Chief Justice of Federal Shariat Court. Direction sought from this Court in reality was

either a direction to Honourable, the Chief Justice of the Federal Shariat Court or the Appellate Bench of the Federal Shariat Court to hear the service-appeal. Petitioner intended to achieve the goal indirectly which directly he could not reach. In view of comity between the Judges of the superior Courts set up under the Constitution, I do not think that this Court should make a direction of the kind sought from it. Though, this Court is not expected to educate the petitioner who had the privilege of being attached to a superior Court in one form or another, on his remedies, yet it could not be helped observing that a simpler way is to address the appeal, subject to its availability, under the Rules, to the Federal Shariat Court, which in due course may reach its proper place. I entertain no doubt that the Registrar, who is the principal staff Officer of the Federal Shariat Court shall not be an impediment to the hearing of the appeal of the petitioner by the appellate Bench. Having regard to the aforesaid, writ is denied and petition for it is dismissed in limine."

31. In order to avoid running the risk of repetition, we fully endorse the foregoing view of the learned Lahore High Court. Furthermore, it is a fact that the definition of 'person' in Article 199(5) supra curiously fails to mention the Federal Shariat Court. An understanding of the historical background of the provisions pertaining to Article 199(5) supra and the Federal Shariat Court is necessary in order to understand this omission. When the Constitution was enacted and brought into force in 1973, Article 199(5) thereof, as it reads today, was a part of it. However, the Federal Shariat Court did not exist in the Constitution as originally passed and that explains why such Court did not find mention in Article 199(5) supra. Chapter 3A originally titled 'Shariat Bench of Superior Courts' was inserted into Part VII of the Constitution (The Judicature) on 07.02.1979 through Constitution (Amendment) Order, 1979 (President's Order No. 3 of 1979). However, a separate Federal Shariat Court was not created, rather it provided for a Shariat Bench to be created at the High Court level that was empowered to examine and decide the question as to whether or not any law or provision of law was repugnant to the injunctions of Islam as laid down in the Holy Qur'an and the Sunnah of the Holy Prophet. Thus the Shariat Bench, being a bench of a High Court, would still be covered by Article 199(5) supra. The original Chapter 3A was substituted a little over a year later on 26.05.1980 through Constitution (Amendment) Order, 1980 (President's Order No. 1 of 1980) with the version that exists today. Interestingly, Constitution (Amendment) Order, 1980 also added sub-Articles (3A), (3B) and (3C) to Article 199 of the Constitution, which were subsequently omitted in 1985. However, there was no corresponding amendment in Article 199(5) of the Constitution. Bearing in mind the scheme of the Constitution particularly Chapter 3A, Part VII of the Constitution as provided by the learned Lahore High Court in M. R. Najmi's case supra, the hierarchy of Courts in Pakistan, the fact that the Federal Shariat Court along with the Supreme Court and High Courts forms part of the superior judiciary, and

the principle of judicial comity as highlighted above is fully applicable thereto, we consider the failure to add the Federal Shariat Court' in Article 199(5) supra to be of no real significance considering the meaning, scope and purpose of the said Article discussed above and also to avoid an absurd situation where the Supreme Court and High Courts are excluded from the definition of 'person' under Article 199(5) supra and therefore immune to the writ jurisdiction of the High Court, but not the Federal Shariat Court which is also a superior Court for all intents and purposes. It is pertinent to note that interpretations of this nature to avoid absurdities and harmonizing various provisions of the Constitution by the superior judiciary which is not tantamount to lawmaking has been recognized in the judgment reported as Lt.-Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Government of Pakistan, Karachi and another (PLD 1962 SC 335) in which Justice Fazle-Akbar observed that:

"It was first contended that this Court in interpreting section 57 of the Estate Duty Act, 1950 as amended by Estate Duty (Amendment) Act, 1953 exceeded the proper limit of interpretation and assumed for themselves power of legislation. The Estate Duty Act was amended in 1953. Due to slip of the draftsman consequential amendments were not made in section 57 of the Act. This Court after referring to Maxwell's Interpretation of Statutes and other decided cases held that it had jurisdiction to modify section 57 so as to rectify the draftsman's mistake. If, further, authority is needed for this proposition it will be found in the case of Ram Kissendas Dhanuka and others v. Satya Charan Lal (PLD 1949 PC 339). In the above case, it was held that "the omission to make such cross-references as may be required to reconcile two textually inconsistent provisions is a common defect of draftsmanship. In such cases, the cross references have to be implied in order to remove the inconsistency". I am, therefore, of opinion that there is no substance in this contention."

[Emphasis supplied]

The foregoing case made reference to Ram Kissendas Dhanuka and others v. Satya Charan Law and others (PLD 1949 PC 339), the relevant extract whereof reads as under:

"The first of these to be considered is Article 126 itself. Two points in it fall to be noticed : (a) the power is expressed to be subject to section 83A(1) of the Indian Companies Act which provides that 'every company shall have at least three directors'; and (b) the power extends to altering the qualification and making a change in the order of rotation of the increased or reduced number. Now if, as the High Court has held, Article 126 only allows an ordinary resolution to operate between the limits of four and three prescribed by Article 109, the following consequences would result: (a) The reference to section 83A(1) would, as the articles stand, be unnecessary. The reason of this is that if according to the argument, the minimum of three laid down by Article 109 can only be altered by a special resolution it could not in any event be altered by an ordinary resolution which is the kind of resolution with which Article 126 is dealing. (b) The power to alter qualification and change the order of rotation, if, as Article 126 provides, it is to be exercised by ordinary resolution, must involve a departure from the provisions of Articles 112, 121 and 122. Those articles are not expressed to be "subject to Article 126" nor are these powers in Article 126 expressed to be given "notwithstanding anything in Articles 112, 121 and 122". Some such words must therefore be implied in one place or the other in order to remove the inconsistency. The omission to make such cross-references as may be required to reconcile two textually inconsistent provisions is a common defect of draftsmanship. There is thus no insuperable difficulty in reconciling Article 109 with Article 126 either by implying in the former some such opening words as "subject to Article 106" or implying in the latter some such opening words as "notwithstanding anything contained in Article 109"."

[Emphasis supplied]

We therefore hold that there is absolutely no basis or reasonable justification for the Federal Shariat Court to be treated differently when it undoubtedly forms part of the superior judiciary.

32. In light of the foregoing discussion, the matters detailed in paragraphs 2 to 11 above are decided as under:

- (a) All the appeals and civil petitions are dismissed, except for Civil Petition No.1439/2018 which is converted into an appeal and allowed and the impugned judgment is set aside (and the short



order of even date is amended accordingly);

- (b) Constitution Petitions Nos.4 and 12/2016 are dismissed as they involve personal grievances and no question of public importance with reference to the enforcement of any fundamental rights is made out;
- (c) Constitution Petition No.143/2012 is dismissed as the prayers sought for are decisions to be taken by the relevant authorities, in which we do not wish to interfere at this stage;
- (d) As the case of Ch. Muhammad Akram supra has been overruled, therefore Criminal Original Petition No.125/2019 is dismissed as having been rendered infructuous; and
- (e) Since all the main appeals and petitions have been finally decided, therefore the civil miscellaneous applications are dismissed as having been rendered infructuous.

33. The foregoing are the detailed reasons for our short order of even dated which reads as follows:

"We have heard the learned counsel for the parties in all these appeals and petitions and have also gone through the record of the case. For the reasons to be recorded later, the appeals as well as the petitions are dismissed."

Sd/-  
Gulzar Ahmed,  
Chief Judge

Sd/-  
Sardar Tariq Masood  
Judge

Sd/-  
Faisal Arab  
Judge

Sd/-  
Ijaz ul Ahsan  
Judge

Sd/-  
Sajjad Ali Shah  
Judge

MWA/G-14/SC

Order accordingly.



# Receipt

I, Mr. Munir-ud-Din Ghouri Advocate have received appeal No. 607/2022, Titled as Muhammad Kabir vs Govt as per honorable Chairman order dated 16-06-2022 on 17-06-2022 in original.

Munir ud din Ghouri



17/6/2022

50	9395	  
ایڈوکیٹ: نور احمد		پشاور بار ایسوسی ایشن، خیبر پختونخواہ
بار کونسل ایسوسی ایشن نمبر: 10-7450		
رابطہ نمبر: 0300 9596181		

بعدالت جناب: حضور صاحب

منجانب: <u>اسرار</u>	دعویٰ:
	علت نمبر:
	موردہ:
	جرم:
	تھانہ:

**بابت تحریر آئکہ**

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ

آن مقام اسرار کے لیے نور احمد بارہ خان صاحب کو مدعی کے طور پر نامزد کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے اور جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے یا اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانون کے واسطے ہر قسم کے اختیار حاصل ہوں گے اور اختیار کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساتھ پر واضح منظور و قبول ہوگا دوران مقدمہ میں جو فریاد ہر جائزہ اتوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی تمام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سہل ہے

الرقوم:

مقام اسرار

ت: اس وکالت نامہ کی فونڈنگ کا عمل قابل قبول ہوگی۔

