

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.664 of 2008

Date	Order with signature of Judge
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For Final Arguments.

31.05.2021

Mr. Ikram Ahmed Ansari, advocate for the Plaintiff.
Mr. Basim Raza, Associate of Mr. Salahuddin Ahmed, Advocate
for Mr. Rasheed A. Rizvi, Advocate.
Mr. Muhammad Ahmar, Assistant Attorney General.

NAZAR AKBAR, J. - Learned counsel for Mr. Rasheed A. Rizvi, Advocate through Mr. Basim Raza, Advocate has sent a statement at the bar which is reproduced below:-

“It is respectfully submitted on behalf of Mr. Rasheed A. Rizvi Sr. ASC that on 28.05.2021 a High Court Appeal bearing No.85 of 2021 was preferred against the orders dated 18.05.2021 and 24.05.2021 before the Hon'ble High Court of Sindh at Karachi.

That vide order dated 28.05.2021 the division bench of this Hon'ble Court comprising of Justice Muhammad Ali Mazhar and Justice Amjad Ali Sahito was pleased to suspend the operation of both orders dated 18.05.2021 and 24.05.2021 passed in the instant Suit and the matter was adjourned to 04.06.2021.

That the appellant has applied for the certified copy of the order dated 28.05.2021 passed in HCA No.85 of 2021 and will provide the same as and when it is made ready by the office.

This statement is made in the interest of justice, equity and good conscience.”

However, since no copy of the order is available, I have only questioned that since I have not passed any order adverse to the interest of Mr. Rasheed A. Rizvi, Advocate such as any direction to suspend payment of pension to him or restraining him to appear in Court pending the issues raised on the objection of Mr. Ikram Ahmed Ansari, Advocate for the plaintiff then what has been impugned. I

believe the operative part of the order is only notice to the Attorney General for Pakistan and suspension of operation of order dated 24.5.2021 could only mean restraining Attorney General of Pakistan to address this Court on the said constitutional issues. It may be mentioned here that the Attorney General has been put on notice on the request of Mr. Salahiddin Ahmed, Advocate in exercise of power conferred under **Order XXVIA** of CPC. However, despite the order of Division Bench, Mr. Muhammad Ahmar, Assistant Attorney General has appeared on behalf of the Attorney General and requested for time. So far amongst the questions of public importance arising out of objection raised by Mr. Ikram Ahmed Ansari, advocate the most important one is that prima-facie a permanent Judge of this Court after his retirement is not supposed to appear before this Court in obedience to **Article 207(3)(b)** of the Constitution as long as this Article is part of the Constitution.

2. I may observe, since I am still seized of the matter and I have not been restrained to apply my judicial mind, that in my humble view **clause (3)(b)** of **Article 270AA** of the Constitution prima-facie cannot be interpreted to have any effect of “suspending” the constitutional provisions contained in **Article 207** of the Constitution. If **Article 270AA** of the Constitution is to be interpreted as nullifying the effect of **Article 207** of the Constitution, it would be repetition of the infamous 17th constitutional amendment whereby operation of **Article 63(1)(d)** of the Constitution was suspended by the Parliament by adding a proviso to **Article 41** of the Constitution. The 17th Amendment was person specific. It was meant to allow General Pervaiz Musharaf to hold two offices- the office of Army Chief and the President of Pakistan in violation of **Article 63(1)(d)** of the Constitution. The said Article was suspended since he wanted to be

elected to the office of the President of Pakistan. Likewise according to **Article 207(3)(b)** a permanent Judge of a High Court **shall not** plead or act in any Court or before any authority within its jurisdiction. Therefore, any interpretation of **Article 270AA(3)(b)** of the Constitution whereby a Judge of High Court on receiving the pensionary benefits for holding the office of a permanent Judge till the date of superannuation if allowed to practice within its jurisdiction it would be in violation of **Article 207(3)(b)** of the Constitution like violation of **Article 63(1)(d)** of the Constitution when the two offices have held by one person. On such interpretation the said Judge would be holding two positions at the same time (1) the position of a permanent Judge having been retired from its jurisdiction and (2) a Judge allowed to practice Law in the same jurisdiction despite constitutional embargo. The 17th Amendment was an amendment consciously suspending **Article 63(1)(d)** of the Constitution to please General Pervaiz Musharaf but I am sure it is not the case in the 18th Amendment whereby **Article 270AA(3)(b)** was introduced in the Constitution. Therefore, **Article 270AA(3)(b)** cannot be interpreted to extend two benefits to one person-----the benefit of retired Judge of High Court and the benefit of practice of Law to the same Judge in the same jurisdiction. Such interpretation would only mean that the Parliament through this amendment has suspended operation of **Article 207(3)(b)** of the Constitution for specific person(s). I believe the framer of 18th Amendment have not intended to confer any right on a citizen of Pakistan in derogation of any of the Articles of the Constitution. Be that as it may, an appeal has been preferred and I have been deprived of hearing the learned Attorney General, as a Divisional Bench has suspended operation of order dated **24.5.2021** whereby he was put on notice. These are my

tentative views on the issue/ question of interpretation of **Article 207(3)(b)** read with **Article 270AA(3)(b)** of the Constitution.

3. I may with utmost respect add that appeal is continuation of original proceedings though it has been preferred before any meaningful findings on any of the proposed constitutional issues which have arisen from an objection raised by a senior counsel during the proceedings of a civil suit, the High Court has to answer these questions. I am also of the considered opinion that it would be more advantageous if the issues raised by this Court can be heard by a Bench of two or more Judges on constitutional side. Therefore, in terms of **Rule 10** of the Sindh Chief Court Rules (O.S), Part-I, Chapter-II reproduced below:-

“10. If it shall appear to any Judge either on the application of the party or otherwise, that a suit or matter can be more advantageously heard by a Bench of two or more Judges, he may report to that effect to the Chief Judge who shall make such order thereon as he thinks fit.”

The office is directed to prepare a separate file from the order sheet containing orders dated **18.5.2021**, **24.5.2021** and today's order and place the said file before Hon'ble Chief Justice to constitute a Bench of two or more Judges for the decision on these issues as his lordship deems fit. This exercise should be done by the office immediately.

JUDGE

Ayaz Gul