IN THE HIGH COURT OF SINDH, AT KARACHI

C. P. No. D-5705 of 2020

Present:
Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

Petitioners	:	Sindh Bar Council & 6 others through Salahuddin Ahmed, Advocate.
Respondents No.1-4	:	Nemo
Date of hearing	:	10.10.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioners, being the Sindh Bar Council and several of its then office-bearers, have preferred the captioned Petition under Article 199 of the Constitution so as to impugn the vires of Rule 3 (1) of the Chairman and Members (Qualifications) Rules, 2016 (the **"Rules"**) setting out the qualification for appointment of a person as the Chairman of the National Industrial Relations Commission (the "**Commission**"), as well as the Notification dated 17.08.2020 issued by the Federal Government in respect of the appointment of the incumbent Chairman (the "Notification"), and it essentially being prayed that Rule 3(1) be declared ultra vires the Act and Constitution and the Notification be set aside.

2. As a matter of record, the Commission stands constituted under Section 53 of the Industrial Relations Act, 2012 (the **"Act"**), with (sub-section 2) thereof envisaging that "The Commission shall consist of not less than ten full time members, including the Chairman" and sub-section 3 providing that "The qualification for appointment as a member or as the Chairman of the Commission shall be such as may be prescribed".

3. Section 86 (1) of the Act confers power upon the Federal Government to make rules to carry out the purposes of the Act, with the Rules having been made in exercise of that power vide SRO.130(I)/2016 dated 16.02.2016, with Rule 3 (1) prescribing as follows:

> **3. Qualifications for appointment as Chairman.**—(1) No person shall be appointed as Chairman unless he is or has been judge of the Supreme Court of Pakistan.
>
> (2) …

4. In keeping with the requirement of Rule 3(1), the incumbent Chairman of the Commission is a retired judge of the Honourable Supreme Court, apparently appointed vide Notification dated 16.02.2016 for a period of 2 years, whereafter his tenure was extended for a further two years vide Notification dated 05.09.2018 and then further extended for a like period vide Notification dated 17.08.2020.

5. A perusal of the Petition reflects that whilst the Petitioners concede that the appointment of the incumbent took place in accordance with Rule 3 (1), the real focus of their challenge lies against the extension(s) granted to him, with it being contended that the same are not supported by any law, as no provision regarding the extension of tenure is to be found in either the Act or Rules. Furthermore, it has been averred that in terms of Articles 177 and 193 of the Constitution, practicing advocates with relevant experience are qualified to be appointed as Judges of Supreme Court of Pakistan and the respective High Courts, however, the qualification in terms of Rule 3(1) has been tailor made so as to limit eligibility to the retired judges of Supreme Court, thus the qualification is unreasonably restrictive, exclusionary and, discriminatory, hence violates Article 25 of the Constitution. The appointments in terms of Rule 3(1) and the extension of such appointments is also said to violate the National Judicial Policy, with it being contended that the same prohibits retired judges from accepting any appointments except those allowed by Statute, whereas the Act itself does not provide for the appointment of any judge and it is only in Rules that such provision has been made, therefore, this extension is against the National Judicial Policy as well.

6. On the very first date that the matter had been put up in Court, a question of maintainability had been framed with reference to the locus standi of the Petitioners, vis-à-vis their status as aggrieved persons. Thereafter, the question remained lingering and unattended over a protracted period due to invariable requests for adjournment on behalf of the Petitioners.

7. However, upon the matter being taken up today, learned counsel for the Petitioners sought to address the question of maintainability through the contention that the Petition was in the nature of quo-warranto, hence there was no requirement that the same be instituted by or on behalf of an aggrieved person. As to the merits, he reiterated the aforementioned arguments, as raised through the Memo of Petition.

8. Having considered the matter, we are of the view that the quo-warranto argument is misconceived, as the incumbent Chairman's appointment is in accord with Rule 3(1), as it stands, and the Petitioners cannot seek to supplant that existing qualification so as to then test the appointment with a yardstick that they consider to be better suited. Indeed, a somewhat analogous contention had come up before a learned Division Bench of this Court in Constitutional Petition No. 2259 of 2020, where the extended appointment of a Judge of the Accountability Court was challenged on the ground that the measure constituted a violation of the National Accountability Ordinance as the office of the Judge Accountability Court has to be treated at par with the aforesaid offices of Chairman, NAB, Deputy Chairman, NAB and Prosecutor General, NAB, which are non–extendable, with it being held as follows:

> "Turning to the contention that the appointment of the Respondent No.2 offends the Ordinance, the argument raised on that note is that Judges of the Accountability Court cannot be reappointed and their term also cannot be extended. This argument is based, not on a reading of the relevant Sections of the Ordinance pertaining to the appointment of a Judge (i.e. Section 5(g) and (h) read with Section

> 5A), but on the assertion that as Sections 6, 7 and 8 of the Ordinance each specify that the prescribed periods for which the Chairman, Deputy Chairman and Prosecutor General NAB respectively may be appointed thereunder is non-extendable, such a restriction ought to apply mutatis mutandis in respect of the appointment of a Judge of the Accountability Court and the absence of such a restriction amounted to an omission which ought to filled by reading in the same to the extent of the relevant statutory provisions. This contention too is patently flawed, as it is not for the Court to invade the legislative field by readily inferring and supplying the casus omissus."

9. Furthermore, we do not perceive Rule 3(1) as giving rise to a violation of Article 25 of the Constitution or of the Act, and even if, for the sake of argument, the scope thereof is considered to be restricted and a more expansive qualification criteria is regarded as desirable, that is a matter to be considered by the competent authority and does not of itself affect the *vires* of the Rule, and neither such alleged defect nor the setting aside of the Rule on that basis would even otherwise constitute a ground for the Impugned Notification to be struck down so as to displace the incumbent Chairman.

10. Moreover, albeit that Section 9 of the Legal Practitioners and Bar Councils Act, 1973, on which reliance has been placed in the Petition, envisages one of the functions of a Provincial Bar Council to be "to promote and suggest law reform", without presently dilating on the scope thereof, we are not convinced that recourse to Article 199 is necessarily the appropriate means of performing that function.

11. In view of the foregoing, we see no force in the Petition and dismiss the same *in limine*, along with the pending miscellaneous applications.

JUDGE

CHIEF JUSTICE