

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 81 of 2024

(Asad Ahmed versus Federation of Pakistan & others)

C. P. No. D – 82 of 2024

(Zahier Abbas versus Federation of Pakistan & others)

C. P. No. D – 83 of 2024

(Qasim versus Federation of Pakistan & others)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **30.01.2024**

Date of decision : **30.01.2024**

Mr. Haq Nawaz Talpur, Advocate for petitioners in all petitions.
Mr. Muhammad Hashim Laghari, Advocate has filed powers on behalf of respondent No.5 in all petitions.
Mr. Zeeshan Haider Qureshi, Law Officer of Election Commission of Pakistan.
Mr. Dareshani Ali Haider 'Ada', Deputy Attorney General.
Mr. Ali Raza Baloch, Assistant Advocate General Sindh.

ORDER

Muhammad Iqbal Kalhoro, J. – These are three petitions filed by different persons calling into question candidature of respondent No.5 for a Member National Assembly against NA-209, Sanghar-I on the grounds, among others, he was disqualified from contesting the election by a judgment of the Supreme Court in Civil Appeal No.02 of 2004 reported as *Muhammad Khan Junejo v. Fida Hussain Dero and others* (**PLD 2004 Supreme Court 452**), when for filing a fake degree of BA, he was adjudicated as disqualified from contesting the election by the Election Tribunal, which order he had challenged before the Supreme Court. Later on, when respondent No.5 again attempted to contest General Election in the year 2013 and his nomination papers were accepted, the matter went up to the Supreme Court of Pakistan, and in a judgment reported as *Muhammad Khan Junejo v. Federation of Pakistan through Secretary, M/o Law Justice and Parliamentary Affairs and others* (**2013 SCMR 1328**), the Supreme Court observed that disqualification of petitioner / respondent No.5 was perpetual and not time related.

2. Learned Counsel appearing for petitioners has relied upon the case law reported as Income-Tax Officer, Central Circle II, Karachi and another v. Cement Agencies Ltd. (PLD 1969 Supreme Court 322), Pir Bakhsh represented by his legal heirs and others v. The Chairman, Allotment Committee and others (PLD 1987 Supreme Court 145), Dr. Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 Supreme Court 265) and Application by Abdul Rehman Farooq Pirzada v. Begum Nusrat Ali Gonda v. Federation of Pakistan and others (PLD 2013 Supreme Court 829), and has further submitted that rule of conclusiveness is one of the most inflexible principle of law, insomuch as, even if it were subsequently held by the Courts that the decision in a particular case was erroneous, such holding would not authorize reopening of the old controversy in order that the final conclusion might be applied thereto. According to him, as long as the determination is not set aside in appeal etc., the judgment will remain in the field irrespective of the quality of law. The rights of the parties thereunder would assume finality and take the colour of a past and closed transaction. The fact that the Supreme Court in an appeal etc. set aside the judgment in another petition would not reopen the concluded rights of the parties acquired under the earlier decision, against which no appeal was filed. According to him, the decision of the Supreme Court in the case of respondent No.5 is a past and closed transaction, is not up for reopening, and hence, the latest judgment of the Supreme Court in Civil Appeals No.981 of 2018 and others positing a different view would not be applicable in this case. Any subsequent amendment in the Elections Act, 2017 has no force to in-effectuate a decision of the Supreme Court.

3. His arguments have been opposed by learned Counsel appearing for respondent No.5, learned Law Officer of Election Commission of Pakistan, learned Deputy Attorney General and learned Assistant Advocate General Sindh. They have relied upon the cases of Aftab Shahban Mirani v. President of Pakistan and others (1998 SCMR 1863), Muhammad Hussain Babar v. Election Commission of Pakistan, through Secretary and others (PLD 2008 Supreme Court 495), Aftab Shahban Mirani and others v. Muhammad Ibrahim and others (PLD 2008 Supreme Court 779), Federation of Pakistan and others v. Mian Muhammad Nawaz Sharif and others (PLD 2009 Supreme Court 644) and Ali Gohar Khan Mahar v. Election Commission of Pakistan through Secretary and 2 others (2014 CLC 776) to support their arguments.

4. We have heard the parties and perused material available on record. As per record, respondent No.5 filed his nomination papers for NA-209, Sanghar-I for contesting upcoming General Election scheduled to be held on 08.02.2024. Petitioners objected to his candidature in view of the pronouncements of the Supreme Court declaring him ineligible to contest the election for life time. On the basis of such objections, his nomination papers were rejected by the relevant Returning Officer vide order dated 30.12.2023, which he assailed before the Election Appellate Tribunal, and the Election Tribunal vide impugned order dated 10.01.2024 set aside the said order and allowed respondent No.5 to contest the election.

5. The Supreme Court in the order dated 8th January 2024, while hearing several cases of similar nature, arising out of various Civil Appeals including Civil Appeal No.1946 of 2023 pertaining to respondent No.5, has declared, among others, in clause (iii) and (iv) as under:

- iii. *The interpretation of Article 62(1)(f) of the Constitution in imposing a lifetime disqualification upon a person through an implied declaration of a court of civil jurisdiction while adjudicating upon some civil rights and obligations of the parties is beyond the scope of the said Article and amounts to reading into the Constitution.*
- iv. *Such reading into the Constitution is also against the principle of harmonious interpretation of the provisions of the Constitution as it abridges the Fundamental Right of citizens to contest elections and vote for a candidate of their choice enshrined in Article 17 of the Constitution, in the absence of reasonable restrictions imposed by law.*

6. Further, in clause (vii), it is stated that Section 232(2) added in the Elections Act, 2017, vide the Elections (Amendment) Act, 2023 promulgated on 26 June 2023, prescribes a period of five years for the disqualification incurred by any judgment, order or decree of any court in terms of Article 62(1)(f) of the Constitution and has also made such declaration subject to the due process of law. Further, it is observed that this provision is already in field, and there remains no need to examine its validity and scope in the present case, and on the basis of which, in certain terms, allowed the Civil Appeals including Civil Appeal No.1946 of 2023, in view of aforesaid declaration.

7. After the above judgment of the Supreme Court on the issue settling the question of perpetual disqualification, the affliction attached to the candidature of respondent No.5, of a candidate to contest the election till his life time, having no roots in the Constitutional scheme of Article 62 and 63, nothing is left for this Court to harp on in depth on the legal, or otherwise, questions raised, as noted above, by the Counsel for the petitioners in arguments, at this pre-poll stage requiring only summary look in the questions directed against the candidature of a person, and intervene in the impugned order rendered by the Election Appellate Tribunal in favour of respondent No.5.

8. This being the position, we do not find any merit in these petitions, and accordingly **dismiss** the same along with pending application(s), if any. Office to place a signed copy of this order in the captioned connected matters.

J U D G E

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Abdul Basit