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Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: **W.P. 29415/2014**

High Court Bar
Association, Bhawalpur

Versus

The Federation of Pakistan,
etc.

JUDGMENT

Date of hearing	20.11.2014
Petitioner by	M/s. Muhammad Sahzad Shaukat, Ch. Riaz Ahmad, Ch. Ikram Mahmood, Bilal Ijaz, Bakhtawar A Sufi, Tariq Mehmood Khan and Abdul Ghaffar Bhutto, Advocates for the petitioner. (Petitioner in person in connected W.P. No.29172/2014)
Respondents by:	M/s. Aamir Rehman and Nasar Ahmad, Deputy Attorney Generals for Pakistan. Mr. Tahir Munir Malik, Advocate for the applicant C.M. No.2/2014. Mr. Hyder Ali, Deputy Secretary, Senate.
Research by:	Mr. Mohsin Mumtaz, Research Associate & Civil Judge, Lahore High Court Research Centre (LHCRC).

Judges: “must not be confused by complexities, or angered by litigants; they must be unflinching in the face of the truth, free from greed, dissatisfied with superficial solutions, consequential in argumentation, steadfast in the search for the truth of all matters. Immune to praise and temptations.”¹

SYED MANSOOR ALI SHAH J. High Court Bar Association, Bahawalpur and Ch. Abdul Ghaffar Bhutto, Advocate, a member of the said Bar, have challenged the decision of the Parliamentary Committee (“Committee”) dated

¹ A sacred conception of Justice: Iman Hazrat Ali’s Letter to Malik Ashtar. *The Sacred Foundations of Justice in Islam*. P.90.

25.10.2013 passed under proviso to Article 175A (12) of the Constitution, whereby nomination by the Judicial Commission (“Commission”) of one Hafiz Shahid Nadeem Kahloon (“*nominated person*”) as an additional Judge of the Lahore High Court was not confirmed.

2. Learned counsel for the petitioner submits that the name of the nominated person was duly recommended by the then Hon’ble Chief Justice of the Lahore High Court and thereafter unanimously approved by the Judicial Commission for appointment as an Additional Judge of this Court. It is submitted that Parliamentary Committee in its meeting held on 25.10.2013 has sat as an appellate forum over the decision of the Judicial Commission, which is not permissible under the Constitution. Even on merits, he submits, that there is no plausible justification for the Parliamentary Committee to dislodge the decision of the Judicial Commission. It is submitted that the Parliamentary Committee has transgressed its constitutional role, as settled in *Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan ad another* (PLD 2011 SC 407) and reaffirmed in *Federation of Pakistan through Secretary Ministry of Law v. Munir Hussain Bhatti and others* (PLD 2011 SC 752) and *Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and Justice, Islamabad v. Sindh High Court Bar Association through President and another* (PLD 2012 SC 1067).

3. Learned Deputy Attorney General for Pakistan, on the other hand submits that *Munir Hussain Bhatti’s case*² has been reviewed and the august Supreme Court of Pakistan in the second *Munir Hussain Bhatti’s case*³ has redefined the scope of

² PLD 2011 SC 407

³ PLD 2011 SC 752

Article 175A by empowering the Parliamentary Committee to independently review the evidence placed before it and give reasons for disagreeing with the decision of the Judicial Commission. It is submitted that in this case, elaborate reasons have been given by the Parliamentary Committee for not appointing the nominated person as an Additional Judge of this Court, which passes the test of judicial review.

4. I have heard the opposing contentions of the parties, have examined the constitutional provisions and the relevant case law on the issue. Vide order dated 06.11.2014, Deputy Secretary (Questions) Senate, was directed to appear in person before the Court alongwith Minutes of the Meeting of the Parliamentary Committee dated 25.10.2013. The Registrar of this Court was also directed to place the record of the nominated person and other candidates (now Hon'ble Judges of this Court) which was put up by the office of this Court before the Judicial Commission. The said documents have been examined.

5. Brief facts are that names of seven persons were proposed by the Hon'ble Chief Justice of the Lahore High Court for appointment as Additional Judges of this Court. The proforma placed before the Judicial Commission of Pakistan by the then Hon'ble Chief Justice of Lahore High Court for initiation of nomination for appointment as Additional Judges of the High Court carries the following antecedents regarding the professional career of the *nominated person*:-

Evaluation:		
(i)	Integrity:	good
(ii)	General reputation in public, bench & bar	Honest, professional, steady, polite.
(iii)	Intelligence	Good
(iv)	Knowledge of law:	Good

(v)	Special aptitude:	criminal law
(vi)	Performance: a. Punctuality: b. Disposition of quick disposal: c. Preparation of case: d. Standard of arguments:	good good good good
(vii)	Outlook	Balanced
(viii)	Relations with colleagues on the bench	N.A.
(ix)	Relations with the bar:	Good
(x)	Behaviour with public:	Good
Others: ...		
(iv)	Any other special merit: General remarks	
<u>Imbued with devotion to the law and a strong sense of justice.</u> <i>(emphasis supplied)</i>		

6. Under the constitutional appointive process, the matter came up for deliberation before the Judicial Commission in its meeting held on 11.10.2013. The Commission at the end of a deliberative process approved all the seven names and nominated them for appointment as Additional Judges of this Court, including that of the *nominated person* in the following manner:

DECISION OF THE JUDICIAL COMMISSION:

“The Commission having taken the views of the members of two Committees, and **after an in-depth discussion about the professional caliber, legal acumen, judicial skills, commitment/devotion to duty, and antecedents of the said person, unanimously recommended all the seven persons for appointment as Additional Judges of Lahore High Court for a period of one year.** *(emphasis supplied)*”

7. Nominations of the Judicial Commission were placed before the Parliamentary Committee. All the nominations were approved except that of the *nominated person*. The Committee recorded the following decision in its meeting held on 25.10.2013:-

DECISION OF THE PARLIAMENTARY COMMITTEE:

“7. The Committee scrutinized the record / proforma of the person at Sr. No.6 (Mr. Hafiz Shahid Nadeem Kahloon) as well as the reports of the Intelligence Agencies in order to evaluate his competency, qualifications, standing and integrity. **The record and the reports reveals that the said person does not have significant reported cases in the law journal and the few reported cases does not include any important or known case involving question of law or constitution. In some of the judgments, cited to his credit, he has appeared as Associate Council while most others are not of significance. His appearance in Supreme Court is only symbolic as he got enrolled as an Advocate Supreme Court in 2013.** The observations of the Committee are supported by the IB Reports as well. In view of the above, all the Members of the Committee present (7 out of 8) were of the unanimous opinion that **Mr. Hafiz Shahid Nadeem Kahloon does not have the requisite qualifications / experience and professional competence to become a Judge of High Court.** *(emphasis supplied)*”

8. The scope of powers to be exercised by the Parliamentary Committee and the Judicial Commission came up for discussion before the august Supreme Court of Pakistan in *Munir Hussain Bhatti's case* (supra), wherein Mahmood Akhtar Shahid Siddiqui, J speaking for the Court held as follows:

“21. It is clear from a preliminary reading of the minutes of the aforementioned meetings that the entire reasoning of the Committee is focused on no material other than that which had already been thrashed out and discussed in depth by the Judicial Commission. The Committee instead of giving its own reasons for not confirming the nominations, merely opted to usurp the territory reserved for the Commission by the Constitution; and in doing so they again passed judgment on the professional caliber, legal acumen, judicial skill and quality and the antecedents of the Judicial nominees. As noted above, this exercise had already been done by the Commission. The Parliamentary Committee neither

had the expertise nor the Constitutional mandate to reverse the reasoning and findings of the Commission on these grounds; doing so would negate the purpose for creating a Commission as envisaged in Article 175A.

22. The constitution of the Judicial Commission itself and the members comprising five sitting judges of the Supreme Court, one former judge of Supreme Court, the Chief Justice and the most senior judge of the High Court, Federal Minister for law and Attorney General of Pakistan, Law Minister of the concerned province and two senior advocates/members of the Bar, gives us a clear insight into the reasons for the creation of the Commission. It comprises of people having an immense background and stature in the field of law and the judicial system. The purpose then was that the discretion in making judicial appointments should not be the forte of one man, as in the old system but should rather be devolved to a body comprised of people who could be trusted to make a just evaluation on the professional caliber, legal acumen, judicial skill and all other related criteria relevant for the appointment of a person as a judge of the High Court. We are thus unable to see how the technical expertise, judged by a Commission comprising of people having spent decades in the legal field, could be better judged, or worse, reversed by the Parliamentary Committee. If this was intended by the legislature then there was simply no need to even constitute a Judicial Commission.

23.....

24. Given this discussion, we do not understand how the Committee could consider that its function was to redo the entire exercise conducted by the Commission while determining the professional caliber, judicial skill, legal acumen and personal conduct, required as a judge, of the nominees.

.....

27. Since in the present case, as already discussed above, the Committee has tried to assume the jurisdiction of the Commission,

there is no option but to come to the conclusion that the Committee failed to perform its functions in terms of clause (12) of Article 175A. The consequence of this failure has been prescribed by the Constitution itself. The Committee must act within a period of fourteen days of receiving the nominations, "failing which the nomination shall be deemed to have been confirmed". So, while in any other case of failure to exercise jurisdiction, we might have been required to send the issue back to the authority for consideration in accordance with law, here the Constitution leaves us with no such option because of a deeming provision.

.....

32. The recommendations of the Judicial Commission are now on greater footing than the recommendations of the Chief Justice alone in the earlier system. These cannot be superseded for any extraneous considerations as already discussed above. Therefore, the Parliamentary Committee cannot simply brush aside the recommendations of the Commission without its own sound reasons. The Committee is to confine itself to the purpose for which it has been constituted, which is evidently the thrashing out of issues not related to the domain of the Commission. The Committee can, based on factual data and reasons, for instance, declare that a nominee is corrupt or is affiliated/partial making him a controversial choice, but judging the caliber of a nominee as a judge rests with the Commission."

Jawad S Khawaja J, while concurring with the majority view, added a separate note. Some of the relevant extracts are:

"71. It also needs to be reiterated that the thirteen members of the Commission are law-knowing and law related persons who can make an objective evaluation of the suitability of a nominee for judicial office. From members of the Committee, it is not expected that they will have first hand information about a nominee or that they will have the same level of expertise as the Commission, to evaluate the suitability of a nominee for appointment to high judicial office. The Committee, however, is not a meaningless or

redundant body. It has the ability to add value to the process of making judicial appointments by taking into account information which is different from and may not have been available with the Commission.

72. Even the learned Additional Attorney General contended that the two bodies namely, the Commission and the Committee were coordinate bodies, neither of which was subordinate to the other. If, however, it is conceded either that the decisions of the Committee are not justiciable or that it has the power to review and reverse the findings of the Commission, an anomalous and even absurd situation can result. It would not be possible or justifiable (without adversely effecting the independence of the judiciary) to interpret Article 175A in a manner which grants a virtual veto to the Committee enabling it to reverse the recommendations of the Commission, for considerations which have already received the attention of the Commission in its deliberations. This is so because of the composition earlier discussed, of the two bodies. It cannot be seen as the intention of the Constitution as amended, that the thirteen members of the Commission who amongst them include the five senior-most members of the Judiciary in the country together with a former Judge of this Court and the Chief Justice of the High Court concerned, should be trumped in their views about the competence and suitability of a nominee, by six members of Parliament who, it may be stated with great respect, are not supposed to be equipped with the core ability for evaluating, inter alia, legal acumen and competence.”

9. Review against the aforesaid judgment was dismissed by the august Supreme Court of Pakistan in the second Munir Hussain Bhatti's case (supra). Relevant observations made in the said case are as under:

“18. Regardless of the above discussion, it must be stressed here that though the Commission and the Committee perform essentially the same functions as the Chief Justice and the Prime Minister in the previous dispensation, it would be a mistake to

imagine these constitutional bodies as simply substitutes for the Chief Justice of Pakistan and the Prime Minister respectively. The base of decision-making has been substantially broadened. Thus we now we now have in the Commission, members of the Bar and the governing Executive involved in the decision-making process along with seven members of the Judiciary who did not have a Constitutional role in the previous dispensation. This provides capacity to the Commission which enables it to have information about, and consider what in our jurisprudence are referred to as ‘antecedents’, of a potential nominee for judicial office. This should not be taken to mean that the Committee’s role in considering the antecedents of such nominee stands eliminated. The Committee may also examine the antecedents of a nominee and form an opinion as to his suitability for judicial office. Such opinion, however, must conform to standards which pass judicial scrutiny because the decisions of the Committee are subject to judicial review.

19. There may, therefore, be an overlap of functions of the Commission and the Committee in, for instance, assessing and evaluating the antecedents of a nominee for judicial office. But this overlap does not eliminate the role of the Committee or making it redundant. It simply requires the Committee to engage in a conscious and rigorous exercise of its own which will ensure that a person who has dubious antecedents is filtered out in the selection and appointment process. It is precisely this function which has been emphasized on behalf of the Federation in the synopsis of arguments referred to above, wherein it has been said, *inter alia*, that the Committee may “*be concerned in calling for intelligence reports which was the function of the Governor under the old system...*”.

20. However, if the Committee, as in the present cases, does not engage in any exercise at all other than picking up an observation of one member of the Commission and chooses to base its decision on it without more, it will have fallen in error.”

Constitutional interpretation settled in Munir Hussain Bhatti's case was followed in "Singh High Court Bar Association, Sukkur through President v. Pakistan through Secretary Ministry of Law Parliamentary Affairs and Justice, Islamabad (PLD 2012 Sindh 531) and reaffirmed by the august Supreme Court of Pakistan in Federation of Pakistan through Secretary, Ministry of Law and Parliamentary Affairs and Justice, Islamabad v. Sindh High Court Bar Association through President and another (PLD 2012 SC 1067).

10. Constitution of the Judicial Commission and Parliamentary Committee under Article 175A for the purposes of appointment of judges of a High Court is as follows:

Sr. #	Constitution of Judicial Commission for appointment of a judge of a High Court	Designation	No of members
(i)	Chief Justice of Pakistan;	Chairman	
(ii)	four most senior Judges of the Supreme Court;	Members.	4
(iii)	A former Chief Justice or a former Judge of the Supreme Court of Pakistan to be nominated by the Chief Justice of Pakistan, in consultation with the four member Judges, for a period of two years:	Member.	1
(iv)	Federal Minister for Law and Justice;	Member	1
(v)	Attorney-General for Pakistan; and	Member	1
(vi)	A Senior Advocate of the Supreme Court of Pakistan nominated by the Pakistan Bar Council for a term of two years.	Member	1

Sr. #	<i>Constitution of Judicial Commission for appointment of a judge of a High Court</i>	<i>Designation</i>	<i>No of members</i>
(vii)	Chief Justice of the High Court to which the appointment is being made;	Member	1
(viii)	the most senior Judge of that High Court;	Member	1
(ix)	Provincial Minister for Law; and	Member	1
(x)	an advocate having not less than fifteen years practice in the High Court to be nominated by the concerned Bar Council for a term of two years:	Member.	1
		TOTAL Members	13

Constitution of the Parliamentary Committee

Sr. No.	<i>Constitution of the Parliamentary Committee</i>	<i>Number of Members</i>
	Four members of the Senate <i>(two from the treasury benches and two from the opposition benches).</i>	4
	Four members of the National Assembly <i>(two from the treasury benches and two from the opposition benches).</i>	4
	Total members	8

The Commission by majority of its total membership nominates to the Parliamentary Committee one person for each vacancy of a judge [Article 175A(8)]. The Committee on receipt of the nomination from the Commission may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination is deemed to have been confirmed. Provided that the Committee for reasons to be recorded may not

confirm the nomination by three-fourth majority of its total membership within the said period [Article 175A (12)].

11. Under Rule 5(2) of the Judicial Commission of Pakistan Rules, 2010 (“Rules”) framed under article 175A (4) of the Constitution, the Commission may call for any information or record required by it from any person or authority for the purposes of carrying out its functions. Similarly, Parliamentary Committee is also empowered to make rules for regulating its procedure under Article 175A(17). No such rules, according to the learned DAG, have so far been framed.

12. The architecture of judicial appointment under Article 175A provides for a two-step appointive process for the judges of the superior judiciary. The name of the candidate requires approval by both the constitutional bodies i.e., the Commission and the Committee. In case the name is approved by the Commission but not approved by the Committee, the appointive process comes to an end and candidate is not selected. The only exception in the two-step selection process is when the Committee fails to come up with an opinion within fourteen days from the receipt of the nomination from the Commission. The two-step process requires independent assessment and evaluation of the candidate at two stages. The role of these constitutional bodies is not to judge each other’s assessment but is to carry out an independent scrutiny and analysis of the candidate followed by their opinion supported with reasons. It is important to underline that the Parliamentary Committee does not veto the decision of the Judicial Commission. This is not the constitutional character of the two bodies. The Committee simply rejects the candidate on the basis of its own independent assessment.

13. The two constitutional bodies are not designed or structured to pry into each others affairs, decisions or to re-examine the findings of the other. They are insulated coaxial autonomous bodies with their own constitutional obligations to perform i.e., to give an independent opinion about the candidate on the basis of the evidence collected by them. It must be underlined that failure of the Parliamentary Committee to come up with an opinion on the candidate within fourteen days, results in the acceptance of the nomination of the Judicial Commission, showing that opinions of both the constitutional bodies have equal constitutional significance but unless both the opinions are in favour of the candidate, the judicial appointment cannot be confirmed, unless of course the Parliamentary Committee fails to give an opinion within the time prescribed.

14. Integral to the constitutional two-step appointment design is the distinct functional domain of the Commission and the Committee. Unless the two bodies operate in their own spheres, covering their own respective fields, the two-step process loses its constitutional importance. Judicial Commission is a high powered collegium comprising 13 members, including eight Hon'ble Judges and five other members connected with the *judicial branch* of the State. By its very constitution, the Commission indubitably is the most qualified group to assess and evaluate the legal acumen, caliber, legal skills, professional commitment, devotion and professional integrity of the candidate. Parliamentary Committee, on the other hand, with members from the *legislative and the executive branches* of the State, are there to examine all the other personal antecedents of the candidate. The two constitutional bodies function in tandem with

collaborative congruity, while maintaining their autonomy. The two constitutional bodies work towards only one objective i.e., to select the best person for the job.

15. Autonomous exercise of power by the two constitutional bodies, which represent the *judicial and legislative/executive branches of the State*, is a prominent feature of the new constitutional construct and is pillared on deeply revered constitutional values of separation of powers and independence of judiciary. “The accepted view is that judicial independence is composed of two foundations. Only together do the two guarantee the independence of the judiciary. These two foundations are the independence of the individual judge and the independence of the judicial branch. Siracuse’s Draft Principles on the independence of the judiciary addressed these two foundations of judicial independence in the following manner:

(1) That every judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law, without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason, and

(2) That the judiciary is independent of the executive and legislature, and has jurisdiction, directly, or by way of review, over all issues of a judicial nature.”⁴

Under the Mt. Scopus International Standards of Judicial Independence⁵, the standard of judicial appointments has been described as follows:

⁴ *Aharon Barak - The Judge in a Democracy* by (Page 77-78), Princeton University Press, 2006

⁵ *The Culture of Judicial Independence*. Conceptual Foundations and Practical Challenges. Edited by Shimon Shetreet and Christopher Forsyth. Pp.482-483.

4.1. The method of judicial selection shall safeguard against judicial appointments for improper motives and shall not threaten Judicial Independence.

4.2 (a) The principle of democratic accountability should be respected and therefore it is legitimate for the Executive and the Legislature to play a role in judicial appointments provided that due consideration is given to the principle of Judicial Independence.”

While, all the three branches of the State, through the two constitutional bodies actively participate in judicial appointments, they simultaneously guard their boundaries to maintain separation of powers and independence of judiciary by forming independent opinions about the candidates. This autonomy, openness and transparency in the method of appointing the judges is an essential requirement of sustaining public confidence in the judiciary.

16. Constitutional autonomy and independence of the two bodies require that they carry out their own investigation, inquiry and collect their own independent information and evidence before formulating their opinion. The Rules empower the Commission to collect any information or record required by it from any person or authority for the purposes of carrying out its functions. Similar power to frame Rules also vests in the Committee under Article 175A(17). While the two bodies have similar investigative powers, their fields of inquiry are distinct and different. Judicial Commission limits itself to the legal antecedents of the candidate, while the Parliamentary Committee is free to examine all the other antecedents of the candidate to ensure a very high standard of propriety, integrity, assiduity and personal conduct. Reliance is placed on *Munir Hussain Bhatti's case* (supra).

17. Another aspect is that once the candidate receives a nod of approval by the Judicial Commission and his candidature is placed before the Parliamentary Committee, denial of approval by the Committee requires compelling reasons based on irrefutable evidence against the *nominated person*, which should irresistibly justify that the *nominated person* is not fit to be appointed as an Additional Judge.

18. *Munir Hussain Bhatti's case* (supra) has settled that the decision of the Parliamentary Committee is subject to judicial review. In the present case, Parliamentary Committee instead of carrying out its constitutional obligation and relying on independent evidence to judge the personal antecedents of the *nominated person*, has instead, reexamined and reviewed the findings of the Judicial Commission by examining the same material and evidence already examined and analyzed by the Judicial Commission and by commenting on the legal antecedents of the candidate rather than the personal antecedents which falls within the jurisdictional purview of the Parliamentary Committee. The Committee has, therefore, transgressed its constitutional limits and entered into the territory reserved for the Judicial Commission, thereby offending the principles of separation of powers and independence of judiciary. The Committee does not enjoy the power to review, reverse or substitute the decision of the Commission. The impugned decision of the Parliamentary Committee is, therefore, unconstitutional.

19. Examination of the impugned decision of the Parliamentary Committee, even on merits, proves how pointless and inconsequential it is to allow the Committee to enter the sphere of interest of the Commission and examine the legal

antecedents of the *nominated person*. The impugned decision of the Committee examines the “competency, qualifications, standing and integrity” of the *nominated person*. The decision states that the intelligence reports and the record reveals that the reported judgments of the nominated person are not significant. That the nominated person in some reported cases has appeared as an *Associate Counsel* and has a symbolic appearance before the Supreme Court of Pakistan, as he was enrolled as an advocate Supreme Court of Pakistan in the year 2013.

20. The impugned decision of the Parliamentary Committee substantially rests on the intelligence reports and that too regarding professional competence of the *nominated person*. Intelligence reports received by the Committee appear to have been preferred over the findings and nomination of the Judicial Commission, which as discussed above, is the apex constitutional body to assess the legal and professional competence of a candidate. A comparative chart of all the applicants shows the fallacy of the impugned decision of the Committee.

Comparative Chart				
Sr. No.	Nominees for appointment as Additional Judges, Lahore High Court, Lahore.	Number of Reported Cases.	Number of Pending and Disposed Cases.	Date of Enrollment as Advocate Supreme Court of Pakistan
1.	Mr. Mehmood Ahmad Bhatti	13	168	Applied on 26.10.2012
2.	Mr. Arshad Mehmood Tabassum	Elevated from service	Elevated from service	From amongst D&SJJ
3.	Mr. Muhammad Tariq Abbasi	Elevated from Service	Elevated from service.	From amongst D&SJJ
4.	Mr. Muhammad Masood Jahangir	7	246	9.10.2009
5.	Mr. Sadaqat Ali Khan	14	637	1.9.2008

6.	Mr. M. Sohail Iqbal Bhatti	11	Elevated while functioning as Addl. Advocate General.	11.10.2008
7.	Hafiz Shahid Nadeem Kahloon	10	453	5.1.2013

The numbers of reported cases of the *nominated person* are almost the same as the other candidates. The date of enrollment of the Supreme Court of Pakistan is not relevant because one of the other candidates does not have a Supreme Court license (it is also not a constitutional requirement). Besides, pending cases of the *nominated person* are more than some of the other candidates. The nominated person has 10 reported cases and 453 pending and disposed of cases in the High Court. Perusal of the record further reveals that other candidates had almost similar number of reported judgments. Perusal of the reported judgments also reflect that in almost all the judgments the *nominated person* appeared as counsel for his clients. However, in three cases the presence of another colleague has also been marked. Besides, none of the judgments show that he appeared as an “Associate Counsel,” a term coined by the Parliamentary Committee, perhaps to highlight, a baseless assumption, that the *nominated person* did not singularly conduct these cases. The reasons of the Committee are frail and cosmetic and cannot be sustained. Besides, these aspects found little weight before the Judicial Commission, which unanimously approved the candidature of the *nominated person*.

21. For the above reasons, the decision of the Parliamentary Committee is not sustainable under the Constitution and the law and is, therefore, set aside to the extent of the *nominated person* with the direction to the Federal Government to issue Notification for the appointment of Hafiz Shahid Nadeem

Kahloon, as Additional Judge on the basis of the nomination of the Judicial Commission which stands in the field.

22. Constitutional metamorphosis under Article 175A has taken judicial appointments out of the yoke of individual discretion into a more open and transparent collegial debate and discussion. Both the constitutional selection bodies rest on this fundamental premise. It is a constitutional imperative that the collegial constitutional ethos runs through the entire process of judicial appointment. Any part of the appointive process that is devoid of this collegial thought is constitutionally deficient. Earlier, the names of the proposed candidates put up before the President for consideration were proposed by the Chief Justice of the respective High Courts. After the 18th constitutional amendment, the Hon'ble Chief Justice is under a constitutional obligation to draw upon the collective wisdom of the senior Judges of the Court before finalizing the list of proposed names. The Hon'ble Chief Justice and the Hon'ble Senior Judges of the Court act as trustees of the public in discharging this onerous responsibility of proposing the best of the best to be elevated to the bench. It is, therefore, now a constitutional expectation that the names put up before the Judicial Commission by the respective Hon'ble Chief Justice would carry the blessing of the collegium of senior Judges of the Court (ordinarily the Administrative Committee of the Court). It needs no reminder, that in the context of judicial appointments, 18th Constitutional amendment has buried the concept of one-man show, forever. Stewardship of the Hon'ble Chief Justice and the Senior Judges of the Court, require that a more structured succession planning for selection of future judges be put in place. This requires that High Court with institutional alertness, regularity and

transparency, identifies and headhunts potential future judges, well in advance.

23. For the reasons given above, this petition, as well as connected W.P. No.29172/2014, are allowed in the above terms.

24. Research support by LHCRC is acknowledged and appreciated.

(Syed Mansoor Ali Shah)
Judge

*Iqbal/M. Tahir**

APPROVED FOR REPORTING