

Stereo. H C J D A 30.

Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE JUDICIAL DEPARTMENT

Case No: W.P. 16793/2014

Rub Nawaz Dhadwana,
Advocate, etc.

Versus

Rana Muhammad Akram,
Advocate, etc.

JUDGMENT

Dates of hearing:	19.06.2014, 27.06.2014, 28.06.2014, 30.06.2014, 01.07. 2014 and 02.07.2014
Petitioners by:	M/s. Ahmad Awais, Zulqarnain Raja, Muhammad Amin Javed, Ghulam Fareed Sanotra, Ch. Zulfiqar Ahmad, Ch. Ishtiaq Ahmad and Mushtaq Ahmad Mohal, Advocates
Respondents by:	Mr. Mustafa Ramday, Additional Advocate General (on court's call). M/s. Muhammad Hanif Khatana and Shan Gul, both Additional Advocates General, Punjab. Mr. Anwaar Hussain, Assistant Advocate General, Punjab. M/s. Ali Zafar Syed, Zahid Nawaz Cheema and Salman Ahmad, Advocates for respondent Pakistan Bar Council. Ch. Muhammad Hanif Tahir, Mr. Iftikhar Ahmed Mian and Rai Bashir Ahmed, Advocates for the respondents. Mr. Khalid Umar, Assistant Secretary/Law Officer, Punjab Bar Council. Mr. Jabran Khalil, S.O. Executive Committee, Punjab Bar Council. Respondents NO.2, 3 and 5 in person. Ch. Muhammad Ilyas, Additional Secretary, Law & Parliamentary Affairs Department. Muhammad Rehman, Section Officer (Admn-III) Law & Parliamentary Affairs Department.
Research by:	M/s. Qaisar Abbas and Mohsin Mumtaz, Research Associates & Civil Judges, Lahore High Court Research Centre (LHCRC).

Syed Mansoor Ali Shah, J:-

Introduction

The process of decision making by the Provincial Bar Council in case of cessation of membership of an elected Member and the corresponding filling of casual vacancy through co-optative process. The foundational role and jurisdiction of an impartial Chairman i.e., *ex-officio* Advocate General for the Province, prevalence and rampancy of *ad hocism* and unexplained delay in constitutional appointments. The consequential dysfunctionality of the laws linked with the constitutional appointment including Legal Practitioners & Bar Councils Act, 1973 and the operational paralysis of self-regulation by the Punjab Bar Council due to the vacancy of the post of the Advocate General are the pivotal issues that have come up for adjudication before us in this case.

Constitution of the Full Bench.

2. Through the instant petition the petitioners challenge interim order dated 06.06.2014 passed by the Appellate Committee of the Pakistan Bar Council. They submit that the order of an Additional Advocate General with a 'look after' charge of the office of the Advocate General, appointing the petitioners as Members of the Punjab Bar Council under section 16(b) of the Legal Practitioners & Bar Councils Act, 1973 (the "Act") is not appealable under section 13(2) of the Act. They also seek protection of their appointment notifications as Members of the Punjab Bar Council, issued by the same Additional Advocate General. Respondents No.1 to 7 raised serious objections to the validity of the appointment notification of the petitioners and the lack of due process and fairness in de-notifying respondents No. 1 to 7 as Members of the Bar Council.

3. Absence and lack of clarity of structured decision-making process within the Punjab Bar Council pertaining to removal (de-notification) of an elected Member under Section 5C of the Act and the corresponding filling of casual vacancy (notification) under Rule 28A of Pakistan Legal Practitioners & Bar Councils Rules, 1976 has compelled the Members to

approach this Court more than once in the last few months. In order to resolve this continuing bone of contention between the opposing groups of the Punjab Bar Council, we felt it was necessary to streamline the procedure and decision making process for removal and filling of casual vacancy of a Member or in other words, procedure for actualizing Section 5C of the Act, being mindful of the persisting vacancy in the office of the Advocate General for Punjab. The instant petition, therefore, unfolded a set of foundational questions, touching upon the significance of the office of Chairman (ex-officio Advocate General) under the scheme of the Act, the decision making process of a Provincial Bar Council and the mechanism to remove and fill the post of a Member, Punjab Bar Council.

4. This case was initially put up before one of us (Syed Mansoor Ali Shah, J) as Single Bench, however, considering that the issue concerned the functioning of the Provincial Bar Council, the apex professional self-regulation authority and realizing the constitutional and legal gravity of the questions involved, request was made to the Hon'ble Chief Justice to constitute a full bench to hear the matter. This requested was graciously acceded to.

Factual Background

5. The factual backdrop to the present litigation is necessary to appreciate the legal questions that have finally surfaced in this case:

- (i) One *Sajjad Akber Abbasi, Advocate* preferred a petition¹ before this Court, challenging the appointment of Zafar Mehmood Mughal, Advocate, Member Punjab Bar Council, on the ground that he was subsequently appointed to an *office of profit* in the service of Pakistan as Deputy Attorney General, hence he has ceased to be a Member under Section 5C (a) of the Act and therefore liable to be removed (de-notified). It was also prayed by Mr. Abbasi that he being a *runner up* in the General Election, from the same district, was entitled to be notified as

¹ W.P. No.3062/2012

Member of the Punjab Bar Council in terms of section 16 (b) of the Act. The said writ petition was allowed vide order dated 04.11.2013 with the direction to the Punjab Bar Council to notify Sajjad Akbar Abbasi in place of Zafar Mehmood Mughal.

- (ii) This decision was challenged before a Division Bench of this Court in appeal,² which was dismissed vide order dated 02.12.2013 on a technical ground. It was held that the appeal was not maintainable as the decision of the Chairman was challengeable in appeal before the Pakistan Bar Council under section 13 (2) of the Act.
- (iii) Finally the matter ended up before the august Supreme Court of Pakistan. The apex Court upheld the view of the learned single bench of this Court and dismissed the petition vide order dated 16.01.2014.³
- (iv) Thereafter, Sajjad Akbar Abbasi was notified on 19.12.2013 by the Additional Advocate General holding a 'look after' charge of the office of Advocate General for Punjab.
- (v) The said notification was challenged by the other side before the Appellate Committee of the Pakistan Bar Council, which was suspended vide order dated 28.12.2013.
- (vi) The order of the Appellate Committee of the Pakistan Bar Council was once again challenged before this Court and vide order dated 27.01.2014⁴ the order of the Pakistan Bar Council was set aside upholding the notification of appointment in favour of Mr. Abbasi.

² ICA No.112/2013

³ Passed in C.P. Nos.1976 & 1977 of 2013.

⁴ In W.P. No.5/2014

- (vii) The question that once a sitting Member of the Provincial Bar Council is appointed to an *office of profit* in the service of Pakistan, he ceases to be a Member of the Bar Council, was finally settled in the above litigation.
- (viii) In the light of the aforesaid decision, the petitioners submitted applications before the Chairman, Punjab Bar Council for de-notification of the private respondents, who were appointed to an *office of profit* in the service of Pakistan. As the matter kept pending before the Additional Advocate General holding a 'look after' charge of the office of the Advocate General, the petitioners approached this Court through W.P. No.10989/2014, which was subsequently placed before a Full Bench of this Court and disposed of vide order dated 15.05.2014 with the direction to the Chairman to decide the matter within a period of three days.
- (ix) Thereafter, the purported Chairman passed order dated 24.05.2014 followed by notifications dated 30.05.2014 de-notifying the private respondents and notifying the petitioners as Members of the Punjab Bar Council.
- (x) The order of the purported Chairman, Punjab Bar Council and the appointment notifications were challenged before the Appellate Committee of the Pakistan Bar Council under section 13 (2) of the Act and vide impugned order dated 06.06.2014, the order of the Chairman, as well as, the appointment notifications were suspended by the Pakistan Bar Council. This order has been impugned before us unfolding a number of constitutional and legal questions as discussed above. The petitioners have also prayed that the sanctity of the appointment notifications be safeguarded by this Court.

6. The foundational questions that arise in this case and require our anxious consideration are:

- a. How is section 5C of the Act, pertaining to cessation of membership, actualized under the Act and the relevant Rules? More precisely, how is a elected Member removed from office and how is the corresponding casual vacancy filled under the law?
- b. What is the role of the Advocate General under the scheme of the Act and the Rules and does the vacancy in the office of the Advocate General have an effect on the working of the Provincial Bar Council and, in particular, while giving effect to Section 5C of the Act?

Arguments

7. The countervailing arguments addressed before us by the learned counsel for the parties are as under. Learned Counsel for the petitioners submitted:

- a. That the appeal before the Appellate Bench of the Pakistan Bar Council was not maintainable against the Order of the Additional Advocate General, as it does not constitute a decision of the Provincial Bar Council, which alone is appealable under section 13(2) of the Act. Reliance is placed on “Mushtaq Hussain Shah v. Sindh Bar Council and others” (2003 YLR 1520).
- b. The notification appointing the petitioners as members is valid as the same has been issued by the Returning Officer i.e., the Additional Advocate General. It is contended that the office of the Returning Officer is a permanent office under the Act and as the issue of filling the casual vacancy pertains to elections, the Returning Officer has, therefore, rightly issued the appointment notification. They relied on the definition of the Returning Officer under Rule 3(i) of the relevant Rules.

- c. That on the basis of the decision of the august Supreme Court of Pakistan in *Sajjad Akbar Abbasi case*, the issuance of appointment notification of the runner up in the General Elections of the Provincial Bar Council was automatic. As a consequence the issuance of the notification was a secretarial act that did not require further deliberation and could not be withheld by the Returning Officer.
 - d. Relying on the decision of the august Supreme Court of Pakistan and the subsequent decisions of this Court discussed above, it was argued that the Additional Advocate General was under a direction to issue the appointment notification.
 - e. That the acting Chairman can appoint the runner up as a Member of the Bar Council. Reliance is placed on “Dr. Kamal Hussain and 7 others v. Muhammad Sirajul Islam and others” (PLD 1969 SC 42).
8. On the other hand, Learned Counsel for the private respondents argued:
- f. That the Additional Advocate General did not pass for a Chairman under the Act and therefore, could not remove an elected Member, hence the removal de-notification and the consequent appointment notification are without lawful authority.
 - g. The respondents were appointed to an office of profit but they subsequently resigned from the said office hence, removal notification could not be issued when they were not holding an *office of profit* in service of Pakistan. Basing the argument on the analogy of a writ of *quo warranto*, which cannot be issued if the incumbent is not holding the office at the time. Reliance is placed on *Sardar Asseff Ahmad Ali v. Muhammad Khan Junejo and others* (PLD 1986 Lahore 310). and “Lt. Col. Farzand Ali and others v. Province of West Pakistan through

the Secretary, Department of Agriculture, Government of West Pakistan, Lahore” (PLD 1970 SC 98). He submitted that subsequent events must be considered by the Court. Reliance is placed on *“Ch. Riyasat Ali Advocate v. Returning Officer and 2 others” (2003 CLC 1730)*.

h. That in the light of the fact that the respondents are not holding an *office of profit* in the service of Pakistan anymore, this petition therefore does not agitate a live issue and hence is not maintainable. Reliance is placed on *“Munawar Iqbal Gondal v. Mrs. Nasira Iqbal and others” (2014 SCMR 860)*.

i. That the appeal before the Appellate Bench of the Pakistan Bar Council was maintainable as ICA No.112/2013 was dismissed on the assumption that the order of the Additional Advocate General was appealable under section 13(2) of the Act. Reliance is placed on *“Tariq Mehmood A. Khan and others v. Sindh Bar Council and another” (2012 SCMR 702)* and the unreported orders passed in **ICA 370/2014 and ICA 112/2013**.

9. Learned Counsel appearing on behalf of the Pakistan Bar Council submitted:

j. That the process of actualizing Section 5C has not been provided under the law. He submitted that when Section 5C(a) is read with section 16(b), the only process available under the law is that of filling the causal vacancy under Rule 28-A of the Rules, 1976.

k. That Rule 28-A of the Rules, 1976 read with section 5C and 16(b) of the Act must be purposively interpreted to provide the same mechanism for removal as provided for filling the casual vacancy. Rule 28-A of the Rules, 1976 provides that casual vacancy is filled through the decision of the Bar Council through a majority vote and only notified by the Chairman.

1. That the role of the Chairman in the functioning of the Bar Council is pivotal. However, in the absence of the Chairman, the functions are performed by the Vice Chairman and the Act does not become dysfunctional. Reliance was placed on Rule 84 of the Rules 1976. It is also pointed out that the post of Additional Advocate General is not the same as that of the Advocate General and placed reliance on “Muhammad Khursheed Khan v. Returning Officer and 4 others” (1998 SCMR 425).
- m. He submitted that while the appeal against the order of the Additional Advocate General was not maintainable, the impugned order was passed by the Pakistan Bar Council under its supervisory power provided under section 13(1) (f) and (i) of the Act.
- n. Referring to section 3 of the Act, he submitted that the Provincial Bar Council is a body corporate and enjoys a perpetual succession. In response to a court query he submitted that vacancy of the seat of the Chairman will, therefore, not amount to dissolution of the Provincial Bar Council.

10. Learned Law Officer representing the office of the Advocate General/Chairman submitted that Order dated 24.05.2014 followed by Notifications dated 30.05.2014 are valid and the Chairman had the lawful authority to pass/issue the same.

Opinion of the Court

11. We have heard the learned counsel for the parties over the last six days. There is no cavil with the legal proposition between the parties that once a Member is appointed to an *office of profit* in the service of Pakistan, he ceases to be a Member of the Bar Council in terms of Section 5C(a) of the Act. The question that requires determination is to identify in whom vests the power, under the Act, to actualize cessation of membership of an elected Member of the Bar Council and the mode and manner required to

operationalize the same, leading to the ‘*de-notification*’ of an elected Member. Correspondingly, similar question arises in the case of filling of the casual vacancy resulting in an appointment ‘*notification.*’ In the present case, the above questions have to be resolved in the peculiar backdrop of the *vacancy* of the seat of the Advocate General for Punjab, the *ex-officio* Chairman of the Bar Council. In order to address the above questions, it is important to understand the scheme of the Act.

Composition and constitution of the Provincial Bar Council

12. The Punjab Bar Council, in addition to the Act, is *inter alia*, regulated by the *Pakistan Legal Practitioners & Bar Councils Rules, 1976* (“**Rules, 1976**”) and *Punjab Legal Practitioners & Bar Councils Rules, 1974.* (“**Rules, 1974**”). Punjab Bar Council is a body corporate and enjoys perpetual succession. The Council has the power to acquire and hold property and to sue and be sued in the name by which it is known [section 3(2)]. The constitutive structure of the Provincial Bar Council consists of a Chairman, who is the Advocate-General of the Province, *ex-officio* and such number of Members as may be elected by the advocates from amongst themselves. In the case of Punjab Bar Council, the total number of Members is 75 [section 5 (a) & (b)]. The term of Bar Council is five years beginning on the first day of January following the General Elections. At the end of the each term, the members of the Bar Council cease to hold office provided the Bar Council continues to function till a new Bar Council is elected [section 4]. For the purposes of election of Members of a Provincial Bar Council from a district or districts the advocates entered on the roll of group of districts as mentioned in the Schedule, constitute the Electoral College [section 5 (2-A)].

13. The Act reiterates that the Provincial Bar Council comprises of a Chairman and Vice-Chairman and the Advocate General of the Province is the Chairman of the Provincial Bar Council for that Province [section 6(2)]. The Members of that Council *from amongst themselves* elect the Vice

Chairman of Provincial Bar Council. The election of the Vice Chairman is held every year and not later than the thirty-first day of January every year. The Vice Chairman ceases to hold his office if he is appointed to an office of profit in the service of Pakistan or is suspended or removed from practice under the Act [section 6 (7)]. In such an eventuality the office of a Vice-Chairman becomes vacant and can only be filled through an election held within thirty days of the office becoming vacant [section 6 (8)]. This is also referred to as the *in-house election* of the Bar Council. General Election of the Provincial Bar Council is held so as to conclude on or before the thirtieth day of November in the year in which the term of the Provincial Bar Council expires [section 7].

Functions of the Provincial Bar Council

14. The functions of the Provincial Bar Council consist of admitting advocates to its roll; preparing and maintaining a roll of advocates; removing advocates from such roll. To admit advocates entitled to practice before the High Court and to prepare and maintain a roll of such advocates; to entertain and determine the cases of misconduct against advocates on its rolls and to order punishment in such cases; to safeguard the rights, privileges and interests of advocates on its rolls including initiation of measures for fair and inexpensive dispensation of justice by subordinate courts and tribunals; to promote and suggest law reforms; to conduct election of its members; to recognize and derecognize bar associations [section 9].

Committees of the Provincial Bar Council

15. The Provincial Bar Council enjoys the powers to constitute Committees under the law and shall constitute the following Standing Committees: *Executive Committee*, *Disciplinary Committee*, and the *Enrollment Committee*. Other Committees of the Bar Council are mentioned in Rule 4.2 of Rules, 1974. Every Committee constituted under the Act shall present to the Bar Council before the end of every quarter a report of its working for approval [Rule 4.9 of Rules, 1974]. Similarly, in the case of the Pakistan Bar Council, the minutes, proceedings, decisions and resolutions

adopted by the Committee are laid before Pakistan Bar Council in its next meeting for approval. The said Committees shall have their own chairman and all the members on these Committees are duly elected from amongst the Members of the Bar Council [section 10].

Elections to the Provincial Bar Council

16. Rules, 1976 provide that elections to the Provincial Bar Council are to be conducted by the Returning Officer, who is the Advocate General of that Province or *in his absence* the Additional Advocate General in order of seniority and where there is no Additional Advocate General, an Assistant Advocate General in order of seniority [Rule 2(i) of Rules, 1976]. On a date specified by the Returning Officer, an advocate qualified as a voter may by a letter addressed to the Returning Officer propose an Advocate qualified as a candidate for election as a Member of the Provincial Bar Council from that District by delivering at the office of the Returning Officer nomination papers signed by him and accompanied by a statement by the Advocate whose name is proposed that he is willing to serve as Member, if elected. Any such proposal shall relate only to one candidate and shall be invalid if it relates to more than one. On the date fixed for scrutiny, the Returning Officer shall after hearing objections to the proposals and after making such summary inquiry as he thinks fit accept or reject the proposal [Rules 6 & 8 of Rules, 1976]. The Returning Officer is to prepare a report of the votes received by each candidate and the votes held to be invalid and is to declare the result [Rule 26 of Rules, 1976]. A list of candidates declared elected is prepared and signed by the Returning Officer and published in the official gazette of the Province. The list is also sent to the Presidents of all the Bar Associations to be affixed on their notice boards [Rule 28 of Rules, 1976]. For the purposes of the election of the Vice Chairman of a Provincial Bar Council, the Advocate General alone is to act as a Returning Officer [Rule 69 of Rules, 1976].

Meetings and Decisions of the Provincial Bar Council

17. The Chairman of the Provincial Bar Council shall convene and preside over meetings of the Bar Council [Rule 84(b) of the Rules, 1976]. In

the absence of the Chairman, the Vice Chairman shall exercise the powers and the duties of a Chairman [Rule 85(a) of Rules, 1976]. Ordinary meetings of the Bar Council are convened by the Chairman and “in case he is for some reason unable to act” [Rules 2.2 & 2.6 of the Rules, 1974] or the Chairman is ‘incapable of acting’ by the Vice Chairman [Rule 3.2 of Rules, 1974]. Any meeting requisitioned by the Members shall also be convened by the Chairman and in the absence of the Chairman, the Vice Chairman [Rule 2.3 of Rules, 1974]. Quorum of the meeting of the Bar Council is one-third of the total Members of the Bar Council, provided where the meeting of the Bar Council cannot be held for want of quorum it stands adjourned to the next day when the quorum of the adjourned meeting is one-fourth of the total number of the Members [Rule 2.5 of Rules, 1974]. Decisions at any meeting shall be by a majority of vote and voting shall be by show of hands. In the case of equality of votes, the Chairman of the meeting shall be entitled to cast a second vote [Rule 2.8 of the Rules, 1974].

18. The Act sets up a professional self-regulating authority of advocates i.e., the Bar Council which volunteers to monitor its own adherence to legal, ethical and professional standards. Self-regulation or self-policing fills the vacuum of the absence of government oversight and regulation. The objective of professional self-regulation has been discussed as under:

“When it comes to regulating transactions between the public and professionals, governments are expected to make sure that the public has some form of protection. For instance, government rules help to ensure that our legal system is fair, teachers are knowledgeable, accountants behave in an ethical manner, and physicians are competent. Examples of government regulation range from rules requiring informed consent when a member of the public has a medical procedure performed, to rules about insider trading for buying and selling stocks. Overall, it is believed that such rules create a fairer system. One of the most common approaches used by government to regulate the practice of professionals is through a system of professional self-regulation....It is expected that all of a regulatory body’s decisions and activities will be done in the “public interest.” In other words, the primary purpose behind all regulatory body decisions is to protect the public from incompetent or unethical practitioners....Another common method of holding a regulatory body

accountable to the public is through the appointment of members of the public to its governing Board.⁵

19. Under the umbrella of self-regulation and self-policing, the Bar Council prescribes standards of professional conduct, etiquettes and exercises disciplinary jurisdiction over the Bar. It regulates the admission of advocates on its roll, looks into professional misconduct and awards punishment, safeguards the rights, privileges and interests of advocates, suggest law reforms and recognize and regulate functioning of Bar Associations.

20. Within the Bar Council, the highest elected office is that of the Vice-Chairman, who is *elected* from amongst the Members. The Members are also *elected* from amongst the advocates, whose names are entered on the provincial and district rolls. The democratically elected Bar Council has an assembly of 75 Members (advocates). Advocates by training are fashioned to stand up for constitutional democracy and fundamental rights. They, therefore, by character are politically active and espouse diverse and independent political views, therefore the body of voters (advocates) belong to different political groups. The elected Vice-Chairman also invariably belongs to any one of such groups. The hallmark of a professional self-regulating body is its neutrality and impartiality, so that its policies and decisions reflect level playing field for all its Members. It is for this reason that in the thicket of such charged diversity i.e., members of the Bar Council, an impartial umpire i.e., the Chairman, has been introduced by the Act, principally to ensure balance and neutrality. The neutral, non-partisan, unelected Chairman is a source of accountability and a measure of governmental oversight of the Bar Council.

21. The Chairman convenes and presides over meetings, enjoys the second or casting vote in case of a tie in a meeting of the Bar Council [Rule 2.8 of Rules, 1974]. He is the *Returning Officer* during Annual Elections of the Bar Council [Rule 4 of the Rules, 1976] and in the case of the in-house

⁵ Understanding Professional Self-Regulation by Glen E. Randall BA, MA, MBA, PhD candidate, Founding Registrar of the College of Repertory Therapists of Ontario (CRTO) 1993 - Nov 2000.

election of the Vice- Chairman [Rule 69 of Rules, 1976]. All key operational functions relating to meetings, casting the second vote, conducting the General Elections and the in-house election of the Vice-Chairman and thereafter notifying the decisions of the Bar Council is the statutory responsibility of the Chairman. Even the functioning of the various Committees is under the supervision and control of the Bar Council which is headed by the Chairman. The role of the Chairman is supervisory. While the functions of the Bar Council under the Act are performed by the Bar Council itself and all the decisions in this respect are the decisions of the Bar Council, the role of the Chairman is simply to maintain oversight. Therefore, the distinction between the role of the Bar Council and the Chairman is important to keep in mind.

22. In the present case, the office of the Advocate General is vacant since July, 2013. In such an eventuality, the scheme of professional self-regulation under the Act is rendered dysfunctional as the vacancy of the office of the Advocate General paralyzes the functioning of the Bar Council. Much stress has been laid on Rule 85(a) where the Vice Chairman is stated to perform the functions of the Chairman in his absence. “Absence” means the state of being away from one’s usual place of residence⁶ or to be available and reachable, when expected.⁷ Reference is once again made to Rules, 1974 which provide that ordinary meetings of the Bar Council are convened by the Chairman and “in case he is for some reason unable to act” [Rules 2.2 & 2.6 of the Rules, 1974] or the Chairman is ‘incapable of acting’ by the Vice Chairman [Rule 3.2 of Rules, 1974], clearly implying that the Chairman exists but is temporarily not available. Vacancy, on the other hand, means the state or fact of a lack of occupancy in an office, post... vacancy does not occur until the officer is officially removed.⁸ Vacancy means “an unoccupied position or job.”⁹ Absence assumes that the post is not vacant, however, the incumbent is not present for the time being, due to any reason,

⁶ Black’s Law Dictionary – 9th Ed. p.7

⁷ Ibid

⁸ Ibid

⁹ Concise Oxford English Dictionary. 12th Ed. p.1596

but is reachable and can be available, if required. The distinction between *vacancy* and *absence* is also brought into sharp relief by Articles 180, 181, 196, 197 and 217 of the Constitution. These Articles provide the constitutional acknowledgement of the distinct status of *absence* and *vacancy*. The Constitution provides that either the office is *vacant* or then the incumbent is *absent* or unable to perform the functions of his office due to any other cause.

23. Law Department Manual, 1938 (L.D.M), which regulates the office of the Advocate General, under Clause 1.15 requires that a notice has to be given by the Advocate General to the Law Secretary of his intentional absence from headquarters for any period and of temporary incapacity to work. Inability of the Chairman to attend a meeting or perform a function under the Act assumes, without doubt, that the Chairman stands appointed and holds the post. Therefore, the term *'in the absence of'* assumes that the seat of the Advocate General is not vacant. *'In the absence of'* provisions under the Act or the Rules are operable only if the post of the Advocate General is filled and not otherwise. Reliance is also placed on *"Bank of Punjab and another v. Haris Steel Industries (Pvt.) Ltd. and others"* (PLD 2010 SC 1109) where the august Court has held:

45. "...Despite knowledge of such-like provisions, the draftsman and the law-giver intentionally declined permission to a Deputy Chairman of NAB to assume the office of the Acting Chairman when this office had become vacant and allowed him to assume the said obligations only in situations of dire emergency when the Chairman was temporarily absent or was unable to perform the functions of his office. Needless to say that inherent in the inability is the ability of someone to do something and there could not be no concept of inability where the ability was completely lacking as in the present case of non-existence of the Chairman on account of his having quit the said office." (emphasis supplied)

Additionally, the concept of Advocate General *ex-officio* being the Chairman of the Bar Council makes the post *office-centric*. It can only materialize if the office of the Advocate General is filled, besides it does not allow any margin for dilution, hence the role of the Chairman can never be

handed over to any officer other than the Advocate General, even under the garb of a ‘look after charge.’

24. The position of law, therefore, is that unless an Advocate General for the Province is appointed, meeting of the Bar Council cannot be convened and elections of the Bar Council or of the Vice Chairman cannot be held. Section 19 of the Act has no application to a case decided by the Additional Advocate General acting as Chairman of the Bar Council. Even otherwise, the vacancy and defect in the Constitution of the Bar Council mentioned in section 19 is limited to the vacancy of the Members of the Bar Council and does not include the vacancy of the office of the Advocate General, which is constitutional post and cannot be filled by the Bar Council. Hence any decision of the Bar Council during the vacancy of the office of the Advocate General cannot be validated under the said provision.

25. With this background and the importance of the office of the Chairman and the constitutional and legal necessity of having an Advocate General, we now attend to the provisions dealing with cessation of membership under section 5C of the Act.

Qualifications, Disqualifications and Cessation of the Membership of Provincial Bar Council:

26. A person is *qualified to be elected* as a member of a Provincial Bar Council if he:

- (a) is on the roll of advocates of High Court maintained by a Provincial Bar Council;
- (b) has, on the day of filing of the nomination paper, been an advocate for not less than ten years; and
- (c) has cleared all the dues payable by him to the Provincial Bar Council. [Section 5A]

A person is *disqualified to be elected* as a Member of a Provincial Bar Council, if he:

- (a) was dismissed or removed from the service of Government or of a public statutory corporation; or
- (b) has been convicted for an offence involving moral turpitude; or
- (c) has been found guilty of professional misconduct; or

- (d) has been declared a tout; or
- (e) is an un-discharged insolvent. [Section 5B]

Both the *qualifications* and *disqualifications* to membership of the Provincial Bar Council, inspite of their distinctive features, are to be considered simultaneously at the time of election of the Member. A Member of a Provincial Bar Council is elected after passing a two tier test; (a) meeting the qualifications and then (b) surpassing the disqualifications. The term “qualified or disqualified to be elected” in the above sections, highlight this simultaneity. Reliance with advantage is placed on “*Sadiq Ali Memon v. Returning Officer, NA-237, Thatta-I and others*” (2013 SCMR 1246) and “*Umar Ahmad Ghumman v. Government of Pakistan and others*” (PLD 2002 Lahore 521). Additionally, while *qualifications* have a pre-election significance, *disqualifications* have a pre-election and post-election application as disqualification can also surface after the election.

27. Post-election disqualifications have been separately provided under section 5C of the Act which states as under:

- 5C. A member of a Provincial Bar Council shall cease to be such member if he:-
- (a) is appointed to an office of profit in the service of Pakistan; or
 - (b) is suspended or removed from practice under the provisions of Chapter VII; or
 - (c) incurs any of the disqualifications specified in section 5B.

The question before us is how cessation of membership under section 5C is to be given effect to or in other words how is section 5C to be operationalized. Who is to pass an order or issue the ‘de-notification’ for the removal of Member hit by section 5C? There is no cavil with the proposition that under section 5C(a), a Member ceases to be a Member of the Bar Council, once he is appointed to an office of profit in the service of Pakistan. Constitutional standards of due process and fair trial under Articles 4 and 10A require that before cessation of membership of an elected Member takes effect, the factum of his appointment to the *office of profit* is verified and

confirmed and the fact whether appointment is actually to an *office of profit* in the service of Pakistan is duly determined. The above verification, confirmation and determination requires an exercise of discretion after granting a hearing to the Member. The question is the identification of the locale of this power under the Act and its consequent operationalization.

28. It is noteworthy that cessation of membership under section 5C(b) is a result of judicial determination by the Tribunal constituted under Chapter VII of the Act. Similarly, disqualification under section 5C(c) requires determination by a court of competent jurisdiction or an independent authority. For example, in the case of dismissal or removal from service it is by the government or a public statutory corporation or by a court in cases of conviction for moral turpitude, or the Tribunal under the Act for professional misconduct or from the court of competent jurisdiction declaring a person to be a tout or an insolvent who has still not been discharged under the Insolvency Act, 1920. Therefore, cases covered under section 5C(b) and (c), have already undergone an independent determination fulfilling the requirement of constitutional due process. Cessation of membership under section 5C(a), on the other hand, is a fresh proceeding, which has to meet the requirements of due process and fair trial. There is no procedure provided under the Act or the Rules for the removal of a Member in case section 5C (a) is attracted.

29. On the other hand, once the vacancy has occurred, the Act and the Rules lay down a procedure for the filling of the said casual vacancy. Section 16(b) of the Act read with Rule 28-A of the Rules, 1976 provides the guidelines and mechanism for filling a casual vacancy. Co-option as opposed to election is selecting a person from amongst existing members without going out to the general body of voters. This co-optative process is adopted to fill a seat that has fallen vacant during the course of the term of the Member. *Co-option* means to elect into a body by the votes of the existing members¹⁰ or to select a person to fill a vacancy usually in close

¹⁰ *dictionary.com*

corporation.¹¹ This process is adopted after the General Elections and during the course of the term of office. Rule 28-A of the Rules, 1976 when read with section 16(b) of the Act, provides that in case of a vacancy, first preference will be given to the *runner up* from the district or group of districts in the general elections and in case there is no runner up, to any other person proposed by the members from the concerned district or group of districts. In either situation the member appointed is in fact *co-opted* by the Members of the Bar Council, as opposed to being elected in the General Elections by popular vote of the electorate i.e., advocates registered on the roll.

30. Rule 28-A of the Rules, 1976 provides that the decision to co-opt is to be taken by the Provincial Bar Council in its meeting. Rule 28-A(iv) of the Rules, 1976 provides that once the Council has taken the decision it is to be notified by the Advocate General. Complete procedure of filling the casual vacancy is provided under the Act and the Rules, however, there is no procedure for “de-notification” or removal of the Member. The learned counsel for the Pakistan Bar Council submitted that by applying purposive interpretation, the same procedure can be extended for the removal of a member.

31. The taxonomy of decision making under the Act includes decisions of the Chairman and the Provincial Bar Council (other than the Committees). The Chairman/Advocate General for Punjab (ex-officio) is the *Returning Officer* under the Rules to ensure neutrality and transparency. This decision-making cannot be exercised by the Bar Council itself. Other than the independent role of the Chairman as a *Returning Officer*, decisions pertaining to the affairs and functions of the Council including the co-optative process fall within the jurisdiction of the Bar Council. Rules envisage meetings of the Bar Council and decisions through majority votes. In such cases, the Chairman simply plays a secretarial role of notifying the decisions of the Bar Council in the official Gazette. It is axiomatic that the

¹¹ Black's Law Dictionary p384

functions of the Bar Council are to be performed by the Bar Council itself. Hence, all the decision making is of the Bar Council through a majority vote, while the meetings are convened and presided over by the Chairman and in case of a tie amongst the Members, the Chairman casts the second vote to avoid an impasse or deadlock. While the functions of the Bar Council are performed by the Council itself, the Chairman maintains the role of a neutral umpire, who is to monitor and supervise, to ensure neutrality, transparency and public accountability of the professional self-regulation carried out by the Bar Council. The Act or the Rules do not mention any other category of decision making except the decisions of the Committee which also are placed before the Bar Council for approval. Therefore, the only mechanism for decision making under the Act and the Rules is in a meeting of the Bar Council through a majority vote. With this background, we can approach the issue in hand regarding the decision making required for the purposes of actualizing section 5C of the Act.

32. The procedure provided under Rule 28-A of the Rules, 1976 is simply the reiteration of the scheme and object of the Act as discussed above. Casual vacancy is filled through deliberation and voting in a meeting of the Bar Council, which is then notified by the Chairman. It is re-emphasized that the Chairman does not enjoy any jurisdiction to exercise sole discretion in matters relating to the functions of the Bar Council. The discretion exercised by the Chairman is limited to its role as a *Returning Officer*, which has to be entrusted to a neutral third party. The Act provides no other mechanism for decision-making. Actualization of section 5C has to be aligned with the purpose and intent of the Act. Professor A. Barak emphasizes the importance of “purposive interpretation” in the following manner: “The aim of interpretation in law is to realize the purpose of the law; the aim in interpreting a legal text (such as a constitution or statute) is to realize the purpose the text serves. Law is thus a tool designed to realize a social goal. It is intended to ensure the social life of the community, on the one hand, and human rights, equality, and justice on the other. The history of law is a search for the proper balance between these goals, and the

interpretation of the legal text must express this balance... Every statute has a purpose, without which it is meaningless. This purpose, or *ratio legis*, is made up of the objectives, the goals, the interests, the values, the policy, and the function that the statute is designed to actualize. It comprises both subjective and objective elements. The judge must give the statute's language the meaning that best realizes its purpose." Subjective purpose is not the only purpose relevant to statutory interpretation, especially in situations where we lack information about that purpose. Even when we do have such information, it does not always help us in the interpretive task. Moreover, even when we do find useful information about the subjective purpose, we must keep in mind that focusing on legislative intent alone fails to regard the statute as a living organism in a changing environment. It is insensitive to the existence of the system in which the statute operates. It is not capable of integrating the individual statute into the framework of the whole legal system. It makes it difficult to bridge the gap between law and society. Thus, it does not allow the meaning of the statute to be developed as the legal system develops. Rather, it freezes the meaning of the statute at the historical moment of its legislation, which may no longer be relevant to the meaning of the statute in a modern democracy. If a judge relies too much on legislative intent, the statute ceases to fulfill its objective. As a result, the judge becomes merely a historian and an archaeologist and cannot fulfill his role as a judge. Instead of looking forward, the judge looks backward. The judge becomes sterile and frozen, creating stagnation instead of progress. Instead of acting in partnership with the legislative branch, the judge becomes subordinate to a historical legislature. This subservience does not accord with the role of the judge in a democracy. The objective purpose of the statute means the interests, values, objectives, policy and functions that the law should realize in a democracy... just as the supremacy of fundamental values, principles, and human rights justifies judicial review of the constitutionality of statutes, so too must that supremacy assert itself in statutory interpretation. The judge must reflect these fundamental values in the interpretation of legislation. The judge should not narrow interpretation to the exclusive search for subjective legislative intent. He must also

consider the “intention” of the legal system, for the statute is always wiser than the legislature. By doing so the judge gives the statute a dynamic meaning and thus bridges the gap between law and society.”¹²

33. Lord Denning in Macgor & St Mellons Rural District Council v Newport Corporation held: ‘We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it...We sit here to find out the intention of Parliament... and we do this better by filling the gaps and making sense of the enactment rather than by opening it up to destructive analysis.’¹³

34. If the Act and the Rules are reviewed with the tool of purposive interpretation, we notice that decision making under the Act is the prerogative of the Bar Council through a majority vote. The co-optative process under Rule 28-A of the Rules, 1976 has a close nexus with creation of vacancy. The procedure under the said Rule vests the decision making of filling the casual vacancy in the hands of the Bar Council, which is thereafter notified by the Chairman. It will be in line with the design, structure and purpose of the Act if the power to remove a Member under section 5C(a) is also vested in the Bar Council. This will not only advance and actualize the purpose of the Act but will also honour the constitutional requirements of due process and fair trial. The Bar Council after granting a hearing to the Member can decide the question of his removal under section 5C of the Act. The decision of the Bar Council is thereafter to be notified by the Chairman. The view that the Chairman alone is authorized to issue de-notification or notification is incorrect and *ultra vires* the scheme of the Act.

35. Learned counsel for the petitioners, vehemently argued that this power can be exercised by the Chairman in the capacity of the Returning Officer instead of the Bar Council. According to them the Returning Officer deals with elections and notifies results of successful candidates under Rules 26

¹² *Aharon Barak - The Judge in a Democracy* (Page 124, 136, 137, 138, 142), Princeton University Press, 2006

¹³ [1950] 2All ER 1226 at p 1236

and 28 of the Rules, 1976. According to them the issue of casual vacancy pertains to elections and, therefore, falls within the duties of the Returning Officer. One reason for promoting this argument is reliance on the definition of “Returning Officer” under Rule 3(i) of the Rules, 1976 which states as under:

Rule 3(i) “Returning Officer” means:-

- (i) in relation to election to a Provincial Bar Council, the Advocate-General of that Province; or in his absence the Additional Advocate-General in order of seniority and where there is no Additional Advocate-General, an Assistant Advocate-General in order of seniority.
- (ii) in relation to election of the Pakistan Bar Council the Attorney General for Pakistan.

Based on the above, the argument is that the Additional Advocate General can also issue the notification hence the present notifications in favour of the petitioners are valid and lawful. The petitioners have failed to appreciate the meaning and scope of the term *‘in the absence of’* appearing in the above definition. Therefore, during the vacancy of the office of the Advocate General this argument does not hold water. Another dimension that has not been argued or weighed by the parties is that as a Returning Officer the Chairman is to perform the act of verification of the antecedents of the candidate. The grounds under section 5C(b) and (c) of the Act have already undergone determination by a court of competent jurisdiction or a governmental authority. Returning Officer while carrying out scrutiny under Rule 8 of the Rules, 1976 has to place reliance on this external determination. On the other hand, the penal provision of section 5C(a), whereby an elected member can be dethroned, requires determination and it is, therefore, in line with the scheme of the Act if this discretion and decision making is vested in the Bar Council itself as is the case with filling of the casual vacancy. It is not a matter that falls within the domain of a *Returning Officer* as it does not pertain to election but is a post-election matter.

36. Learned counsel for private respondents submitted that his clients are no more holding *office of profit* in the service of Pakistan and have since been de-notified. The details are as under:

Sr. #	Name & Designation	Date of Member Pb. B.C.	Cessation of Membership	Date of Appointment to an office of profit	Date of De-notification from the office of profit
1.	Rana Abdul Rehman, Renala Khurd (Standing Counsel)	27.11.2009	30.05.2014	08.02.2011	30.07.2012
2.	Nawazish Ali Gujjar, Vehari (Standing Counsel)	27.11.2009	30.05.2014	30.01.2013	20.09.2013
3.	Ghulam Murtaza Lahore (Standing Counsel)	27.11.2009	30.05.2014	08.02.2011	18.11.2013
4.	Rana Muhammad Akram Toba Tek Singh (Standing Counsel)	27.11.2009	30.05.2014	19.12.2010	30.07.2012
5.	Muhammad Akram Malik, Sargodha (Standing Counsel)	27.11.2009	30.05.2014	19.03.2011	30.07.2012
6.	Rao Abdul Ghaffar Sargodha (Standing Counsel)	27.11.2009	30.05.2014	19.12.2010	18.11.2013
7.	Rana M. Asif Saeed, Khanewal (Legal Advisor PEPCO)	27.11.2009	30.05.2014	11.12.2010	27.09.2012

Building his argument on the analogy of writ of *quo warranto*, it is argued that as the respondents are not holding an office of profit at the moment, hence section 5C(a) cannot be pressed against them. He placed reliance *Sardar Asseff Ahmad Ali v. Muhammad Khan Junejo and others* (PLD 1986 Lahore 310). and *"Lt. Col. Farzand Ali and others v. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore"* (PLD 1970 SC 98). He submitted that subsequent events must be considered by the Court. Reliance is placed on *"Ch. Riyasat Ali Advocate v. Returning Officer and 2 others"* (2003 CLC 1730). Perusal of Section 5C(a) reveals that it takes effect on the appointment of the Member to an office of profit in the service of Pakistan. It does not provide that the Member must continue to hold the office of profit at the time of the proceedings. It is an admitted position that the respondents accepted the office of profit in the service of Pakistan and were duly appointed to the said posts. Appointment to an office of profit is the triggering event for attracting

section 5C(a) of the Act and it matters less if the Member resigns later on. The analogy to a writ of *quo warranto* is misconceived. Under Article 199 the constitutional court is to see if a person holding a public office in accordance with law and the need to issue such a writ becomes immaterial if the person is no more holding the post when the writ is to be issued. The scheme under the Act is different. Section 5C(a) is not concerned with the removal of the Member from the *office of profit*, but is concerned with the appointment of the Member to an office of profit, which is the triggering factor for the cessation of his membership. Hence the analogy to *quo warranto* is misconceived and the case law relied upon has no relevance to present case.

37. We, on the basis of scheme and structure of the Act and in order to actualize the real intent of the Act, hold that Section 5C can best be operationalized through the mechanism provided under Rule 28A of the Rule, 1976 read with section 16(b) of the Act. The decision has to be of the Bar Council which will thereafter be notified by the Advocate General. It is also clarified that in case the office of the Advocate General is vacant, the process cannot be put into motion, as the meeting of the Bar Council cannot be convened.

Appeal under section 13(2) of the Act.

38. The above section provides that only the decision of the Provincial Bar Council can be challenged before the Pakistan Bar Council. Decision of the Punjab Bar Council is a decision of its Members passed by majority votes in terms of Rule 2.8 of the Rules 1974. Therefore, in the circumstances the appeal filed against the order passed by the Advocate General is not maintainable and the appellate proceedings are totally without jurisdiction. We are not in agreement with the argument of the learned counsel for the Pakistan Bar Council as the *quasi-judicial* appellate jurisdiction of the Pakistan Bar Council cannot be equated with the supervisory jurisdiction of the Council under section 13 (1) (f) and (i) of the Act.

Appointment of Advocate General - a constitutional obligation

39. Learned law officer submitted that vide Order dated 13-7-2013 Mr. Mustafa Ramday, Additional Advocate General was given the charge to “look after the work of Advocate General.” The Order/Notification reads as under:

“Governor of the Punjab is pleased to assign Mr. Mustafa Ramday, Additional Advocate General, *the duties to look after the work of Advocate General Punjab* till appointment of the Advocate General. (emphasis supplied)

40. This was followed by another Order dated 7-8-2013, where during the absence of Mr. Mustafa Ramday, Muhammad Hanif Khatana has been appointed to “look after the work of the Advocate General.” Admittedly the seat of the Advocate General is vacant since July, 2013. Punjab Bar Council, under the Act has been rendered dysfunctional due to the absence of the Chairman. The Secretary, Punjab Bar Council submitted that the Council regulates the affairs of 124 Bar Associations and almost 80,000 lawyers across the Province, however, since July, 2013 the Council has been rendered dormant due to the failure of the Provincial Government to honour its constitutional obligation.

41. The constitutional office of the Advocate General has multiple roles and obligations under other laws. Syed Shabbar Raza Rizvi, the then sitting Advocate General, Punjab, in his article “*Role and Functions of the Advocate General*,¹⁴” has listed these obligations and duties:-

- i. Under High Court Rules and Orders, copy and notice is given to the Advocate-General in all criminal matters including appeal and bail matter.
- ii. Under Supreme Court Rules, Order IV, the Advocate-General shall have precedence over all other advocates and senior advocates in the Court. Under Order XXVII, the Attorney-General is to conduct the proceedings in contempt cases, the Advocate-General performs the same function in the High Court. In this capacity he acts as Law Officer of the Court.
- iii. Under Legal Practitioners and Bar Councils Act, 1973, the Advocate General is the Chairman of the Punjab Bar Council. The functions of the Council are to admit persons as advocates on the roll, to hold examination

¹⁴ PLD 2003 Journal 121

for the same, to prepare and maintain a roll, of such advocates of the Province and to admit persons as Advocates of High Court. To entertain and determine cases of misconduct, to safeguard the rights etc. of advocates, to suggest law reforms, to conduct the election of its Members and arrange free legal aid to the indigent litigants.

- iv. Under section 91 and 92 of Civil Procedure Code, cases of public nuisance and public charities are instituted and conducted by the Advocate-General.
- v. Under Order XXVII (A) of the Civil Procedure Code if in a case of any substantial question as to the interpretation of Constitutional law is involved, the Court shall not proceed to determine the question until after notice has been given to the Attorney General and to the Advocate-General. In this role, he does not represent a party, instead, he assists Court earnestly to the best of his professional abilities as its Law Officer.
- vi. Under section 495 of Criminal Procedure Code, the Advocate General acts as a Prosecutor and under section 265-L of the same Code the Advocate General may refuse to prosecute against the accused.
- vii. Under the Mental Health Ordinance, 2002 the care of properties of persons who are mentally retarded are looked after by the Advocate General particularly litigation relating to such property is conducted by the Advocate-General.

Above survey of different areas of duties/functions of the Advocate-General is sufficient to demonstrate its pivotal role/importance in the Government and administration of justice.

42. The “Instructions for the Management of the Legal Affairs of the Government of the Punjab,” Law Department Manual (LDM), 1938 provide for the office of the Advocate General and enumerates his duties as under:

1.6 Duties of Advocate General:

His duties are as follows:-

- (a) The Advocate General will advise on any case relating to the initiation of criminal proceedings by the State or executive action by the Punjab Government under the law and on any other legal matter that may be referred to him by the Punjab Government or the Law Secretary. It will also be his duty to advise upon any matter on which his advice is required by the Governor, acting in his discretion.
- (b) He will represent the State or will arrange for the representation of the State, at all stages in all criminal cases in the High Court, as well as Supreme Court and in quasi criminal matters. The Punjab Government may direct that owing to the special importance of the case, the Advocate General shall himself represent the state.
- (c) He will appear or arrange for the appearance of Law Officer/State Counsel, in the following civil cases:

- (i) Cases in the High Court and Supreme Court to which the Punjab Government is a party or cases relating to the affairs of the Punjab Government to which the Federal Government is a party.
 - (ii) Cases in the High Court and Supreme Court to which officers serving under the Punjab Government are parties and which the Punjab Government has decided to conduct on behalf of such officers.
 - (iii) Cases in the High Court and Supreme Court in which either the Punjab Government or such officers are directly interested but in which Government considers itself to be sufficiently interested to render it advisable to conduct the case on behalf of some third person.
 - (iv) Appeals from the cases referred to above.
-
- (d) He will personally appear when so required, before the High Court in references from subordinate courts to which the Punjab Government is a party or which can otherwise be heard.
 - (e) He will appear himself or arrange for the conduct of civil cases of the nature described above in the other civil courts of Lahore.
 - (f) He will also be expected to appear in any civil or criminal cases outside Lahore when specially desired to do so by the Punjab Government or by the Law Secretary.
 - (g) He will attend the legislative assembly when required to do so by Government.¹⁵

43. Further, Rule 5(e) of the *Advocate General for West Pakistan (Terms and Conditions of Service) Rules, 1962* provides that for the first two years of the appointment, the Advocate General will not be entitled to more than one month's leave except on medical certificate in any one year. Such is the scope and extent of the constitutional office of an Advocate General for the Province.

44. Learned law officers submitted that the constitutional post of the Advocate General, Punjab is lying vacant since 12.07.2013 (for almost one year). The Additional Secretary, Law Department, Government of the Punjab present on Court's call, submitted that no process has been initiated by the Government for the selection and appointment of the Advocate

¹⁵ Law Department Manual 1938 Instructions for the Management of the Legal Affairs of the Government of the Punjab (Law Department Manual) Part-I General Management and Opinion Work Chapter-I

General under Article 140 of the Constitution. He frankly admitted that there is nothing on the record of the department to show that even the process of selection or appointment of an Advocate General has been initiated by the Provincial Government. Learned Law Officers, vehemently refuted the position taken by the Additional Secretary and submitted that efforts have been made and number of names have been short-listed. However, no such list or summary was placed on the record by the AG office. The law officers unsuccessfully tired to paper over the failure of the Provincial Government to honour its constitutional commitment.

45. The Secretary, Punjab Bar Council was directed to place on record total number of Advocates enrolled in Punjab. He has placed the said information,¹⁶ which states that there are 10,300, Advocates who are above the age of 45 years and enjoy a standing of more than 10 years as Advocate of the High Court. It is noted with regret that out of a pool of 10,300 Advocates, the Provincial Government has failed for almost a year to select and appoint an Advocate General. Learned law officer was asked to place the record of appointments of the Advocate Generals in the last five years¹⁷ which is reproduced as under:-

Sr. #	Duration of Period	Name of the Advocate General/ Addl. Adv. Genl.	Remarks	Office kept vacant
1.	24.06.2008 to 26.02.2009	Kh. Haris Ahmad		
2.	06.03.2009 to 23.04.2009	M. Muhammad Hanif Khatana	look after charge	47 days
3.	24.04.2009 to 24.06.2009	Mr. Raza Farooq	look after charge	60 days
4.	24.06.2009 to 02.08.2009	Mr. Muhammad Raza Farooq		
5.	05.08.2009 to 05.03.2010	M. Muhammad Hanif Khatana	look after charge	210 days
6.	06.03.2010 to 29.10.2011	Kh. Haris Ahmad		
7.	31.01.2012 to 07.04.2013	Mr. Ashtar Ausaf Ali		

¹⁶ Placed on the record as **Mark-A**,

¹⁷ Placed on the record as **Mark-B**

Sr. #	Duration of Period	Name of the Advocate General/ Addl. Adv. Genl.	Remarks	Office kept vacant
8.	09.04.2013 to 11.07.2013	Mr. Shahid Karim		
9.	15.07.2013 to 02.07.2014	Mr. Mustafa Ramday	Look after charge	345 days
10	TOTAL			662 days or 22 months

46. The above record reveals that the office of Advocate General remained vacant for almost two years in the past six years without any plausible or convincing explanation. The Governor and the Chief Minister of Punjab have sworn oath to *preserve, protect and defend the Constitution*, yet the constitutional obligation to appoint an Advocate General under Article 140 of the Constitution has gone unnoticed without demur. While the Government in power enjoys the comfort to appoint an Advocate General of its choice, this does not in any manner give license to the Government to delay the appointment indefinitely. Any inordinate delay in filling a constitutional post offends Articles 3, 25 and 27 of the Constitution. “Indeed, the fundamental perspective is that the public official is the trustee of the public. Public officials do not act for their own sake but rather for the sake of the public interest. In this view, the role of the public official in a democracy, like the role of the state itself, is to serve the interest of the public and its members. The government in itself has no “private” interest of its own. The government exists for the sake of individuals. The government does not exist for its “own” sake. Those who represent the government have no “self” interest that must be protected. They must act to achieve the collective interest. Indeed, there is a serious concern---a concern that history has repeatedly validated---that representatives of the government will develop their own interests and use the tremendous power granted them for purposes that do not reflect the collective good. The duty of loyalty seeks to prevent that. The duty of loyalty seeks to guarantee that the government

takes care of the public and not itself; the general duty of loyalty seeks to guarantee that the government takes care of the public and not itself.¹⁸

47. The duty of trusteeship imposes derivative duties upon the state: Trusteeship requires fairness, and fairness requires integrity, relevance, equality, and reasonableness. This list of principles derived from the position of trusteeship is not closed, and the list of values derived from the duty of fairness is not fixed. Values and principles, by nature, are on the one hand stable and on the other hand evolving. They are sown in the soul of the nation and are not subject to passing trends. They are full of vitality, and they evolve to provide fitting solutions to new problems.¹⁹

48. The Provincial Government has not only ignored the constitutional mandate but has circumvented the Constitution to appoint a person to ‘look after the work of Advocate General.’ Article 140 does not permit to appoint a surrogate Advocate General who would “look after the work of the office of the Advocate General”- no such post exists under the Constitution. The said appointment amounts to playing a fraud on the Constitution and on the people of the Province.

49. In this instance, the Provincial Government seems to have encouraged a culture of adhocism in making constitutional appointments, which has no constitutional recognition. *Adhocism* is an organizational philosophy or style characterized by (1) aversion to planning, (2) tendency to respond only to the urgent, as opposed to the important, (3) focus on 'fire fighting,' than on establishing systems and procedures through goal setting and long term planning.²⁰ Adhocism is a mindset or a tendency to establish temporary, chiefly improvisational policies and procedures to deal with specific

¹⁸ H.C. 164/97, *Conterm Ltd. v. Finance Ministry*, 52 (1) P.D. 289, 347; [1998-9] IsrLR 1, 71-72. (See *Aharon Barak - The Judge in a Democracy* (Page 220-221), Princeton University Press, 2006

¹⁹ H.C. 1635/90, *Prime Minister v. Zarzevsky* 45 (1) P.D. 749, 841 (Barak, J.) (see Aharon Barak - *The Judge in a Democracy* - Princeton University Press, 2006 (Pp 221-222)

²⁰ www.businessdictionary.com

problems and tasks. Adhocism is a malaise, which exploits the system and weakens institutions and is, therefore, abhorred.

50. Filling of a constitutional post, in the absence of any constitutional timeframe, can be conveniently benchmarked against the timeframe required to fill the office of the President, which if falls vacant has to be filled within a period of *thirty days* from the occurrence of the vacancy in terms of Article 41 (5) of the Constitution. Even though the process of appointing the President is far more circuitous and cannot be compared with the appointment of an Advocate General, still the maximum period that can be read into Article 140 is 30 days.

51. We hope that the Provincial Government of today and of the future, will learn to honour, revere and respect the Constitution and the obligations it casts upon them. It is also hoped that the Provincial Government will strongly desist from entrusting constitutional offices to adhoc and surrogate appointees.

52. *Considering* that the appointment of Advocate General is a *sine qua non* for the functioning of the Punjab Bar Council. *Considering* that it has been almost one year that the seat of the Advocate General is lying vacant. *Considering* that no effort, whatsoever, has been made to even initiate the appointment of the Advocate General. *Considering* that obedience to the Constitution (under Article 5) is a fundamental constitutional value. *Considering* that the inordinate delay in appointment of the Advocate General is offensive to the letter and spirit of the Constitution, we direct the Provincial Government to appoint Advocate General for Punjab in terms of Article 140 of the Constitution **within a fortnight** of the receipt of this Judgment.

53. In the light of above, removal de-notifications, as well as appointment notification of the private respondents and the petitioners vide order dated 24.05.2014 followed by notifications dated 30.05.2014 passed by the Additional Advocate General holding a “look after charge” of the office of the Advocate General are set aside being unconstitutional, illegal and ultra

vires the Act and the Rules thereunder. The appellate proceedings before the Appellate Committee of the Pakistan Bar Council challenging the aforementioned orders of the Additional Advocate General are not maintainable, therefore, impugned interim order dated 06.06.2014 passed by the aforesaid Appellate Committee is also set aside.

54. Once the Advocate General for Punjab is duly appointed in terms of Article 140 of the Constitution, the matter regarding vacancy in terms of Section 5C of the Act shall be put up before the Provincial Bar Council in the mode and manner given in Rule 28-A of Rules 1976 for decision which will thereafter be duly notified by the Chairman. Similar procedure will follow in the case of filling the casual vacancy.

55. This writ petition is decided in the above terms with no order as to costs.

**(SYED MANSOOR ALI SHAH)
JUDGE**

**(AYESHA A. MALIK)
JUDGE**

**(AMIN-UD-DIN KHAN)
JUDGE**

Iqbal

APPROVED FOR REPORTING