

**PESHAWAR HIGH COURT, ABBOTTABAD BENCH.**

**FORM OF ORDER SHEET**

| Date of Order of Proceedings | Order or other Proceedings with Signature of Judge (s)   |
|------------------------------|--|
| 1                            | 2  |
| 16.06.2022                   | <p><b><u>WP No. 775-A/2022</u></b></p> <p>Present: Sardar Nasir Aslam Khan and Sardar Shah Nawaz Khan, Advocates, for the petitioner.<br/>***</p> <p><b><u>KAMRAN HAYAT MIANKHEL, J.-</u></b> By means of this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has sought the following relief.</p> <p><i>“It is, therefore, humbly prayed that on acceptance of the instant writ petition the order passed by the respondents No.4 &amp; 6 without having any jurisdiction and lawful authority may graciously be ordered to be set aside, as prayed for in the heading of instant petition. Any other order / relief / direction which this Hon’ble Court may deem fit and proper in the circumstances be also given.”</i></p> <p>2. The facts of the case, in brief, are that petitioner, being one of the contesting candidate alongwith three (03) others candidates of current ongoing election of the High Court Bar Association Abbottabad for the seat of President, filed their nomination papers. The petitioner on 11.06.2022, which date was fixed for scrutiny of papers, filed objection on the candidature of the respondents No.7 &amp; 8. During scrutiny of the nomination papers, the respondent No.4 directed respondent No.5 to withhold the</p> |

scrutiny process of President till further order. Later on through the impugned letter dated 11.06.2022 direction was issued by the respondent No.4, vide which, the appeal of Mr. Fida Muhammad Khan, Advocate, for relaxation of Rule-94 was accepted and respondent No.6 on the strength of above order accepted the nomination papers of respondents No.7 to 10. The petitioner has challenged the aforesaid orders of respondents No.4 & 6 through the instant constitutional petition.

3. We have heard the arguments of learned counsel for the petitioner at length and scanned the record with his able assistance.

4. Without touching the merits of the case, the issue of maintainability is essential to be resolved by this court. The bare examination of the prayers made by the petitioner reveals that the petitioner is aggrieved from the order of respondents No.4 i.e. (Secretary Khyber Pakhtunkhwa Bar Council) and respondent No.6 i.e. (Chairman notified, High Court Bar Association Election 2022-23 Abbottabad). The Hon'ble Supreme Court of Pakistan in "*Mirza Muhammad Nazakat Baig Vs Federation of Pakistan through Secretary Ministry of Law and Justice, Islamabad and another*" (2020 SCMR 631) has enunciated the principle by holding that:

*"A bare reading of the provisions of the Legal Practitioners and Bar Councils Act shows that the Act provides for establishment of Bar Councils in the*

*Provinces as well as the Islamabad Capital Territory. It deals with all matters relating to elections of office bearers, disciplinary and other professional matters, constitution of committees, their powers and other related and incidental matters. However, it is clear that other than the Attorney General for Pakistan being the ex-officio, Chairman Pakistan Bar Council and Advocates Generals of the Provinces and Islamabad Capital Territory being ex-officio, Chairman of the Provincial Bar Councils and Islamabad Capital Territory neither the Provincial nor the Federal Government exercise any administrative control over the affairs of the Pakistan Bar Council or the Provincial Bar Councils. Pakistan Bar Council is a statutory body which is autonomous and generates its own funds independently. The Government does not have any control over it. Likewise, the Islamabad Bar Council acts as a regulator for affairs of the Advocates in Islamabad Capital Territory, admits Advocates to practice before the said High Court and maintains rolls of such Advocates. The functions of the Council also inter-alia include initiating proceedings for misconduct against Advocates on its rolls and award punishment in such cases. That being so, neither the Respondent nor any of its constituents or committees can be regarded as*

*persons performing functions in connection with the affairs of the Federation, Provinces or Local Authority within the contemplation of the Article 199 of the Constitution of Islamic Republic of Pakistan. As such we are in no manner of doubt that Respondent No.2 is not amenable to the jurisdiction of the High Court in terms of Article 199 of the Constitution".*

5. Recently, the same principle was further enunciated by the Hon'ble Supreme Court of Pakistan in case of "*Syed Iqbal Hussain Shah Gillani Vs Pakistan Bar Council through Secretary, Supreme Court Bar Building, Islamabad and others*" (**2021 SCMR 425**) by holding that "neither the Bar Council nor any of its committees could be regarded as persons performing functions in connection with the affairs of the Federation, Provinces or Local Authority within the contemplation of Article 199 of the Constitution of Pakistan. Accordingly, the Pakistan Bar Council and its Committees were not amenable to constitutional jurisdiction of the High Court". Further reliance can also be placed on the judgment reported as "*Sardar Qurban Ali Dogar Vs Pakistan Bar Council through Chairman and 08 others*" (**2022 CLC 649**). Every judgment of the Hon'ble Supreme Court is binding on all the Courts under Article 189 of the Constitution. Since the prayers

made by the petitioner is to set aside the orders of Secretary Khyber Pakhtunkhwa Bar Council and Chairman notified, High Court Bar Association Election 2022-23 Abbottabad, therefore, no interference can be made by this court in view of principles enunciated in above referred apex Court judgments which are binding on this court under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

6. Pith and substance of the above referred judgments of the Hon'ble Supreme Court of Pakistan is that the respondents do not fall within the meaning of 'persons' as per Article 199(5) of the Constitution.

7. It has now become a trite law that when an alternative and efficacious remedy is available to the petitioner, the constitutional petition under Article 199 is not maintainable. In this respect, reliance can be placed on the judgment reported as *Pakistan telecommunication Company Limited Vs Muhammad Samiullah (2021 PLC (CS) 1003*, when it was held as under:

*“Even otherwise, an adequate and efficacious remedy of filing a grievance petition before the Labour Fora was available to the Respondent. There is no denial of the fact that the said alternate remedy has not been availed by the Respondent. Hence, we are not persuaded by the argument of the learned counsel for the respondent that the non-maintainability of the constitutional petition before the High*

*Court under Article 199 of the Constitution would render the Respondent remediless.”*

In this context, further reliance can also be placed on the judgment reported as “*Crescent Jute Products Limited through Chief Executive Officer, Lahore Vs Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 04 others*” (2022 CLD 338). Rules 4 & 5 of the Pakistan Bar Council Appeal Rules, 1986, which are reproduced below:

**4. MANNER OF FILING APPEALS:**

*(i) An appeal against an order or decision of a Provincial Bar Council or an Executive Committee of Provincial Bar Council shall be filed with the Chairman of the respective Committee either personally or through recognised agent or through registered post.*

*(ii) Every Memorandum of Appeal shall be accompanied by a certified copy of the order or decision appealed against. If the certified copy of the order or decision appealed against is not made available to the appellant he shall furnish an affidavit duly sworn by him in this behalf.*

*(iii) Every such appeal shall be accompanied by a deposit receipt of Rs. [1000/-] to be deposited in the collection account of the [Pakistan Bar Council](#).*

*(iv) The appellant shall submit alongwith his memorandum of appeal all the documents he wishes to*

*produce in support of his appeal alongwith affidavits of witnesses if any.*

**5. FUNCTIONS OF THE APPEAL COMMITTEE:**

*(i) The Appeal shall normally be laid before the Committee within 1[fifteen] days [of receipt of an Appeal] for admission of the appeal and grant of interim relief if prayed for.*

*[Provided that the Chairman may in appropriate cases grant the interim relief and his order shall be placed before the Committee for approval in its next meeting].*

*(ii) For the admission of appeal and grant of interim relief it shall not be necessary to call a meeting of the Committee and it will be sufficient if the appeal is circulated amongst the members of the Committee.*

*Every order or decision of the Committee shall be taken by majority.*

*(iii) The Appeal Committee shall hear the appeal, examine the record of the case, and record such evidence as it may deem necessary after providing opportunity of hearing to the parties.*

*The Appeal Committee shall decide the Appeal within two months and its decision shall be deemed to be the decision of the Pakistan Bar Council.*

*(iv) The decision of the Appeal Committee shall be communicated to the parties.”*

8. The matter relates to the internal affairs of Bar Association and adequate remedy is also available to the petitioner, the instant writ petition in hand is not maintainable.

9. So in view of the above discussion, the Khyber Pakhtunkhwa Bar Council for having no statutory rules and not performing any function in relations to the affairs of Federation, Provinces or any local authority and also the presence of adequate and alternate remedy in the form of appeal to Pakistan Bar Council, this petition is hereby dismissed in *limine* being not maintainable.

**JUDGE**

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