

JUDGMENT SHEET

PESHAWAR HIGH COURT
 ABBOTTABAD BENCH
 (Judicial Department)

Election Appeal No. 06-A/2023

Muhammad Yousaf.

(Appellant/s)

VS

Abdul Mateen and others.

(Respondent/s)

***Present: Mr. Saad Abbasi, Advocate, for
 the petitioners.***

***Syed Hammad Hussain Shah Gillani,
 Advocate, for respondent No. 1.***

***Ms. Isma Urooj, Law Officer, for
 respondents/Election Commission.***

Date of hearing: 18.03.2024

Date of announcement: 25.03.2024

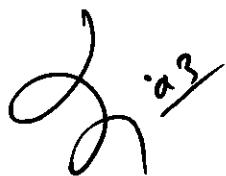
JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Through the instant judgment, this Court shall decide this as well as connected **Election Appeal No. 27-A/2024** titled "**Abdul Mateen vs. Muhammad Yousaf and others**" as both these appeals have arisen from one and the same judgment of The Election Tribunal, Abbottabad dated 13.12.2023, whereby, it allowed the election petition of co-appellant namely Abdul Mateen and

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thereby de-notified the appellant namely Muhammad Yousaf from the seat of general councilor of Union Council Tatreela (No. 44) and also directed the Election Commission of Pakistan to issue a schedule of polling for the constituency of said Village Council for the vacant seat of category of general councilor.

2. Precisely the facts as per the averments of these appeals are that the Local Bodies Election for the seats of general councilors were held on 31.03.2022 in which for the Union Council No. 44 namely Tatreela, District, Abbottabad total twelve (12) candidates contested the said election and out of which as per Section 27 read with Eleventh Schedule of The Khyber Pakhtunkhwa Local Government Act, 2013 (hereinafter is to be referred as The Act of 2013) the top three candidates were declared as successful in which one Shabir Ahmad had obtained 290 votes, whereas, the appellant Muhammad Yousaf obtained 278 votes and other Muhammad Shabir obtained 265 votes and Shabir Ahmad being the highest scorer with 290 votes is also acting as the Chairman of the said Village Council, whereas, co-appellant namely Abdul Mateen obtained 227 votes and as such he was at Serial No. 4 and was a runner-up candidate, therefore,



being at serial No. 4 he was not declared as returned candidate, however, the said Abdul Mateen filed an election petition before The Election Tribunal, Abbottabad that the present appellant namely Muhammad Yousaf being a Nikah Registrar was not eligible to contest the said election, therefore, he prayed before the Election Tribunal that his notification be withdrawn and instead he (Abdul Mateen) may be declared as returned candidate. After filing of the election petition, the Worthy Election Tribunal without recording any evidence considering the issue being of legal nature straightway issued notices to the respondents and after hearing arguments of contesting parties, allowed the election petition of Abdul Mateen and thereby the present appellant Muhammad Yousaf was de-notified from the seat of general councilor and the Election Commission of Pakistan was directed to issue a schedule for the polling of the said constituency vide impugned order and judgment dated 13.12.2023. The aforesaid order and judgment has now challenged by the present appellant namely Muhammad Yousaf as a whole, whereas, co-appellant namely Abdul Mateen has challenged the same to the extent that instead of

issuing direction for re-polling he, being runner up at serial No. 4, should have been notified by the Election Tribunal as returned candidate.

3. Arguments of learned counsel for parties as well as law officer appearing on behalf of respondent/Election Commission were heard in considerable detail and record perused with their able assistance.

4. The only controversy involved in these appeals are that as to whether a person who is a "Nikah Registrar" could contest an election of the local bodies in view of the bar contained in Section 78 (1) (f) of **The Act of 2013**, therefore, it is a case where the intentions of the legislature behind the said clause is required to be traced, therefore, the same being relevant is reproduced below;

"78. Qualifications for candidates and elected members.---(1) A person shall qualify to be elected or to hold an elective office or membership of a local council, if he-

- (a)
- (b)
- (c)
- (d)
- (e)

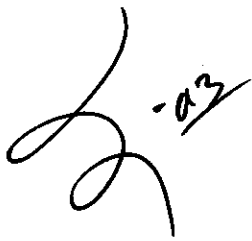
(f) is not in the service of the federal, a provincial or a local government or, any statutory body or a body which is controlled by any such government or, in which any of such governments has a controlling share or interest, except the holders of elected public office and part-time officials remunerated either by salary or fee; provided that in case of a person who has resigned or retired from such

service, a period of not less than six months has elapsed since his retirement".

On a plain reading, the aforesaid clause (f) could be segmented in three parts; *firstly*, that a person shall qualify to be elected or to hold an elective office or membership of a local council, if he is not in the service of federal, a provincial or a local government or, any statutory body or a body which is controlled by any such government *secondly* an excluded class of employees has been provided i.e. except those persons who are holder of elected public office and part-time officials remunerated either by salary or fee and *thirdly* that a person who has been in the service of federation/provincial or local government could contest an election provided he has resigned or retired from such service and a period of six months has elapsed since his retirement. So, in plain words clause (f) of Section 78 of **The Act of 2013** mandates/stipulates that a person could not contest an election if he is in the service of federation or a provincial or a local government or any statutory body, however, even such person could contest an election but after his resignation or retirement from such service and when a period of six months has been

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expired from his retirement. The aforesaid bar as contained qua a person who being in service and unless a period of six months has elapsed since his retirement could not be applied to the excluded class of employees provided by the same clause (f) to the effect that all those persons who are holding elected public office and are part time officials and who are being remunerated either by salary or fee. The legislatures with a very clear intention have excluded the part time officials from the said bar and thus if the aforesaid yardstick is applied to the case of the appellant Muhammad Yousaf, who too is a Nikah Registrar which is a part time duty and he is being remunerated from the fee collected by himself from the registration of the marriages and thus he could not be termed as a person in the service of federal, a provincial or a local government or, any statutory body or a body which is controlled by any such government and as such he was an eligible person to hold the seat of general councilor and thus the learned Election Tribunal has put a wrong interpretation to the said clause and has wrongly applied the said bar to the case of the appellant Muhammad Yousaf.



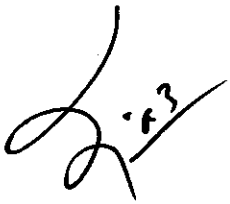
5. During the course of arguments, the learned counsel representing the respondent namely Abdul Mateen vehemently argued that since the appellant Muhammad Yousaf is a sitting Nikah Registrar and he has neither resigned nor got retirement from his position, therefore, the inbuilt proviso in clause (f) of Section 78 of **The Act of 2013** would fully attract to the excluded class of employees as well including to the part-time employment of the appellant, however, such plea is misconceived as the words "a person who has resigned or retired from such service" and "Six months has elapsed since his retirement" occurring in the said proviso are of much significance and surely speaks of such service where any such eventuality of "retirement" or "resignation" may arise and as in the part-time duty like that of Nikah Registrar no such eventuality of "retirement" could arise as under the provision of The Muslim Family Laws Ordinance, 1961 (*hereinafter is to be referred as The Ordinance of 1961*) and The Rules of 1961 framed thereunder do not provide for any threshold of retirement qua upper age limits of a Nikah Registrar. Similarly, these law/rules are also completely silent about the resignation of a Nikah

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Registrar. It may be relevant to mention here that the position of Nikah Registrar is not a permanent post on the strength of the local government/village council. Similarly, to fill such position neither any publication is made in the newspaper to invite applications from general public nor any open competition is required to be carried out amongst the eligible persons rather it is the sweet will of any individual of the area who wish to perform such duty and thus such desirous person on his own may apply to the relevant authority for the grant of a license within the meaning and as per mandate of Section 5 (2) of The Ordinance of 1961 read with Rule 7 of The Rules of 1961 and thus after fulfilling of all pre-requisite formalities a license is issued to the desirous person in Form-I with the prescribed terms and conditions mentioned therein and in case of violation of any terms and conditions of license, the competent authority i.e. Secretary Union Council may revoke/cancel his license and he may also be punished with imprisonment for a period of one month and thus in the given facts and circumstances the word "retirement" and "resignation" as occurred in the inbuilt proviso of clause (f) of Section 78 of **The Act of 2013** are totally alien for the office of a Nikah




Registrar and thus the said proviso could not be tagged or applied to the part-time employment of a Nikah Registrar. In *Ghazanfar Ali*'s case reported as *PLD 2016 Supreme Court 151* the Apex Court has held that the qualifications and disqualifications imposed by law for a candidate to contest the election and even to hold office should be construed and applied strictly and a person can only be debarred from contesting elections or holding an office if the case falls squarely within the strict scope of the qualifications and disqualifications stipulated by law. Similarly, it is also an established principle of interpretation of statute that a statute must be interpreted in such a manner so as to advance the cause of justice instead of defeating the same. In the case of *Govt: of Khyber Pakhtunkhwa through Chief Secretary Peshawar & others v/s Intizar Ali & others* reported as *2022 SCMR 472* it was held by the Apex Court that in a number of judgments, the superior courts of the country have held that when meaning of a statute is clear and plain language of statute requires no other interpretation then intention of Legislature conveyed through such language has to be given full affect. Plain words must be expounded in their natural and ordinary sense.



Intention of the Legislature is primarily to be gathered from language used and attention has to be paid to what has been said and not to that what has not been said. Similarly, in the case of **“Govt. of Khyber Pakhtunkhwa & others v/s Abdul Manan** reported as **2021 SCMR 1871** the Apex Court has reiterated the aforesaid rational by observing that when the intent of the legislature is manifestly clear from the wording of the statute, the rules of interpretation required that such law be interpreted as it is by assigning the ordinary English language and usage to the words used, unless it causes grave injustice which may be irremediable or leads to absurd situations, which could not have been intended by the legislature. Likewise, in the case of **“J.S Bank Limited v/s Province of Punjab through Secretary Food Lahore & others”** reported as **2021 SCMR 1617**, the Apex Court has declared that for the interpretation of statutes purposive rather than a literal approach is to be adopted and any interpretation which advances the purpose of the Act is to be preferred rather than an interpretation, which defeats its objects.

6. It is also relevant to mention here that Section 27 & Section 23 of The Punjab Local



Government Act, 2013 and Section 78 & Section 114 of The Khyber Pakhtunkhwa Local Government Act, 2023 are synonymous as these sections respectively speak about the qualifications/disqualifications of candidates and elected members and the status of the members of the local government being of public servants. The interpretation of Section 27 and Section 23 of the Punjab Local Government Act, 2013 came up before the Apex Court in Ghazanfar Ali's case reported as PLD 2016 Supreme Court 151 wherein the Apex Court in Para No. 5 has held as under;

5. *Heard. In the context of the facts of the cases, which are not disputed, we find that the following propositions need resolution through this opinion (i) the interpretation of section 27(2)(e) of the Punjab Local Government Act, 2013; (ii) the effect of section 23 of the Zakat and Ushr Ordinance, 1980 when read with the provisions of section 21 of the Pakistan Penal Code, 1860; and (iii) whether in the facts and circumstances of the present case and in the letter and spirit of the Ordinance, the petitioners are "in the service of a statutory body". Thus for the above purpose, it seems expedient to reproduce the relevant Sections:-*

Punjab Local Government Act, 2013

"27. Qualifications and disqualifications for candidates and elected members.- (1)

.....

(2) *A person shall be disqualified from being elected or chosen as, and from being, an elected member of a local government, if he-*

(a)

(b)

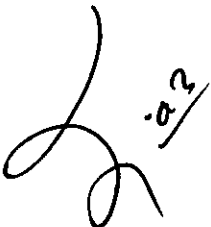


- (c)
- (d)
- (e) *is in the service of any statutory body or a body which is owned and controlled by the Government or a Provincial Government or the Federal Government or a local government or, in which any of such Government or local government has a controlling share or interest, except the holders of elected public office and part-time officials remunerated either by salary or fee; provided that in case of a person who has resigned or retired from any such service, a period of not less than two years has elapsed since his resignation or retirement."*

23. Certain persons to be public servants.--
Every person engaged in, or employed for, the administration of this Ordinance shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

Explanation.--*For the purposes of this section, the Chairman and members of the District Committee and Local Committee shall be the persons engaged in the administration of this Ordinance."*

From the unambiguous language of section 27(2)(e), there is no room for doubt that the disqualification is only in relation to a person who is "in the service" of any statutory body, etc. Before proceeding further it may be mentioned that it is settled law that the qualifications and disqualifications imposed by law for a candidate to contest the election and even to hold office should be construed and applied strictly (note: we are deliberately not examining this aspect in this case on the touchstone of Article 17 of the Constitution of Islamic Republic of Pakistan, 1973), and a person can only be debarred from contesting elections or holding an office if the case falls squarely within the strict scope of the qualifications and disqualifications stipulated by law. Be that as it may, in order to interpret and apply section 27(2)(e) in the context of the facts of the present case, it may be mentioned that various Councils/Committees envisaged by the Ordinance are undisputedly statutory bodies as these have been created by the statute itself (the Ordinance). Therefore, the pivotal question which needs consideration and resolution is that whether a



person who holds a post or position in any of these Councils/Committees is in the service of a statutory body. In our view to answer this question it is expedient to understand the object and spirit of the Ordinance, in that, why this law has been enforced, what are the different levels and nature of the Councils/Committees, what functions these Councils/Committees have to perform and, obviously what are the duties/functions of the persons who are a part of these forums, holding posts/positions thereto, because this analysis and comprehension has a direct nexus with, and shall facilitate in understanding the nature of the posts/positions.

In the said judgment it is further held that though the member and chairman of the Local Zakat & Usher Committee are employees of a statutory body, however, such persons could not be termed as in the service of federal, a provincial or a local government or, any statutory body or a body which is controlled by any such government. Similarly, their nature of duties and the sovereign authority exercised by them and that they are not receiving any salary or honorarium or any other financial benefit from the public exchequer were also considered as determining factors and it was thereafter held that they are not in the service of federal, a provincial or a local government or, any statutory body or a body which is controlled by any such government. If the aforesaid interpretation so made by the Apex Court is applied to the case of present appellant namely Muhammad Yousaf who

being a Nikah Registrar, too does not receive any salary or honorarium rather he receives a specific percentage in the fee collected by him from registration of the marriages, therefore, he too could not be termed as a person in the service of federal, a provincial or a local government or, any statutory body or a body which is controlled by any such government.

7. During the course of arguments, the learned counsel for the respondent namely Abdul Mateen also made much emphasis to the effect that as per section 114 of **The Act of 2013** all members of the local council functionaries of a local government and every other person duly authorized to act on behalf of a local government are "public servant", therefore, Nikah Registrar being part of the local government is also a public servant and as such he was not eligible to contest the said election, however, such interpretation of the learned counsel for the petitioner is also misconceived. The said section being relevant is reproduced below.

"114. Members and servants to be public servants.---

All 5 [Chairmen, the member presiding the meeting] members of the local councils, functionaries of the local governments and every other person duly authorized to act on behalf of the local governments shall be public servants

within the meanings of section 21 of the Pakistan Penal Code (Act XIV of 1860) and shall be subject to the provisions of sections 161 to 169 of the said Code.

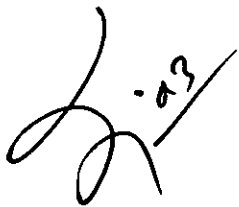
A plain reading of the said section would also reflect that though this section mandate that all member of the local council functionaries of the local government are public servants, however, such meaning of public servant is to be considered in context of section 21 of the Pakistan Penal Code. It is by now settled jurisprudence that a "civil servant", a "government servant" or "person in service of Pakistan" and "public servant" have distinct meaning as all persons whether they are "civil servant", "government servant" or "persons in service of Pakistan" are surely & undisputedly "public servants", albeit all public servants are not civil servants. It is also settled by now that the definition of these categories of employees are to be read in the context of those statutes where such terminology has been used. There is no cavil with this preposition as advanced by the learned counsel for the respondent Abdul Mateen that the Nikah Registrar is a public servant, however, keeping in view the plain wording of clause (f) of Section 78 of **The Act of 2013** qua this admitted

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position that all “public servants” are not debarred from contesting election but only those persons who are in the service of Pakistan could not contest an election and keeping in view the part-time nature of duties and remuneration being paid to the appellant, he could not be a person in service of any federation or provincial government or local authority, therefore, the bar as contained in clause (f) of section 78 of **The Act of 2013** could not be attracted to the case of the appellant. The distinguishing characteristic of the aforesaid category of servants and followed by their legal consequences has been a favorite subject of the Apex Court as well as of various High Courts of the country. In Muhammad Naeem's case reported as 2023 SCMR 301 the Apex Court has interpreted the term “civil servant” and “government servant” and it has been observed that those civil servants and government servants having almost the same meaning and scope and are commonly used interchangeably in the civil service laws of the country. The term “public servant” as defined in section 21 of the P.P.C. for the purpose of application of that law is, however, of wide import and scope than those terms. It cannot, therefore, be referred to or used as an equivalent or synonym of

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them, in the context of a person's civil status, capacity or position. In the ordinary English language, the words "civil servant" and "public servant" may have the same meaning, but this is not so in the legal language as commonly used in the laws of the country (Pakistan). It may be said that in legal parlance, particularly of the service and criminal laws, all civil servants are public servants as defined in section 21 of the P.P.C., but not all such public servants are civil servants. In Muhammad Iqbal's case reported as PLD 2006 Lahore 13 the candidate therein was an employee on work charge basis on a contract without entitlement to any kind of allowance or other vested rights of service and as such was not a regular employee who contested the election for Punjab local government and he was disqualified by the Returning Officer as well as by the District Returning Officer, however, the Lahore High Court set aside the said disqualification on the ground as stated hereinabove. In Mst. Shahzina Parveen's case, reported as 2003 MLD 2023, too the S.14(g) of The Sindh Local Government Elections Ordinance, 2000 which is synonymous to section 78 (1) (f) of **The Act of 2013** it was held that the holder of the public office and part-time officials



remunerated either by salary or fee has been excluded from the category of employees who could not contest election due to the nature of their job and remuneration paid to him. Similarly, in *Ghulam Mustafa*'s case reported as *1986 MLD 2143*, it has been held that part-time employee of government institution could contest elections and they shall not be debarred in view their nature of duty.

8. During the course of arguments, learned counsel for respondent Abdul Mateen heavily relied upon the judgment of the Lahore High Court in *Ghulam Mustafa*'s case reported as *PLD 2016 Lahore 251*, whereby, terming a Nikah Registrar as a public servant and as such was held as disqualified under Section 27 (2) (e) of The Punjab Local Government Act, 2013, however, this Court does not agree with the aforesaid findings of the Hon'ble Lahore High Court *firstly* that the said findings are persuasive for this Court *secondly* the same are against the law as set by the Apex Court in *Muhammad Naeem*'s case supra *thirdly*, for the reasons that the word "public servant" has neither been used by the legislature in Section 27 (2) (e) of The Punjab Local Government Act, 2013 nor

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in Section 78 (f) of **The Act of 2013** rather persons in the service of federal, a provincial or a local government or, any statutory body or a body which is controlled by any such government have been debarred from contesting election which has entirely a distinct meaning than the “public servant” as classified by the Hon’ble Lahore High Court and *fourthly* the judgment of the Apex Court being a kind of vertical precedent for this Court is binding upon it in view of Article 189 read with Article 203 of The Constitution of Islamic Republic of Pakistan, 1973.

9. In view of the above discussion and exposition of law, this appeal (*Election Appeal No. 06-A/2023*) titled “*Muhammad Yousaf vs. Abdul Mateen and others*” is allowed and the impugned order/judgment of The Worthy Election Tribunal, Abbottabad dated 13.12.2023 is set aside and consequently the notification of the appellant as a returned candidate for the seat of general councilor of constituency of Village Council namely Tatreela (No. 44) District, Abbottabad is restored and as we have allowed the instant appeal, therefore, as a corollary the connected appeal (*Election Appeal No.*



27-A/2024) titled "Abdul Mateen vs. Muhammad

Yousaf and others" is dismissed.

Announced
25.03.2024



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