

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2907 of 2017.

MUHAMMAD USMAN DAR.

Vs

KHAWAJA MOHAMMAD ASIF, ETC.

PETITIONER BY:

Mr. Sikandar Bashir Mohmand, ASC, Mr Mustafa Aftab A. Sherpao, ASC and Syed Zulqarnain Safdar, Advocate.

RESPONDENTS BY:

Mr. Rashdeen Nawaz Kusuri, ASC, Mr Nadeem Yousaf Rana, Mr Assad Ullah Waghra and Ch, Najam ul Hassan, Advocates.

DATE OF HEARING: 10.04.2018.

ATHAR MINALLAH, J.- The petitioner, namely Muhammad Usman Dar, has invoked the jurisdiction of this Court under Article 199(1)(b)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "***Constitution***") requiring Khawaja Muhammad Asif (hereinafter referred to as the "***Respondent***") to show under what authority of law he claims to hold the office as Member of the National Assembly of Pakistan, the lower House of Majlis-e-Shoora (Parliament).

2. The facts, in brief, are that the General Elections were held on 11.05.2013. The Respondent contested elections on the ticket of Pakistan

Muslim League (Nawaz) and secured 92803 votes as against 71525 votes polled in favour of Muhammad Usman Dar (hereinafter referred to as the "Petitioner".) The latter had contested elections from the platform of Pakistan Tehreek-e-Insaf. The nomination paper submitted by the Respondent was challenged by other contesting candidates which culminated in the dismissal of Election Appeal no. 144-A of 2013 by the learned Election Tribunal of the Lahore High Court, Lahore vide order dated 17.04.2013. Pursuant to the said order the Respondent had contested the elections and was declared as returned candidate. He was, thereafter, notified as a Member of the National Assembly, elected from constituency NA-110. After taking oath of office as Member of the National Assembly, the Respondent was inducted in the Federal Cabinet on 08.06.2013 as the Minister for Water and Power. Later the Respondent was given the portfolio of Minister of Defence on 27.11.2013. The Respondent took oath as Foreign Minister of Pakistan on 04.08.2017. The Respondent has had the privilege of being elected to the lower house of the Majlis-e-Shoora (Parliament) in the General Elections held in 1993, 1997, 2002 and 2008. Some relevant facts necessary for the adjudication of the instant petition are mentioned as follows;:-

(A) NOMINATION PAPER:

The nomination paper to contest elections from the constituency NA 110 was filed by the Respondent on 30.03.2013 under section 12 of the Representation of the People Act 1976 (hereinafter referred to as the "**Act of 1976**"). Declarations made in columns 7 and 8 therein, as required under section 12(2)(e), were as follows;:-

"7. My educational qualification is B.A., LLB
8. My present occupation is BUSINESS"

3. It is noted that the Respondent was required to attach attested copies of the relevant documents in support of the declarations, inter alia, made in columns 7 to 10. The nomination paper signed by the Respondent specifically contained the following affirmation;

(b) I, Mr/Ms/Mrs KHALWAJA MOHAMMAD ASIF s/o KHALWAJA MOHAMMAD SAFDAR state that failure to give detail regarding any item of this Form shall render my nomination to contest election invalid or if any information given here in above are found incorrect at any time my election shall stand void ab initio"

(B) OCCUPATION IN UNITED ARAB EMIRATES:-

The Respondent has executed, from time to time, three separate employment contracts with International Mechanical and Electrical CO. (W.L.L.) (hereinafter referred to as the "**Company**"). The latter is a juridical person incorporated and governed under the laws of the United Arab Emirates.

(i) **FIRST CONTRACT:-**

The first employment contract was executed by the Respondent on 08.06.2011 which remained valid till 30.06.2013 (hereinafter referred to as the "**First Contract**"). The relevant clauses of the contract, dated 06.08.2011 are as follows;—

A. FIRST PARTY

Company/Est : INT. MECH. & ELEC CO. LLC

Nationality : EMIRATES

Address : ABU DHABI TOURIST CLUB

Represented by : ELIAS IBRAHIM SALLOUM

B. SECOND PARTY

Mr./Mrs : ASIF MUHAMMAD KHALWAJA SAFDAR MUHAMMAD KHALWAJA

Nationality : PAKISTAN

Passport No. : AC 1886006

Now therefore the parties declare having full capacity to contract and mutually agreed as follows:

1) That the Second party accepts to work for first party as **LEGAL ADVISOR PRIVATE LAW** in the U.A.E. For a basic salary 9000 Per **MONTH nine thousand dirhams**

2) The duration of this Agreement shall be (Unlimited) As from **03-07-2011** to _____.

A- The two parties hereto have agreed that the Second party shall be subject to a probation period of 6 months (provided that the probation shall not exceed six months from the beginning of employment).

B- The limited employment agreement expires on the date of expire thereof, but in case the two parties continue to execute the agreement then it shall be considered as renewed for an extra period of one year from the date of expire thereof on the same terms and conditions.

3) The First Party shall bear the cost of air ticket at the time of commencing work and also the cost of one ticket home at the time of terminating the Employment Agreement.

4) The First Party may terminate the services of Second Party immediately and without notice in case the Second party violates Clause (120) of the Federal Law No(8) of 1980 in respect of the organizing of Labour Relation and as conditions provided therein. And also as provided in Clause (88) there of.

5.) Provisions of Federal Act No.(8) shall be applicable in respect of end of service gratuity and shall also be applicable for other conditions which are not provided for herein.

6) This Agreement is made in 3 copies. First Copy retained with the Ministry (Labour Dept.) at the time of attesting the agreement each party hereto shall have one copy to act according whenever necessary..

7) The first Party is obligated to grant the Second Party an annual leave with pay for 30 days (provided that the annual leave shall not be less than thirty days).

8) Other allowance granted to the Second Party:

A-Accommodation All: **FAMILY HOME PROVIDED**

B-Transportation All. **PROVIDED**

C-Other:

1- _____

2- _____

3- _____

4- _____

Basic Salary: 9000

Total salary with Allowance: 9000

9) Other Conditions:

.A _____

.B _____

10) Daily working hours are (8) hours only, and shall not exceed forty eight hours weekly. In case of shops, hotels, restaurants and watchmen, the working hours shall be nine hours per day."

(ii) **SECOND CONTRACT:-**

The First Contract was followed by the execution of another employment contract in July 2013 which remained valid from 01.07.2013 to 30.05.2017 (hereinafter referred to as the "**Second Contract**"). The terms and conditions of the Second Contract were the same as that of the First Contract except that basic salary was increased to AED 2000/- while the total i.e salary and allowances amounted to AED 30,000/-.

(iii) **THIRD CONTRACT:-**

The Third Contract was executed by the Respondent and the Company in May 2017 and it was valid and subsisting till the filing of the instant petition. It is noted that the Third Contract was executed by the Respondent when he was holding the portfolio of Defense Minister in the Federal Cabinet. The said employment contract was valid w.e.f. 31.05.2017 and the terms and conditions thereof are as follows:-

"Hereinafter referred to as (The First Party) in this Employment Contract and the Annex thereof.

<i>To hire:</i>
<i>Mr. Ms.:</i>
Name : ASIF MUHAMMAD KHAWAJA SAFDAR
MUHAMMAD KHAWAJA
Nationality: PAKISTAN
Passport No. AC1886006

Hereinafter referred to as (The Second Party Worker) in this Employment Contract and the Annex thereof

Both the First Party and the Second Party are hereafter referred to as (The Parties Both Parties) in this Employment Contract and the Annex thereof.

Preamble

Whereas the Second Party works for the First Party in the Job profession of [MANAGEMENT CONSULTANT] under an Unlimited Term Employment Contract No.(MB174652818AF) commencing as of 02/07/2011. And whereas Both Parties desire to continue this Contract. Both Parties have agreed upon the following.

First Article

The Second Party shall work for the First Party on the job profession of MANAGEMENT CONSULTANT within the UAE (Emirate Name: Abu Dhabi.).

Second Article

The Second Party's weekly rest shall be 1 day(s). The First Party shall determine such day(s) and inform the Second Party thereof at the commencement date of the employment relationship.

Third Article

Should either party desire to terminate this Contract, such party shall notify the other party of such desire within 01 Month(s) as prior notice before the determined date of termination. Such period shall be similar for both parties.

Fourth Article

Both Parties agree that the Second Party shall work for the First Party in return for [Monthly Wage of 50000 AED (fifty thousand)] Such wage shall include:

<i>The Basic Salary at an amount of AED 35000 (Thirty-five thousand)</i>
<i>Allowances</i>
<i>These allowances should include without limitation:</i>
<i>Housing Allowance: FIRST PARTY</i>
<i>Transport Allowance: FIRST PARTY</i>
<i>Other allowance: 15000</i>

The First Party shall pay the wage and the Second Party shall receive the wage according to the regulations determined by MOL

Fifth Article

The labour relationship governed by this Contract, shall be a contractual, consensual relationship. Neither Party shall be obliged to continue such contractual labour relationship with the other Party without its consent, provided that the Party terminating the Contract at its sole discretion shall

bear all legal consequences resulting therefrom as stipulated in the Annex enclosed herewith and according to any MOL Applicable Laws. The Labour relationship between both Parties shall end if any of the events set forth in Article (2) of the Annex enclosed herewith occurs.

Sixth Article

The First Party acknowledges that it has informed the Second Party of all the articles stipulated in the Annex enclosed herewith (6 articles in total).

Seventh Article

The Second Party acknowledges that it has thoroughly reviewed all the articles stipulated in the Annex enclosed herewith (6 articles in total).

Eighth Article

Both Parties acknowledge that the articles stipulated in the Annex enclosed herewith constitute an integral and complementary part hereof and shall be binding on both Parties.

Ninth Article

Both Parties have agreed to add the following conditions:

1-family accommodation provided

In such case, the additional conditions shall not breach Applicable Laws, or the articles stipulated in this Contract or the Annex hereof. In case of adding such conditions, this Contract and the Annex hereof must be referred to the relevant labour relation authority within MOL for review and prior to approval thereof.

Tenth Article

This Contract has been made in three counterparts duly signed by Both Parties. Each Party shall receive a copy and the third one shall be kept by MOL."

4. Pursuant to the above three employment contracts, the Respondent was granted an "Iqama" i.e. residence visa. Moreover, the Respondent was also registered as a skilled labourer and a card was duly issued by the Ministry of Labour, United Arab Emirates wherein, *inter alia*, Work Permit No. 70798428 was mentioned. The list issued by the Company shows it has a total strength of 1250 employees. The name of the Respondent appears at serial no. 303 and his job description is "***Management Consultant***". The occupation of employees mentioned in the list above and below the name of the Respondent i.e. at serial nos. 302 and 304 respectively is described as Concrete Mason and Shovel Operator Driver. The Managing Director of the Company, namely Mr. Elias Salloum, has issued a certificate, dated 12.04.2018, titled "To Whom It May Concern" which was submitted by the learned counsel for the Respondent along with his written arguments. The contents of the certificate are reproduced as follows:-

"TO WHOM IT MAY CONCERN"

We hereby confirm that Kh. Muhammad Asif has been the "Legal Advisor Private Law" for the company. The agreement executed with him was a standard document approved by the UAE Government. The agreement was executed to fulfill UAE Law, however, the terms stated in the agreement were not the understanding between the parties. The relationship has been cordial, with mutual consent and there was no requirement for him to be present in UAE for any period of time and we have been seeking his advice as and when required telephonically and during his planned visit to UAE.

Similarly, the agreement was renewed as per UAE law, he became the Management Consultant of the Company. The agreement was executed to fulfill UAE Law, however, the terms stated in the agreement were not the understanding between the parties. The relationship has been cordial, with mutual consent and there was no requirement for him to be present in UAE for any period of time and we have been seeking his advice as and when required telephonically and during his planned visit to UAE.

Mr. Asif was paid a fee for his services as per the understanding of the company and himself. Mr. Asif was never a full time employee of the company and was not required to stay in UAE as mentioned in the agreement. There is total flexibility in the UAE after execution of the standard document to agree to any terms with the employees and Consultants of the company and the UAE Government does not interfere in this respect.

A representative of the company is willing to come and appear before any Court in Pakistan to confirm the above facts.

*Yours faithfully,
For **INTERNATIONAL MECHANICAL & ELECTRICAL CO.
WLL.***

***ELIAS SALLOUM
MANAGING DIRECTOR"***

(C) ASSETS AND LIABILITIES:-

The Respondent had not declared Bank Account no. 6201853775, maintained with the National Bank of Abu Dhabi in the statement of assets and liabilities attached with the nomination paper. According to the documents placed on record it shows a balance amount on the date of filing the nomination paper. The said account was declared by the Respondent for the first time in 2015 before the Election Commission of Pakistan in the

annual statement of assets and liabilities filed under section 42-A of the Act of 1976.

5. It is noted that the above facts have been unambiguously admitted. There is no dispute whatsoever regarding the execution of the three employment contracts and non disclosure of the aforementioned Bank Account in the nomination paper. The Petitioner had challenged the election of the Respondent by filing an election petition under section 52 of the Act of 1976 which ultimately led to the rendering of the judgment by the august Supreme Court in the case titled "*Usman Dar versus Khawaja Muhammad Asif*"[2017 SCMR 292]. The above facts were not part of the Election Petition because the Petitioner asserts that they came to his knowledge much later.

6. Mr Sikandar Bashir Mohmand, ASC has contended that; the Respondent is not entitled to hold the office of Member of the National Assembly nor as member of the Federal Cabinet; the Respondent had deliberately concealed material facts in his statement of assets and liabilities ; he had not declared his income which was derived as 'salary' from full time employment with the Company since 2011; source of business capital applied for to set up a restaurant in Abu Dhabi was also not fully declared; material discrepancies in the account of salary and foreign remittances disclosed in the nomination form are obvious; the three employment contracts were not declared; the Respondent had unambiguously taken the plea before the learned Election Tribunal of the Lahore High Court, Lahore that the remittances exclusively related to the sale of the restaurant; the unequivocal statement recorded in the order dated 17.04.2013, passed by the learned Tribunal in Election Appeal no. 144-A of 2013, had attained finality since no attempt was made to correct it; the Respondent had declared his occupation as 'Business': for the first time in the present proceedings he has taken the

plea that foreign remittances declared in the nomination form included income from salary as well as from the business of a restaurant; non-disclosure of the Bank Account maintained with the Bank of Abu Dhabi is sufficient for a declaration in the context of Article 62(1)(f) of the Constitution, read with the relevant provisions of the Act of 1976; the test laid down by the august Supreme Court in the recent precedent law relating to non-disclosure for the purposes of Article 62(1)(e) is that of strict liability; the Respondent was a full time employee in a foreign based Company while he was holding the portfolios of Defence and Finance Minister; the conflict of interest is obvious and, therefore, this alone is sufficient to declare the Respondent as disqualified; the Respondent, through his acts and omissions, has violated his oath which he had taken before entering upon the office as Member of the National Assembly and then as Federal Minister. The learned counsel has placed reliance on the case law which has been attached with his written arguments.

7. Mr Rasheen Nawaz Kusuri, ASC has appeared and has argued on behalf of the Respondent; the admission relating to execution of the three employment contracts with the Company is not simplicitor; the intent of the parties was different from the expressions used in the three employment contracts; the Company has confirmed that the language and expressions used in the three employment contracts was for the purposes of fulfilling the requirements of law and did not reflect the intent of the parties; this raises questions of fact which cannot be resolved while exercising jurisdiction under Article 199 of the Constitution; the Company, vide certificate dated 12.04.2018, has explicitly acknowledged that the employment contracts were executed merely to fulfill the requirements of the Labour Laws in United Arab Emirates; the letter dated 12.04.2018 of the Company ought to be read with the employment contracts; the employment contracts are infact an 'Iqama Agreement' between the Respondent and the

Company; the employment contracts reflect the standard document and, therefore, does not manifest the actual relationship; the terms and conditions relating to the services rendered by the Respondent are settled orally; the parties are free to enter into any terms and conditions; re-writing of a contract falls within the exclusive domain of the parties; the onus is on the petitioner to establish that the Respondent was performing his duties in the United Arab Emirates and only then would he have been able to make out a case; the presence of the Respondent and performing functions as member of the Majlis-e-Shoora (Parliament) and the Federal Cabinet stand admitted by the petitioner; the relationship between the Respondent and the Company was flexible; no reliable evidence has been produced by the petitioner to show that the Respondent was engaged in working on full time basis in the United Arab Emirates; the declaration regarding occupation does not attract section 12(2)(f) of the Act of 1976; omission to mention a dormant account maintained with the National Bank of Abu Dhabi is inconsequential; the non-disclosure of the Bank Account would not attract the test of strict liability; reliance has been placed on the case titled "Rai Hassan Nawaz versus Haji Muhammad Ayub and others" [PLD 2017 S.C. 70]; the petitioner has not been able to bring on record any error or defect which may be false in material particular; the petitioner had declared the account maintained with the Bank of Abu Dhabi and an amount of AED 4700 deposited therein before the Election Commission of Pakistan in the annual statement of assets and liabilities submitted on 30.06.2015; the said declaration was made much before filing of the instant petition; the occupation mentioned at serial no.8 of the nomination form cannot be treated as false in order to attract the penal consequences since the petitioner had enclosed a copy of his passport, which contained the 'Iqama' issued by the United Arab Emirates; entries disputed in the statement of account required recoding of evidence; the Respondent has made correct and true disclosures; any dispute regarding qualification of the Respondent as Member of the Majlis-e-Shoora (Parliament) after issuance of

notification as a returned candidate is required to be dealt with under Article 63(2) of the Constitution; at the best this Court may refer the matter to the Speaker of the National Assembly of Pakistan under sub-article (2) of Article 63 of the Constitution; a bonafide omission, particularly relating to declaration regarding occupation, is not fatal nor attracts the consequences of being disqualified; the question of whether the strict liability test would be attracted in the case of non-disclosure was recently argued before the august Supreme Court in Sheikh Rasheed's case wherein the judgment has been reserved; it would be appropriate to keep the matter at hand pending till august when the Supreme Court announces judgment in the said case; quo-warranto petition is not maintainable and in case this Court concludes that inquisitorial proceedings are required then the matter may be referred to a competent forum; the relief sought in the instant petition is discretionary in nature and, therefore, utmost restraint must be exercised; the Respondent has been elected by a large number of constituents and, therefore, it would be unjust and unfair if they are disenfranchised; malafide of the petitioner is obvious from the filing of the instant petition eight months before the holding of General Elections; the august Supreme Court in the case titled "*Imran Ahmad Khan Niazi versus Mian Muhammad Nawaz Sharif and others*" [PLD 2017 S.C. 265] has not disqualified the former Prime Minister merely for holding an '**Iqama**' but rather his disqualification was due to non-disclosure of assets; holding an '**Iqama**' cannot be made the basis for attracting Article 62(1)(f) of the Constitution. The learned counsel has placed reliance on the case law which has been mentioned in the written arguments and, therefore, we need not reproduce the same.

8. The learned counsels for the parties have been heard and the record perused with their able assistance.

9. The petitioner has invoked the constitutional jurisdiction of this Court under Article 199(1)(b)(ii) of the Constitution. The learned counsel

for the petitioner has raised several grounds. However, we feel that it would be appropriate to avoid discussing those grounds which involve disputed questions of facts. We shall, therefore, focus only on such grounds which are based on facts that have been unambiguously admitted by and on behalf of the Respondent. What has been explicitly admitted before us are; (i) declarations in the nomination paper; (ii) the three employment contracts; (iii) the said employment contracts having been executed only to fulfill the requirements of the laws of the United Arab Emirates and that the parties had never intended to give effect to the express terms and conditions thereof; (iv) the order dated 17-04-2013, passed by the learned Election Tribunal of the Lahore High Court, wherein specific plea was taken by and on behalf of the Respondent regarding the source of foreign remittances, attained finality and (v) non-disclosure of an account maintained with the National Bank of Abu Dhabi. These facts have been expressly admitted in the para wise comments, written arguments and during the course of arguments addressed at the Bar by the learned counsel for the Respondent. It is the case of the Petitioner that the Respondent had deliberately not disclosed in his nomination paper his occupation in column 8 as a permanent full time employee of the foreign based Company, concealed the salary received from the Company and the bank account maintained with the Bank of Abu Dhabi and was thus disqualified to contest the election, since Article 62(1)(f) of the Constitution read with the relevant provisions of the Act of 1976 were attracted. It would, therefore, be beneficial to examine the relevant provisions of the Constitution and the Act of 1976. It is also inevitable to examine the precedent law regarding the test laid down and applied for giving effect to Article 62(1)(f) read with the corresponding provisions of the Act of 1976. The learned counsel for the Petitioner has also raised the question of conflict of interest.

10. Chapter-2 of the Constitution deals with the Majlis-e-Shoora (Parliament). Article 50 provides that the Majlis-e-Shoora of Pakistan (Parliament) shall consist of two Houses to be known respectively as the National Assembly and the Senate. Article 51 provides that there shall be 342 seats for Members in the National Assembly, including seats reserved for women and non-Muslims. The number of Members elected on General Seats is 272. A person is not qualified to contest elections and become Member of the Majlis-e-Shoora (Parliament) unless he or she fulfils the conditions which have been described under Article 62 while the disqualifications are enumerated under Article 63. Article 62(1)(f) provides that a person shall not be qualified to be elected or chosen as Member of the Majlis-e-Shoora (Parliament) unless he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law. Article 63(2) provides that if any question arises as to whether a member of the Majlis-e-Shoora (Parliament) has become disqualified from being a Member then the Speaker or, as the case may be, the Chairman shall, unless he or she decides that no such question has arisen, refer the matter to the Election Commission of Pakistan within thirty days and if the latter fails to do so within the specified period, then it is deemed to have been so referred.

11. The purpose and object of enacting the Act of 1976, as described in its preamble, is to provide for the conduct of elections to the National Assembly and Provincial Assemblies and to guard against corrupt and illegal practices and other offences. Section 2 defines various expressions. Section 11 mandates that, pursuant to an announcement made by the President of Pakistan regarding the date or dates on which polls shall be taken, it becomes a statutory duty of the Election Commission to call upon a constituency to elect a representative or representatives, as the case may be. Section 12(2), inter alia, requires that every nomination shall be made by

a separate nomination paper in the prescribed form which shall be signed both by the proposer and the seconder and that it shall, on solemn affirmation made and signed by the candidate, accompany, *inter alia*, the statement specifying his or her educational qualifications and occupation along with attested copies thereof. Section 99(1)(f) provides that a person shall not be qualified to be elected or chosen as Member of an Assembly unless he is sagacious, righteous and non-profligate and honest and ameen and pays his debts specified under sub section (2) of section 12.

12. It is obvious from the above provisions of the Constitution and the Act of 1976 that Article 62(1)(f) and section 99(1)(f) are grounds for qualification and eligibility to contest elections and to hold the Public office of Member of the Majlis-e-Shoora (Parliament). The expressions used in the said provisions have a wide scope. The interpretation of the said expressions and their application has been examined by the apex Court in several pronouncements by now. In the words of His Lordship Mr Justice Asif Saeed Khosa, Hon'ble Judge of the Supreme Court, vide his separate note in "*Ishaq Khan Khakwani and others v. Mian Muhammad Nawaz Sharif and others*" [PLD 2015 S.C. 275];-

"It is unfortunate that the nightmares of interpretation and application apprehended and anticipated by me as a young lawyer more than a quarter of a century ago are presently gnawing the Returning Officers, Election Tribunals and the superior courts of the country in the face but those responsible for rationalizing the troublesome provisions of the Constitution through appropriate amendments of the Constitution have slept over the matter for so long and they still demonstrate no sign of waking up. As long as the highlighted obscurities and impracticalities are not addressed and remedied nobody should complain that the Returning Officers, Election Tribunals and the superior courts of the country

are generally unsuccessful in catching the candidates with bad character or antecedents in the net of Articles 62 and 63 of the Constitution, particularly when the electorate is quite happy to elect such candidates with sweeping majorities while in full knowledge of their character and antecedents."

13. The august Supreme Court, in the judgment dated 25.03.2015, rendered in Civil Appeal no. 91 of 2015 titled "*Abdul Waheed Chaudhry versus Rana Abdul Jabbar, etc*" has interpreted the expressions used in Article 62(1)(f) as follows:-

*"Before turning to the decision of the learned Election Tribunal that the appellant was not qualified to contest the elections under Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973, it is expedient to shed light on Article 62(1)(f) *ibid* which reads as follows:-*

"Article 62 – ((1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-

(f) he is sagacious, righteous and non-profligate and, honest and aman, there being no declaration to the contrary by a court of law"

*While interpreting Article 62(1)(f) *ibid*, the terms 'ameen', 'righteous' and 'honest' have been defined by the courts in multiple judgments. In the case reported as *Maqbool Ahmed Qureshi v. Pakistan* PLD (1999 SC 484), it has been held that "the word 'Ameen' would mean honest, trustworthy, and sagacious. The principle thus deducible is that the person to be employed for rendering service should possess these two basic qualities, firstly, he should be physically and mentally capable and secondly, he should be honest and trustworthy". Similarly in the case reported as *Mobashir Hussain v. Federation of Pakistan* (PLD 2010 SC 265), the definition of 'Amin' in *The Concise Encyclopaedia of Islam*, Pg*

41 was quoted as: 'al-Amin. A name of the Holy Prophet (May Peace and Blessings be Upon Him), give to him by the Quraysh before the revelation of Islam, meaning the 'Trustworthy One'. The word is used as a title for an organization official in a position of trust, with the ... treasurer of a charitable organization, a guild and so forth".

On the other hand, with respect to the word 'righteous', in the case reported as Muhammad Yousaf v. M. Irshad Sipra and others [1988 CLC 2475], it has been held that "The word 'righteous' having not been defined would be given its dictionary meaning. Word 'righteous' means morally right, just, upright, virtuous, law-abiding and per The Oxford English Dictionary, Vol. VII, Pg. 677, righteous means 'Of persons: Just, upright, virtuous, guiltless, sinless, conforming to the standard of the divine or the moral law, acting rightly or justly' and 'Of actions, etc: Characterized by justice or uprightness; morally right or justifiable.

The word 'honest' has been defined in the case reported as Ch. Altaf Hussain v. Raja M. Afzal [PLD 1986 Jour. 93] in the following terms:

*"Coming to the meaning of the terms 'honest' I would first refer to the Latin term *honeste, vivere*, the meaning which is given in Black's Law Dictionary Third Edition at page 902. The term means honourable, creditably or virtuously. It also means not to injure others and to render to every man his due. It Webster's Third New International Dictionary Volume I Edition 1971 at page 1086, the meaning of the term 'honest' are given as free from fraud or deception: legitimate, truthful, of good repute; virtuous in the eye of the society: of a creditable nature: of good reputation: characterized by integrity: adhering to principle, upright etc."*

14. In the above case, the august Supreme Court had upheld the disqualification of a returned candidate because he had obtained two national identity cards prior to the introduction of computerized CNICs. The august Supreme Court, in the case titled "*Rai Hassan Nawaz versus Haji Muhammad Ayub and others*" [PLD 2017 S.C. 70], after examining the provisions of the Act of 1976 and the precedent law has observed and held that there is a clear public interest object behind the statutory prescription for obtaining the prescribed statements and declaration. It is to ensure integrity and probity of contesting candidates. After quoting with approval a passage from the earlier judgment titled '*Muhammad Yousaf Kaselia v. Peer Ghulam*' [PLD 2016 S.C. 689], it has been held and observed as follows; -

"It is for that reason that in a number of recent judgments, this Court has treated inaccurate disclosure of proprietary and financial resources to be fatal to the election of a returned candidate. In Muhammad Ahmed Chatta v. Iftikhar Ahmed Cheema (2016 SCMR 763), the failure by a returned candidate to disclose a presumed inactive bank account and in Shamuna Badshah Qaisarani v. Muhammad Dawood (2016 SCMR 1420) the omission by a lady returned candidate to disclose her agricultural land claimed to be transferred to her brothers without evidence of the mutation were held to annul their elections."

15. It is obvious from the above that, in a nut shell, the Constitution has prescribed conditions for being eligible to hold the exalted Public office of Member of the Majlis-e-Shoora (Parliament). The object is to ensure the integrity, honesty and probity of a person who has the enviable privilege and honour to represent the constituents who have reposed trust and confidence in him or her. These provisions were unequivocally affirmed by the Majlis-e-Shoora (Parliament) when, despite protracted deliberations, Article 62(1)(f) was not interfered with while passing the Eighteenth Amendment. The Majlis-e-Shoora (Parliament), therefore, has itself set a high

bar of qualifications for being eligible to hold the public office as its Member. In a recent judgment rendered by a larger Bench of the august Supreme Court in the case titled '*Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others*' [PLD 2017 SC 265] it has been held that the expression 'honest' as used in Article 62(1)(f) refers to legal honesty, an objective concept and not mere moral or ethical honesty, the latter being subjective. It has been further held that a person cannot be disqualified under Article 62(1)(f) in the absence of an established and proven breach of a legal obligation or violation of law.

16. The question which is required to be examined and answered is the nature of the test laid down for ascertaining the type of error or non disclosure by a candidate in a nomination paper which would attract the consequences flowing from failing to meet the conditions prescribed under Article 62(1)(f) and section 99(1)(f) of the Act of 1976. The question which needs to be answered precisely is whether in the case of the said provisions the test to be applied is that of 'strict liability'. A strict liability test contemplates liability which is not based on actual negligence or intent. Would any non disclosure of information prescribed under section 12(2) of the Act of 1976 ipso facto render a person to be other than honest, sagacious, righteous, non profligate and ameen in the context of the aforementioned provisions. The august Supreme Court, in the case titled "*Rai Haq Nawaz etc versus Haji Muhammad Ayub, etc*" (supra), has observed and held as follows; -

"We, therefore, observe that any plausible explanation that exonerates, *inter alia*, mis-declaration of assets and liabilities by a contesting candidate should be confined to unintended and minor errors that do not confer

any tangible benefit or advantage upon an elected or contesting candidate."

17. However, the jurisprudence expounded by the august Supreme Court in the recent judgments appears to have elaborated the standard of the test required to be applied while examining a non disclosure in the context of Article 62(1)(f) of the Constitution. The relevant judgments in this regard are '*Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others*' [PLD 2017 S.C. 265], "*Imran Ahmed Khan vs. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan*" [PLD 2017 S.C. 692], "*Mian Muhammad Nawaz Sharif, etc versus Imran Khan Niazi*" [PLD 2018 SC 1], "*Muhammad Hanif Abbasi versus Imran Khan Niazi, etc*" [PLD 2018 SC 189], "*Mohammad Hanif Abbasi vs. Jahangir Khan Tareen*" [PLD 2018 SC 114] and lastly the recent judgment of the august Supreme Court, dated 13.04.2018 in Civil Appeal no. 233 of 2015 titled "*Samiullah Baloch versus Abdul Karim Noshewani, etc*".

18. The question regarding the test to be applied came up for consideration before a larger Bench of the Hon'ble Supreme Court and it was observed and held in the case titled "*Mian Muhammad Nawaz Sharif vs. Imran Ahmed Khan Niazi*" [PLD 2018 SC 1] as follows:-

"The argument that even if it is assumed that unwithdrawn salary constitutes an asset, omission to disclose it involving a violation of Sections 12 and 13 of the Representation of Peoples Act calls for the rejection of nomination papers or at its worst, removal of the petitioner from the public office and not his disqualification in terms of Section 99(1)(f) of the ROPA and Article 62(1)(f) of the Constitution is devoid of force when the petitioner deliberately concealed his assets and willfully and dishonestly made a false declaration on

solemn affirmation in his nomination papers. It is not something to be looked at with a casual eye and outlook. It is not only a legal duty but a qualifying test for the candidates who in the later days preside over the destiny of the people. This duty has to be performed without a taint of misrepresentation. This test has to be qualified without resorting to unfair means. Any concession at this stage or any leniency to the candidates or the person elected would be a prelude to a catastrophe in politics, which has already had enough of it. Since it is already touching the extreme, extreme measures have to be taken. The culture of passing the candidates by granting grace marks has not delivered the goods. It has rather corrupted the people and corrupted the system."

It has been further elaborated;

"The argument that the omission to disclose assets could possibly be unintentional in the circumstances of the case would have been tenable had the petitioner been a novice or a new entrant in business and politics. But where he has been neck deep in business and politics ever since early 80's it is unbelievable that he did not understand the simple principle of accounting that his accrued and accumulated salary of six and a half years was his asset and liability of the company he was an employee of."

19. The above enunciation has been reaffirmed by the apex Court in the judgment titled "*Mohammad Hanif Abbasi vs. Imran Khan Niazi*" [PLD 2018 SC 189] as follows;

"In the passage referred above, the Court is addressing an undisclosed asset, existence whereof is expressly admitted through the coffers of an entity whose financial dealings were already doubted and formed part of the network of persons and entities allegedly holding

disproportionate assets attributed to the erstwhile Prime Minister, his dependents and benamidars. It cannot, therefore, be contented that dishonesty is attributed in the said judgment without reference to any alleged design, intention, scheme, background or impropriety. Consequently, to our minds the larger Bench has not expunged the requirement of establishing the "dishonesty" of conduct of an aspirant or incumbent member of a Constitutional Legislature in order for the disqualification under Article 62(1)(f) of the Constitution and Section 99(f) of the ROPA to be attracted. Each and every word in the Constitution bears a meaning and place, which must be given effect because redundancy cannot be assigned to the Constitution. Accordingly, in earlier judgments by this Court in the matter of "dishonest conduct," violation of constitutional norms required by Article 62(1)(f) in its phrase "honest and ameen" have been deduced with caution and care."

It has been further held as follows:-

"The insistence by learned counsel for the petitioner that any error or omission in the declaration of assets by a candidate for election or a legislator incurs his disqualification under Article 62(1)(f) of the Constitution posits a wide proposition of law. If at all, this may have limited relevance where the context involves corruption or money laundering in state office, misappropriation of public property or public funds, accumulation of assets beyond known means or abuse of public office or authority for private gain. These allegations are not germane to the present case. There is no involvement here of public property or funds, abuse of public office and authority, corruption or breach of fiduciary duty. Consequently, the argument of the learned counsel for the petitioner on this score fails."

20. In the case titled "*Sheikh Muhammad Akram vs. Abdul Ghafoor*" [2016 SCMR 733] the august Supreme Court has observed that

misrepresentation or non disclosure must have been made to gain a benefit to which the candidate was not otherwise entitled to. The test, therefore, in the light of the principles and law highlighted above, could be divided into two categories. *Firstly*, those who are contesting an election for the first time and are inexperienced in this realm and, *secondly*, those who have had experience in the past and cannot be treated as a 'novice', an expression used by the august Supreme Court to draw a distinction. In the case of the latter category the standard or bar is phenomenal. Nonetheless, the existence or attribution of 'dishonesty' is not precluded. There has to be some design, intention, scheme, impropriety or benefit to be gained in non-disclosing or misrepresenting the prescribed information. It is, therefore, not a test of purely strict liability because presence of intent is not precluded. A true and forthright disclosure of material information prescribed under the law would not attract the mischief contemplated under Article 62(1)(f) of the Constitution. Likewise a non disclosure sans an element of design, scheme or intent would also not make a candidature open to be questioned if it could be shown that it was a bonafide error and that there was no intention to gain any benefit by withholding such information from the constituents. The scrutiny for the purposes of Article 62(1)(f) of the Constitution is not based on moralistic or subjective criterion. The said condition does not contemplate perfection but in simple words requires a person to be honest, reliable and trustworthy. The test laid down in the above discussed judgments acknowledges that to err is human. The requirement of making the prescribed information public under section 12 of the Act of 1976 is aimed at maintaining purity and transparency in the process of elections. In any form of democratic system the most important stakeholders are the constituents. It is the voter who has to make a choice and it is crucial for this purpose that every candidate makes a true and honest declaration, particularly when any information mentioned in the nomination paper has been challenged.

21. We will now advert to the facts and circumstances in the instant case so as to examine whether the Respondent, in the light of the above principles and law, was qualified on the touchstone of Article 62(1)(f). The Respondent has had the privilege of being declared as a returned candidate from the constituency of NA-110 in the General Elections which were held in 1993, 1997, 2002, 2008 and lastly in 2013. In his column relating to qualifications, the Respondent has declared that he holds the degree of bachelor of law. He was definitely a seasoned and accomplished politician and, by no stretch of the imagination, a 'novice' in the field of politics. He was also a law graduate and, therefore, fully understood the implications of making a false or evasive declaration. When he had signed and submitted the nomination paper on 30-03-2013, the First Contract was valid and subsisting, pursuant whereof salary or 'wage' per month was being paid by the Company, incorporated and governed under the laws of another sovereign State. The First Contract was approved by the Government of United Arab Emirates as has been confirmed by the Company in the certificate signed by the Managing Director. The relevant clauses of the First Contract have been reproduced above. The execution of the employment contract attracts, *inter alia*, the provisions of Article 120 of UAE Federal Labour Law no. 8 of 1980 which amongst other conditions makes it an obligation of the employee not to reveal any secret of the establishment in which the latter is working. The employment can be terminated if an employee remains absent from duties without a valid reason for more than twenty consecutive days, or more than seven consecutive days, in one year. A plain reading of the express terms and language incorporated and used in the First Contract unambiguously shows that it was for employment on a full time basis. The relationship between the Respondent and the Company, in the light of the expressions and terms used in the First Contract, was that of an employee and employer. This is further affirmed from the list of employees of the Company which, even today, includes the name of the

Respondent at serial no. 303. On the basis of the First Contract the Respondent was registered and issued an identification card in the category of 'labour' by the Ministry of Labour of the United Arab Emirates. Moreover, this status of the Respondent made him eligible for a resident visa and, accordingly, an '**Iqama'** was issued in his favour. Employment was essentially one of the main occupations of the Respondent when he had executed the nomination paper. The Respondent was admittedly paid salary per month on the basis of the First Contract. Besides influencing the minds of the constituents, serious questions regarding conflict of interest would have been raised if disclosure regarding the nature of the employment and the terms and conditions had been made in the nomination paper. In column 8 of the nomination paper only 'Business' was declared as an occupation. A vague and obscure figure of Rs.6.820 million was shown in the statement of assets and liabilities as foreign remittances. This vagueness was strongly challenged by the other contesting candidates before the Returning Officer. It led to an appeal before the learned Election Tribunal of the Lahore High Court. In paragraph (c) under the title 'Grounds' of memo of petition in Election Appeal no. 144-A of 2013 it was explicitly objected that "respondent no. 2 has also suppressed material facts before the respondent no.1/Returning Officer as there is a huge amount of money in the shape of foreign remittance in previous three years but no source of income, nor the name of the sender or country of the sender has been mentioned". The response, or rather the plea taken by the Respondent and recorded in the order, dated 17-04-2013, was as follows;

"It is further contended that all the remittances received by the respondent no. 2 are through bank transactions and they are on the basis of business being run by the respondent no. 2 in a restaurant and are fully explained"

22. The learned counsel for the Respondent could not show a single document to even remotely suggest that the income as salary received from the employer pursuant to the First Contract had been declared in the nomination paper. It is also admitted that no attempt was made to correct the plea taken in response to the objection regarding obscurity of the foreign remittances which has been recorded in the order dated 17-04-2013 by the learned Tribunal of the Lahore High Court. "Occupation" is a generic term which, *inter alia*, includes '*business*', '*employment*' and '*profession*'. The First Contract was an employment contract wherein the status of the Respondent was that of an employee. This status continues till date despite holding the portfolio of Foreign Minister of Pakistan. It is obvious from the facts and circumstances in the instant case that the Respondent had deliberately and willfully not disclosed his status as an employee of the Company, nor receiving of the salary per month pursuant thereto, despite having been expressly put to challenge by the other contesting candidates. The validity of '**Iqama**', working as an employee of the Company and receiving a substantial salary without being physically present, which is AED 50,000/- per month under the Third Contract executed in July 2017, were some benefits gained from non disclosure. Disclosure would have led to giving up the 'Iqama' and the hefty salary paid by the Company for some advice sought telephonically by a foreign based employer from the prospective Defense and then Foreign Minister of Pakistan. We have deeply pondered but could not persuade ourselves that this deliberate and willful non disclosure was a bonafide or honest omission. The lack of honesty was established by not disclosing the employment as an occupation and the salary received per month despite the vague and obscure amount declared as foreign remittances having been specifically challenged. This would also apply to the non disclosure of the account maintained with the Bank of Abu Dhabi.

Nothing has been placed on record to show that a request had been made for closing the account before submitting the nomination paper.

23. The Respondent has taken the stance before us that the employment contracts described above had been executed merely to fulfill the requirements of the laws of the United Arab Emirates. In this regard a certificate, dated 12.04.2018, executed by the Managing Director of the Company, has also been placed on record. The contents of the said certificate have been reproduced above. The Respondent, by taking this stance, has further complicated matters for himself. In other words, the Respondent has taken a stance which tantamounts to acknowledging that he had executed a false contract with the intent of deceiving the laws of another sovereign State. The expression 'false' has been defined in the Black's Law Dictionary as follows;

"false, adj. **1.** *Untrue <a false statement>.* **2.** *Deceitful; lying <a false witness>.* **3.** *Not genuine; inauthentic <false coinage>.* *What is false can be so by intent, by accident, or by mistake.*

false, vb. **1.** *Scot law. To make or prove false.* **2.** *Archaic. FALSIFY (I).*

24. In the light of the above dictionary meaning of the expression 'false', the Respondent as well as the Company unambiguously acknowledge that the employment contracts were executed only to meet the requirements of law. Both the Company and the Respondent expressly admit that the three employment contracts were executed deliberately and knowingly that the contents were untrue. This stance unfortunately has been taken by a person who has had the privilege of being elected many times as Member of the Majlis-e-Shoora (Parliament) and pursuant to contesting the General Elections of 2013 he was later to hold the portfolios of Defense and

Foreign Affairs as Member of the Federal Cabinet. This manifests the reason for non disclosure of the occupation as an employee of the Company and receiving monthly salary, despite the amount claimed as foreign remittances having been challenged. Would a person of ordinary prudence treat this as an honest non disclosure of material information prescribed under the Act of 1976? We are afraid that the answer is an emphatic no. The Respondent had definitely concealed and withheld this material information from his constituents at the crucial time of submitting the nomination paper and later when the declarations made therein were challenged. This material non disclosure of information prescribed under section 12 of the Act of 1976 was indeed fatal. The Respondent for the first time admitted the employment contracts in response to the instant petition and the Third Contract was attached therewith.

25. We are afraid that the argument of the learned counsel for the Respondent that the employment contracts should not be interpreted according to the language and terms and conditions expressly mentioned therein because it does not manifest the actual intent of the parties is fallacious. As noted above, this argument is an acknowledgment that the employment contracts are 'false' documents. A contract executed between parties can only be interpreted on the basis of the language and terms and conditions expressly mentioned therein. The parties cannot later turn around and take a plea that the terms and conditions were false because they were never intended to be acted upon. It is now settled principle of interpretation that a contract has to be strictly and literally construed without deviating from or implying in a contract something inconsistent with its express terms. Stipulation not expressed in a contract cannot be implied. While construing a contract the words are to be taken in their literal, plain and ordinary meaning. Intent has to be gathered from the document as a whole and all parts of the deed must be examined and read together. Reliance is placed on the case

titled "*House Building Finance Corporation vs. Shahinshah Hamayun Corporation House Building Society*" [1992 SCMR 19]. In the instant case, the Company, vide certificate dated 12-04-2018, has unambiguously stated that the three employment contracts were approved by the Government of the United Arab Emirates. We have not been able to fathom why the Respondent, even after being notified as Member of the Majlis-e-Shoora (Parliament) and then as Minister of Water and Power and later Defense, had executed fresh employment contracts with the foreign based Company. This conduct definitely raises questions regarding conflict of interest. Nonetheless, the non disclosure of employment as occupation and receiving a monthly salary, particularly when the amount of Rs. 6.820 million declared as remittance was specifically challenged, was deliberate and willful and, by no stretch of the imagination, a bonafide and honest omission. It was other than an honest omission and thus attracted the consequences flowing from the non fulfillment of the conditions described under Article 62(1)(f) of the Constitution, read with section 99(1)(f) of the Act of 1976. There is also no force in the argument advanced by the learned counsel for the Respondent that since copies of the passport attached with the nomination paper also contained a copy of the '**Iqama**', therefore there was no misrepresentation or concealment of the prescribed information. '**Iqama**' is merely a residence visa issued by the immigration officials. In the instant case, the non disclosure was that of the employment as an occupation pursuant to the First Contract and the salary per month received there under. These ought to have been truly declared in the nomination paper or, at best, when the statement regarding foreign remittances and details thereof were challenged. The certificate, dated 12-04-2018, issued by the Company and the stance taken by the Respondent to the effect that the employment contracts and the contents thereof were false explains withholding of this vital information while submitting the nomination paper.

26. The learned counsel for the Respondent has laid great stress on the copy of document attached with the petition, numbered as page 65, in support of his contention that the salary amounting to AED 9000/- per month was declared in the tax returns. The said copy appears to be wealth reconciliation statement for the financial year 30.06.2011 to 30.06.2012. It shows an increase. Sources of income, inter alia, refers to foreign salary of AED 9000/- but the same is declared as not received since "O" (zero) is recorded in the relevant column. In the said financial year foreign remittances were separately declared as having accrued from (50% share/Dividend) amounting to Rs.21.793 million. Perusal of the tax return filed in respect of the corresponding tax year shows that the figures do not match with the aforementioned document. We are afraid that rather than supporting the plea taken before us, this document reaffirms that the amount of Rs.6.824 million declared in the nomination paper as foreign remittances did not include the amount of salary because the non-receipt was expressly mentioned in the relevant column of the wealth reconciliation statement. It is noted that for the purposes of Article 62(1)(f) of the Constitution a candidate cannot take a plea on the basis of sub-section 4 of section 111 of the Income Tax Ordinance, 2001 because the immunity thereunder is for tax purposes and cannot be used to defeat the legal obligations under section 12 of the Act of 1976.

27. There is yet another crucial dimension of the salary earned as income pursuant to the employment contracts. Section 102 of the Income Tax Ordinance, 2001 provides that any foreign source salary received by a resident individual shall be exempt from tax if the individual has paid foreign income tax in respect of such a salary. It is further provided that a resident individual shall be treated as having paid foreign income tax in respect of foreign source salary if tax has been withheld from the salary by the individual's employer and paid to the revenue authority of the foreign country in which the employment was exercised. Section 82 defines a "Resident

Individual" and provides that an individual shall be a resident individual for a tax year if, *inter alia*, the individual is present in Pakistan for a period of, or periods amounting in aggregate to one hundred and eighty three days or more in a tax year. Respondent, admittedly, is a Resident Individual within the meaning of Section 82 of the Income Tax Ordinance, 2001 and was required to comply with the requirements of section 102 *ibid*. We are afraid that nothing has been placed on record to show compliance with the mandatory requirements prescribed under Section 102 *ibid*. The tax returns filed in the relevant tax years and placed before us confirms that the said provisions were not complied with. We are not concerned with violations of the tax laws but the non compliance of section 102 of the Income Tax Ordinance, 2001 highlights the non-disclosure in the nomination paper of employment as an occupation and the salary received in pursuance thereof.

28. The learned counsel for the Respondent has raised objection regarding maintainability of the instant petition. The august Supreme Court in the case titled '*Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others*' [PLD 2017 S.C. 265] has observed and held as follows;:-

"While election of a member whose disqualification was overlooked, illegally condoned or went unquestioned on the nomination day before the Returning Officer or before the Election Tribunal, could still be challenged under Article 199(1)(b)(ii) or Article 184(3) of the Constitution of Pakistan, 1973 as was held in the cases of Lt. Col. Farzand Ali and others. Vs. Province of West Pakistan through the Secretary, Department of Agriculture, Government of West Pakistan, Lahore (PLD 1970 SC 98) and Syed Mehmood Akhtar Naqvi. Vs. Federation of Pakistan through Secretary Law and others (PLD 2012 S.C. 1054)"

It has been further held that;

"However, it is now settled law and has been so settled through a series of judgments of this Court including Farzand Ali v. Province of West Pakistan (PLD 1970 S.C. 98) and Muhammad Azhar Siddiqui v. Federation of Pakistan and others (PLD 2012 S.C. 774) that a Constitution Petition in the nature of a writ of quo warranto is maintainable against a Member of the Majlis-e-Shoora, if he is disqualified or did not possess or has lost his qualification, in this behalf. Such Constitutional Petitions can always be filed before the learned High Court under Article 199 of the Constitution and before this Court under Article 184(3) of the Constitution, as has been filed in the instant case.

It has been observed;

*"As noted above, the power to disqualify a member in cases where for some reason he escaped disqualification at the time of filing his/her nomination papers, but such fact/event was discovered subsequently (as is the case set up by the petitioners) can, in appropriate cases and subject to availability of admitted facts or irrefutable evidence be exercised by the High Court under Article 199 and by this Court under Article 184(3) of the Constitution on the principles laid down in Farzand Ali's case *ibid*, which has been followed by this Court in a number of recent judgments, including Mehmood Akhtar Naqvi's case *ibid*. This power can also be exercised where facts can be determined if the exercise does not require voluminous evidence and intricate and disputed questions of fact are not involved. The instant case, however, does not presently meet the said criteria."*

29. It is, therefore, obvious from the above enunciation of law that a disqualification can be challenged before a High Court under Article 199(1)(b)(ii) if it has been overlooked, illegally condoned or went unquestioned on the nomination day or before the election Tribunal. This jurisdiction can be exercised if the facts can be determined without recording of evidence and when intricate disputed questions are not involved. It is for this reason that we have solely considered those facts and events which were admitted before us. The documents discussed above were not available on the date of filing the Election Petition.

30. The learned counsel for the petitioner has also argued that it is incumbent upon this Court to refer the matter to the Speaker of the National Assembly as mandated under Article 63(2) of the Constitution. In this regard it would be appropriate to reproduce the observations of the Hon'ble Justice Ijaz ul Ahsan, recorded in the case titled "*Imran Ahmad Khan Niazi versus Mian Muhammad Nawaz Sharif and others*" [PLD 2017 S.C. 265] and the same is as follows:-

"The High Court shall therefore proceed with the matter(s) before it and decide the same in accordance with law. Article 63(2) of the Constitution provides one of the remedies to cater for a situation where a validly elected member becomes disqualified during the tenure of his membership on the basis of any of the grounds mentioned in Articles 62 and/or 63(1) of the Constitution. That is to say the ground of disqualification occurs after he has validly been elected and was not in existence (whether known to anybody or not) at the time when he filed his nomination papers and was elected. In such a situation, any other member can approach the Speaker/Chairman seeking disqualification of the member who has incurred the alleged disqualification whereupon the Speaker/Chairman and the Election Commission can exercise powers provided in Article 63(2) and (3) of the

Constitution, respectively. This means that where the ground for seeking disqualification is that a member did not qualify at the time of filing his nomination papers, but this fact (ground seeking disqualification) was discovered subsequently (which is the case of the petitioners), the matter cannot be referred to the Election Commission of Pakistan. In order for the Election Commission to disqualify a member on a reference sent by the Speaker, it must be shown that the disqualifying fact or event occurred after a member had validly been elected, which (ground) was nonexistent at the time of filing of nomination papers. The words "if any question arises, whether a member of Majlis-e-Shoora (Parliament) has become disqualified from being a member" supports this interpretation. This view is fortified by the law laid down by this Court in Muhammad Azhar Siddiqui v. Federation of Pakistan (PLD 2012 SC 774)."

31. In the case at hand the ground of disqualification has a nexus with the nomination paper and had arisen prior to the issuance of notification of the Respondent as a returned candidate. The argument of the learned counsel is, therefore, without force.

32. For what has been discussed above, we hold that the instant petition is maintainable. We declare that the Respondent was not qualified to contest the General Election of 2013 from NA 110 as he did not fulfill the conditions described under Article 62(1)(f) of the Constitution, read with section 99(1)(f) of the Act of 1976. The petition is, therefore, **allowed**. The Registrar of this Court is directed to send certified copy of this judgment to the Election Commission for de-notifying the Respondent as Member of the National Assembly of Pakistan. A copy is also directed to be sent to the Speaker of National Assembly of Pakistan for information.

33. Before parting we would like to observe that it is not a pleasant duty for any Court to be called upon to examine and exercise powers of judicial review which may lead to an elected representative being disqualified as Member of the Majlis-e-Shoora (Parliament). In the words of Hamood-ur-Rehman, Chief Justice, in the case of titled "*State vs. Zia-ur-Rehman*" [PLD 1973 SC 49], while exercising power of judicial review, the judiciary claims no supremacy over the organs and that it is a duty assigned to the Courts to see that the Constitution prevails. In the judgment rendered by a Bench consisting of seven Hon'ble Judges in the case titled "*Ishaq Khan Khakwani and others v. Mian Muhammad Nawaz Sharif and others*" [PLD 2015 SC 275] it has been held that "Thus the consistent view of the Courts has been that if the determination of any question raised before the Court requires interpretation or application of any provision of the Constitution the Court is obliged to adjudicate upon the same notwithstanding that the action impugned or the questions raised has political overtones". However, when political forces, instead of settling disputes at the political forums, particularly the Majlis-e-Shoora (Parliament) resort to the Courts, it has consequences not only for the institutions but the litigant public as well. This conduct of political forces lowers public confidence in the Legislature on the one hand and on the other hand exposes the institution of the judiciary to the controversies of adversarial politics. The political forces are expected to settle their grievances before the political forums rather than taking the precious time of the bona fide litigants awaiting justice to be dispensed. Parliament is a symbol of unity of the Federation and the peoples will. Parliament deserves utmost respect and its prestige and public confidence depends on the conduct of its Members who represent the actual stakeholders i.e. the people of Pakistan. It would have been appropriate if the political party to which the Petitioner belongs had raised the issue at hand in the Parliament before invoking the jurisdiction of this Court. It is ironic that Pakistan is amongst the few countries where a formal code of ethics and conduct for Members of the

Majlis-e-Shoora (Parliament) and the Cabinet has not been prescribed so as to avoid situations such as have been observed in the facts and circumstances of the instant petition. We have handed down this judgment with a heavy heart not only because a seasoned and accomplished political figure stands disqualified but more so because the dreams and aspirations of 342,125 registered voters have suffered a setback.

(ATHAR MINALLAH)
JUDGE

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the Open Court on 26.04.2018.

JUDGE
JUDGE

JUDGE

Asad K/*

Approved for reporting.

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