

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

C.P. No. D-4076 of 2019

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| <b>DATE</b> | <b>ORDER WITH SIGNATURE OF JUDGES</b> |
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**Present:**

**Mr. Justice Aqeel Ahmed Abbasi**  
**Mr. Justice Zulfiqar Ahmad Khan.**

Fresh case

1. For orders on Misc. No.17988/2019 (Urgent Application)
2. For orders on Misc. No.17989/2019 (Exemption Application)
3. For orders on Misc. No.17990/2019 (Stay Application)
4. For hearing of main case

**19.06.2019**

Mr. Rafiq Ahmed Kalwar, Advocate for the petitioner

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1. Urgency granted.
2. Exemption granted subject to all just exceptions.
- 3&4. Through instant petition, petitioner, who was a Councilor of Taluka Council Kashmore in the year 2005 to 2010, has impugned the condition, as prescribed in Section 2(1)(e) defining the term holder of public office and the provisions of Section 11(a), whereby "holder of public office" has been excluded from availing the benefit of such scheme of the Assets Declaration Ordinance, 2019, read with provisions of Section 2(1)(d) of Voluntary Declaration of Domestic Assets Act, 2018, whereby, according to learned counsel for the petitioner, a condition of "*preceding ten years*" has been imposed in definition of public office holder, which condition according to learned counsel, is excessive and unreasonable and has effected the right of the petitioner, who otherwise qualifies to avail such scheme as a businessman. Per learned counsel, there is no reasonable classification or *intelligible differentia*, while excluding the 'holder of public office' from the Amnesty Scheme, whereas, this scheme is only available to a particular class of persons and not to all the citizens alike, hence amounts to discrimination in terms of Article 8, 14 and 25 of the Constitution.
2. We have heard the learned counsel for the petitioner and examined the relevant provisions of Assets Declaration Ordinance, 2019 including Section 2(1)(e) and Section 11(a), as well as provisions of Voluntary Declaration of Domestic Assets Act, 2018, including Section 2(1)(d), which according to learned counsel for the petitioner, are unreasonable, arbitrary, unconstitutional and

against the principal of Natural justice and equity, and has sought a declaration that the above provisions may be declared to be ultra vires to the Constitution. It will be advantageous to reproduce the provision of Section 2(1)(e) and 11(a) of Assets Declaration Ordinance, 2019 as well as provisions of Section 2(1)(d) of Voluntary Declaration of Domestic Assets Act, 2018 as follows:-

**Assets Declaration Ordinance, 2019**

2. *Definitions.—(1) In this Ordinance, unless there is anything repugnant in the subject or context,—*

- (a) .....
- (b) .....
- (c) .....

(e) *"holder of public office" means a person as defined in the Voluntary Declaration of Domestic Assets Act, 2018 or his benamidar as defined in the Benami Transactions (Prohibition) Act, 2017 (V of 2017) or their spouses and dependents;*

11. *Ordinance not to apply to certain persons, assets or proceedings.— The provisions of this Ordinance shall not apply to—*

- (a) *holders of public office;*
- (b) *a public Company as defined under clause (47) of section 2 of the Income Tax Ordinance, 2001;*
- (c) *any proceeds or assets that are involved in or derived from the commission of a criminal offence;*
- (d) *gold and precious stones;*
- (e) *bearer prize bonds;*
- (f) *bearer securities, shares, certificates, bonds or any other bearer assets; or*
- (g) *proceedings pending in any court of law.*

**Voluntary Declaration of Domestic Assets Act, 2018**

2. **Definitions.—** (1) In this Act, unless there is anything repugnant in the subject or context,

- (a) .....
- (b) .....
- (c) .....
- (d) "holder of public office" means a person who is or has

been, during **the preceding ten years**,—

- (i) the President of the Islamic Republic of Pakistan or the Governor of a Province;
- (ii) the Prime Minister, Chairman Senate, Speaker of the National Assembly, Deputy Chairman Senate, Deputy Speaker National Assembly, Federal Minister, Minister of State, Attorney-General for Pakistan and other Law Officers appointed under the Central Law Officers Ordinance, 1970 (VII of 1970), Adviser or Consultant or Special Assistant to the Prime Minister and holds or has held a post or office with the rank or status of a Federal Minister or Minister of State, Federal Parliamentary Secretary, Member of Parliament, Auditor-General of Pakistan, Political Secretary;
- (iii) the Chief Minister, Speaker Provincial Assembly, Deputy Speaker Provincial Assembly, Provincial Minister, Adviser or Consultant or Special Assistant to the Chief Minister and who holds or has held a post or office with the rank or status of a Provincial Minister, Provincial Parliamentary Secretary, Member of the Provincial Assembly, Advocate-General for a Province including Additional Advocate-General and Assistant Advocate-General, Political Secretary;
- (iv) the Chief Justice or, as the case may be, a Judge of the Supreme Court, Federal Shariat Court, a High Court or a Judicial Officer whether exercising judicial or other functions or Chairman or member of a Law Commission, Chairman or Member of the Council of Islamic Ideology;
- (v) holding an office or post, in the service of Pakistan or any service in connection with the affairs of the Federation or of a Province or of a local council constituted under any Federal or Provincial law relating to the constitution of local councils, co-operative societies or in the management of

corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization established, controlled or administered by or under the Federal Government or a Provincial Government or a civilian employee of the Armed Forces of Pakistan:

Provided that a member of the Board, not actively engaged in the business and day-today affairs of the said corporations, banks, financial institutions, firms, concerns, undertakings or any other institution or organization shall not be treated as holder of public office under this sub-clause;

- (vi) the Chairman or Mayor or Vice Chairman or Deputy Mayor of a *zila* council, a municipal committee, a municipal corporation or a metropolitan corporation constituted under any Federal or Provincial law relating to local councils;

**Explanation.**— For the purpose of this sub-clause the expressions "Chairman" and "Vice Chairman" shall include "Mayor" and "Deputy Mayor" as the case may be, and the respective councilors therein; and

- (vii) a District *Nazim* or District *Naib Nazim*, Tehsil *Nazim* or Tehsil *Naib Nazim* or Union *Nazim* or Union *Naib Nazim*.

3. Section 2(1)(e) is the part of definition clause of Assets Declaration Ordinance, 2019, whereby, definition of holder of public office for the purpose of Assets Declaration Ordinance, 2019, has been borrowed from the definition of holder of public office as defined under Section 2(1)(d) of the Voluntary Declaration of Domestic Assets Act, 2018. It may be observed that the definition clause in any enactment or ordinance by itself does not create any charge or liability nor does it provide for any exemption or concession against such charge or liability, whereas, it only defines or explains the various legal terms for the purposes of ease and reference to other provisions of such enactment. Nothing has been shown or argued by learned counsel as to how the definition of the terms "holder of public office" as referred to hereinabove is in conflict with Constitutional provisions or contrary to any other enactment. The grievance of the petitioner in the instant case primarily relates to the **exclusion of holder of**

**public office** and the time period of ten years, during which such holders of public office, has remained in such public office, who have been excluded from the purview of Assets Declaration Ordinance, 2019, hence deprived from availing the Amnesty.

4. It may be observed that through instant petition, the petitioner has neither challenged the legislative competence of the parliament nor the authority of the President to promulgate the Ordinance, relating to Voluntary Declaration of Domestic Assets and imposition of tax thereon, however, the petitioner has alleged discrimination on the grounds that there has been no reasonable classification nor there is any intelligible differentia while, holder of public office, during preceding ten years, has been excluded from the purview of the Assets Declaration Ordinance, 2019.

5. From perusal of hereinabove provisions of law, which have been challenged through instant petition to be ultra vires to the Constitution, it has been observed that there is a long list of holders of public office which includes Prime Minister and Federal Ministers, Chief Minister and Provincial Ministers, all the Members of parliament and Provincial Assemblies, Chairman Senate, all the members of Senate, Speaker National Assembly, Chairman or Mayor of a Municipal Corporation, Metropolitan Corporation and its Members, District Nazim and all the Members of Union Council etc. and out of such long list only petitioner, who remained as Councilor of Town Committee Kashmore has approached this Court with the plea that exclusion of holder of public office from the purview of the Amnesty relating to Assets Declaration amounts to discrimination, whereas, there is no reasonable classification or intelligible differentia while excluding the holder of public office as a class. We do not see any discrimination or unreasonableness while creating or treating the holder of public office as a separate class, as we are of the opinion that a councilor is a holder of public office, who is elected through voting by the public as their representative at the level of Local Government, whereas, he is entrusted with public funds and responsible to perform certain functions for the public at large within the local limits. Accordingly, we do not find any substance in the instant petition, which is dismissed in limine along with listed application. It may however, be clarified that

the constitutionality or validity of aforesaid enactment and promulgation of the Ordinance relating to Assets Declaration, has been examined only to the extent of petitioner with particular reference to provisions of Section 2(1)(e), Section 11(a) of Assets Declaration Ordinance, 2019 and Section 2(1)(d) of Voluntary Declaration of Domestic Assets Act, 2018.

Judge

Judge

Barkat Ali, PA