

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ
MR. JUSTICE ZAFAR AHMED RAJPUT,
MR. JUSTICE ABDUL MOBEEN LAKHO

C.P. Nos.D-2781 & 2782 of 2024

Petitioner in
CP No.D-2781/2024 : Mehboob Ali Channa
present in person.

Petitioner in
CP No.D-2782/2024 : Aamir Ali present in person.

Respondent No.2 : Mr. Suhail Muhammad Leghari
Registrar of Sindh High Court.

Respondent No.3 : Province of Sindh through
Mr. Saifullah, Asst. A.G.
Sindh alongwith Ms. Deeba
Ali Jaffri, A.A.G.

: Law, Parliamentary Affairs &
Criminal Prosecution Depart.
Government of Sindh through
Ms. Manzooran Gopang and
Mr. Abdul Sattar Pathan,
Law Officers.

Date of Hearing : 10th June, 2024.

Date of Announcement
of Decision : 20th June, 2024.

**_*_*_*_

ORDER

1. This larger bench has been constituted in view of Para 9 of Order dated 21.05.2024 passed by a Division Bench at Circuit Court Larkana in C.P. No.D-2781 & 2782 of 2024, which reads as follows: -

“9. In view hereof and as reiterated by the recent order of a five member bench of the Supreme Court in SSGC case, the office is instructed to place these petitions before the honorable Chief Justice for formation of a larger bench to consider the matter and adjudicate issues including the those identified per paragraphs 2 and 5 supra.”

2. Pursuant to above, Office Note was placed before the Hon'ble Chief Justice of this Court, wherein, following order was passed on 25.05.2024: -

“Larger bench comprising of Chief Justice, J-Zafar Ahmed Rajput and J- Mobeen Lakho is constituted to hear the matters. The same may be fixed in the first week of June, 2024 after notice to all concern and Advocate General Sindh at 11:30 AM.”

3. When after having perused the record and the order dated 21.05.2024 passed by the Divisional Bench, Circuit Court Larkana following order was passed: -

“Mr. Suhail Muhammad Laghari, learned Registrar of this Court has shown appearance and submits that pursuant to the Court's order passed by a Divisional Bench of this Court at Circuit Court Larkana on 21.05.2024, he has furnished his explanation/reply, whereas, while accepting the explanation, the Hon'ble Bench has been pleased to pass an order on 29.05.2024, whereby, explanation/reply duly furnished has been accepted and the show-cause notice has been discharged in the following terms, (copy of the order has been placed on record).

“Mr. Laghari submits that no non-compliance was ever intended and none can even be contemplated. It is further submitted that the replies, as sought vide order dated 07.5.2024 in Constt. Petition No.D- 217 and 218 of 2024 are being filed at the Principal seat since, per orders of this bench, the cases have already been referred to the Hon'ble Chief Justice at Karachi to be heard by a larger bench.

It is the considered view of this Court that the reason for non-compliance has been adequately explained and the same is hereby accepted. The show cause notice stands discharged. A copy of this order may be kept on file, however, the show cause notice, its reply and/ or this order need no longer be placed in the service file of Mr. Suhail Muhammad Laghari.”

It has been prayed that in view of above factual and legal position, the adverse remarks as contained in Para 11 of the order dated 21.05.2024 may be expunged or the same may not be treated as part of the proceedings before this larger bench.

*This Bench is of the tentative view that while hearing the matter on judicial side, the Courts are required to adjudicate upon the legal issues and the points for consideration, as agitated before it, after hearing the relevant parties in accordance with law. However, in exceptional cases, during course of hearing the matter, in case of any disruption of Court proceedings, or non-compliance of the Courts' orders by any of the party to the proceedings, contempt of Court proceedings can be initiated after notice or show cause notice, against the delinquent officials or the party in accordance with law, besides deciding the lis before the Court on merits. In the instant case, prima facie, it appears that while disagreeing with the previous decision(s) of the Hon'ble Division Benches of this Court, while placing reliance in the case of **MULTILINE ASSOCIATES v. ARDESHIR COWASJEE [1995 SCMR 362 / PLD 1995 SC 423]** matter has been referred to the Chief Justice for constitution of a larger bench, however, while doing so, directions have been issued for issuance of show-cause notice of contempt to the Registrar of this Court on the pretext that the order passed by the Hon'ble Division Bench in the above petitions requiring the Registrar of this Court to submit policy relating to the appointment of deceased / son-quota, if any, in the District and Sub-ordinate Courts, Sindh was flouted, therefore, show cause notice was directed to be issued to the Registrar, whereas, in addition to issuance of show-cause notice, further directions have been issued in the following manner: -*

"A copy of this order and the consequent show cause notice shall be placed in the service file of Mr. Suhail Muhammad Leghari (Registrar) forthwith."

Without dilating upon the proprietary of the aforesaid directions, prima facie it appears to be beyond the scope of lis pending before the Hon'ble Division Bench in the above petitions, which otherwise are premature, as no explanation/reply to this effect was sought or considered while issuing the aforesaid directions. Moreover, without ascertaining the factual position regarding service of Court's orders upon the Registrar, or making out a prima facie case of deliberate or willful non-compliance or defiance of Court's order, which may otherwise constitute contempt of Court, such extreme action for issuance of contempt notice should have been avoided while exercising due caution and showing judicial restraint. Therefore, in order to keep the record straight we are inclined to expunge

the aforesaid directions as contained in Para 11 of Order dated 21.05.2024. We need not dilate upon the propriety of the contents of Para 11 of the order regarding issuance of show cause notice to the Registrar of this Court, in view of the fact that explanation/reply furnished by the Registrar has been duly accepted and the show cause notice has been discharged and further directions have been issued to the effect that the aforesaid order may not be placed in the service file of Mr. Suhail Muhammad Laghari (Registrar). However, it is observed that while hearing instant matters, Para 11 of the decision dated 21.05.2024 passed by the Division Bench at Circuit Court Larkana shall be treated as of no consequence or effect. We are also concerned with regard to the observations made in Para 10 of the aforesaid decision to the following effect: -

“This practice would defeat the administration of justice and upset the integrity and sanctity of the Court. Therefore, this matter may be placed before the competent authority / honorable Senior Puisne Judge to consider the likelihood and severity of disciplinary proceedings against officers concerned.”

We are of the tentative view that Additional / Deputy Registrar(s) while entertaining any matter to be placed before the Court exercises the administrative authority, whereas, in case of allegation regarding non-compliance of Rule 6 of the Roster set by the Chief Justice of this Court the matter should have been referred to the Chief Justice through Registrar to be taken up on Administrative Side, instead of referring the matter to the Hon'ble Senior Puisne Judge, who is authorized to deal with the complaints regarding misconduct of the judicial officers, while performing judicial functions. Whereas, it has been intimated by the Registrar that office objections were raised by the Additional Registrar in the above petitions in the following terms:

“Advocate to satisfy the Court as to how he has made Learned Registrar High Court of Sindh, Karachi as a respondent/Party.”

It appears that the onus of Additional Registrar appears to have been discharged once objection as to maintainability of the petition at Circuit Court Larkana was raised. It has been further observed that similar objections were also raised in C.P. No.D-570/2023. Learned Registrar submits that he has already filed reply/statement on behalf of Registrar, High Court of Sindh,

wherein, policy relating to the appointment of sons of deceased, retired and serving employees of District and Sub-Ordinate Courts in Sindh has also been annexed alongwith decision of the Administration Committee of the High Court of Sindh to this effect, whereas, comments on behalf of the District and Sessions Judge, Larkana have also been filed, which are available on record.

*In view of hereinabove facts and circumstances of the case, we are constrained to suspend the operation of the aforesaid observations made in Para 10 of the order passed by the Divisional Bench of this Court at Circuit Court Larkana in the above petitions. Since the learned AAG is already on Notice, whereas, representative of Judicial District Larkana present in Court have also filed their reply, therefore, by consent, these matters be fixed on **10.06.2024**, to be taken up **at 11:30 A.M.** In the meanwhile, intimation notice be issued to the petitioner and his counsel in C.P. No.D-2781/2024 for the next date of hearing, whereas, the attendance of the representative of District & Sessions Court, Larkana is dispensed with till further orders.”*

4. The matters were again taken up for hearing on 10.06.2024 and both the petitioners were present in persons, who have prayed that relief being sought in the instant petitions for appointment in the District Judiciary Sindh on the basis of son quota is based on the previous judgments of the learned Divisional Benches of this Court as well as policy/directive issued from time to time by the Hon'ble Chief Justice of this Court based on the decision of the Administration Committee as well, whereas, such policy/directives have been communicated to all the District & Sessions Judges in the Province of Sindh by the Registrar of this Court to be implemented while considering the appointment in the District Judiciary in Sindh on the basis of son quota, which include the deceased's son quota, quota of retired and serving employees, as the case may be. It has, therefore, been prayed that keeping in view the policy/directive issued by the Hon'ble Chief Justice of this Court, duly approved by the various decisions of the Divisional Benches of this Court, petitioners are also

entitled to the relief being sought under similar circumstances of the case.

5. Learned Registrar of this Court present in Court has drawn the attention to his reply/statement filed on 03.06.2024, wherein, according to Registrar, factual and legal position with regard to the policy/directive of the High Court of Sindh and the relevant rules of Sindh Judicial Staff Services Rules, 1992 has been mentioned, which prima facie supports the contention of the petitioners to the extent that there is policy/directive issued by the Hon'ble Chief Justice of this Court regarding appointment in the District & Sub-ordinate Courts in Sindh while observing son quota. It will be advantageous to reproduce such reply/statement filed by the Registrar on 03.06.2024, which reads as follows: -

**REPLY/STATEMENT OF RESPONDENT (REGISTRAR,
HIGH COURT OF SINDH)**

In compliance with the orders dated 07.05.2024 & 21.05.2024 passed Application No. D-01 of 2024 (in C.P No. D-217 & 218 of 2024), the in the above matters and order dated 29.05.2024 passed in Contempt undersigned being Respondent submits his reply / statement on the basis of record as follows:-

1. *That this Court had earlier approved policy regarding appointments on son / deceased quota basis for the employees of High Court Establishment through Administrative Committee meeting of this Court held on 14.11.2009 and in the light of decision of the said Committee, the same policy was adopted for the employees of District Judiciary of Sindh as per order of the then Hon'ble Chief Justice dated 24.02.2010, which was duly communicated to all the District and Sessions Judges of Sindh vide letter No. Admin/XII-Z- 14-II/438 dated 23rd March 2010. A copy whereof is attached herewith and marked as **Annexure-A** for kind perusal of the Hon'ble Court.*
 2. *That the application for appointment by son of one deceased employee of Judicial District, Sukkur was received which was placed and the above policy came under discussion and in continuation of earlier policy further directions were issued and*
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communicated to all the District and Sessions Judges of Sindh vide letter No. HC/ADMI/00565 dated 23rd July, 2012. A copy whereof is attached herewith and marked as **Annexure-B** for kind perusal of the Hon'ble Court. In this regard another letter dated 04.03.2013 is available on record which was issued for maintaining record of applications for appointment on son quota basis of retired employees, the same letter is attached herewith and marked as **Annexure-C**.

3. That thereafter instructions for appointment in District Judiciary of Sindh was issued on the direction of the then Hon'ble Chief Justice for strict compliance during the process of appointment of staff in District Judiciary of Sindh which were sent to all the District and Sessions Judges in Sindh by letter No.HC/ADMI/Circ. Dated 3rd August, 2023. A copy whereof is attached herewith and marked as **Annexure-D** for kind perusal of the Hon'ble Court.
4. Attention is also respectfully invited towards Rule-4 of the Sindh Judicial Staff Services Rules, 1992, which is reproduced hereunder for the sake of convenience and ease of reference:-

4. Appointing Authority.- Appointments to the service in a Sessions Division shall be made by the District Judges for the Sessions Division:

Provided that appointments to the service in the Small Causes Courts shall be made by the Judges, small Causes Court:

Provided further that appointment shall be made in accordance with:-

(a) The provisions of the Sindh Civil Servants (Appointment, promotion and transfer) Rules, 1974, so far as they are applicable to the posts in the service and are not inconsistent with these rules, and such other general rules as Government may frame from time to time; and (b) any instructions which the High Court may issue.

The above instructions were issued pursuant to the above Rule 4 (b), through letters (supra) were duly issued by order of the then Hon'ble Chief Justice from time to time to all the District & Sessions Judges across the Sindh province to follow in letter and spirit. A copy of said Sindh Judicial Staff Service Rules, 1992 is attached herewith and marked as **Annexure-E** for kind perusal of the Hon'ble Court.

5. That except the aforementioned policy letters, this Court has never issued any such direction in respect of the above subject matter to all District and Session Judges across the Province, which comes in the
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way of recruitment process of the children of the retired / deceased employees of District Judiciary. There is no order restraining to follow the said policies which as per record are still in the field.

The above reply / statement is submitted as directed.

6. It has been noted that alongwith aforesaid reply/statement, copies of letters dated 03.03.2010, 23.07.2012, 04.03.2013 and 03.08.2023 issued by the Registrar of this Court, whereby, policy as to the appointment of son/deceased/retired and surviving employees of District & Subordinate Courts in Sindh has been communicated to all the District and Sessions Judge in Province of Sindh with further directions to be strictly followed with the decision of the Administration Committee of this Court in their respective District Judiciary Sindh. For the convenience, it will be advantageous to reproduce the aforementioned letters issued by the Registrar of this Court from time to time regarding policy as to the appointment of son quota basis of deceased, retired and serving employees in District Judiciary Sindh, which reads as follows: -

No. **Admin/XII-Z-14-11/438**
Dated: **3rd March, 2010**

From:

The Registrar, High Court of Sindh, Karachi.

To:

*All the District & Sessions Judges
in the Province of Sindh.*

Subject:

Policy as to the appointment of Sons of Deceased, Retired and Serving Employees of District and Sub-Ordinate Courts in Sindh.

In supersession of this Court's letter No.Admn/XII-Z-14 dated 26th April, 1993 on the subject noted above and to say that the Hon'ble Administration Committee of the Court has been pleased to pass the following resolution in its meeting held on 14.11.2009 on the captioned issue:

"The Hon'ble Chief Justice proposed that vacancies in BPS-2 to BPS-7 in the High Court be filled up as follows:-

- a) First preference be given to children of those employees of High Court who expired during service.*
 - b) Second preference would be given to children of those employees who expired after retirement.*
 - c) Third preference to be given to children of retired employees.*
 - d) Last preference would be given to children of serving employees.*
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The above proposal was approved with the condition that only one male or female child of an employee would be accommodated.....”

Pursuant to the above decision, the Hon'ble Chief Justice has been pleased to order that all the District and Sessions Judges in the province of Sindh will strictly follow the aforesaid decision of the Administration Committee of this Court in their respective Judicial Districts in future. However, in the case of appointment to the post of Junior Clerk (BPS-7) all the rules and regulation shall be followed.

Sd/- 3/3
(ABDUL MALIK GADDI)
INCHARGE REGISTRAR

Endt: No.Admin/XII-Z-14-II Karachi dated 2nd March, 2010.

Copy forwarded for information and necessary compliance to:

1. The Director I.T. Department of this Court.
2. The Additional Registrar, Sukkur Bench, Circuit Court Hyderabad and Larkana.
3. The Assistant Registrar, Gazette Branch of this Court.
4. Office Order File.

(Noor Ahmed Kalhoro)
Assistant Registrar (Administration)
For: **REGISTRAR**

No. **HC/ADMI/00565**
Dated: **23rd July, 2012**

From: The Registrar, High Court of Sindh, Karachi.

To: All the District & Sessions Judges,
In Sindh.

Subject: **POLICY AS TO THE APPOINTMENT OF SONS OF DECEASED, RETIRED AND SERVING EMPLOYEES OF DISTRICT & SUB-ORDINATE COURTS IN SINDH.**

In continuation to this Court's letter dated 03.03.2010 on the subject noted above, I am directed to inform you that the Hon'ble Chief Justice has been pleased to pass the following order in respect of appointment on son quota basis;

“There should be a fixed quota for employing children of the deceased/retired employees. It should be applicable to employees of Grade 1 to 5 only. The employment in the higher grade, should be strictly on merits. The children of those employees should be given preference who expired while in service as sudden loss of earning member of a family creates hardships for the dependents. Those employees who have retired or have died after retirement are support to have already planned for their children while they were in service. Therefore, out of the total quota say about 20% the children of those employees, who have expired during service, should be given preference. On remaining 80% the Appointment

Authority be free to appoint persons who are most capable for the post. In the quota the children of the deceased employees should be given preference over children of retired employees”.

You are therefore, directed to follow the above order while considering applications for appointment.

Sd/- 23-7-2012
(Faheem Ahmed Siddiqui)
I/C: REGISTRAR

No. **HC/ADMI/00565**
Dated: **4th March, 2013**

From:

The Registrar, High Court of Sindh,
Karachi.

To:

All the District & Sessions Judges,
Sindh.

Subject: APPOINTMENT ON SON QUOTA BASIS.

I am directed to refer to the subject noted above and to inform you that the Hon'ble Chief Justice has been pleased to pass the following order:

“All the learned District & Sessions Judges be requested to maintain record of application of retired employees whose none of the family member is in employment of judiciary, their one child may be considered when any vacancy occurs on merit”.

You are, therefore, requested to comply on the above direction of Hon'ble Chief Justice.

Sd/-
(Zulfiqar Ali Shaikh)
Deputy Registrar (Admin)
For: **REGISTRAR**

No. **HC/ADMI/Circ.**
Dated: **3rd August, 2023**

To:
All the District & Sessions Judges,
In Sindh.

SUBJECT: INSTRUCTIONS FOR APPOINTMENT IN DISTRICT JUDICIARY OF SINDH.

In exercise of powers conferred by section 26 of the Sindh Civil Servants Act, 1973, read with government of Sindh Notification No. SRO.1(S&GAD)2/9- 92, dated 9th August, 1993 and Rule-4 (b) of Sindh Judicial Staff Service Rules, 1992 the Honourable Chief Justice of the High Court of Sindh has been pleased to issue following instructions for strict compliance during the process of appointments:

1. *Advertisement for inviting the applications for all posts shall be published in three widely circulated dailies in English, Urdu and Sindhi language. The closing date should not be less than 15 days of publication of advertisement. Once the advertisement is published, the same shall also be affixed on notice boards of courts. Copies of newspapers containing the advertisement shall be transmitted to the Registrar, High Court of Sindh, Karachi alongwith the order of constitution of the selection committee comprising at least three judicial officers from the district.*

2. *The total number of vacant posts in each category should be specifically mentioned in the advertisement.*

3. *The disability quota should be strictly adhered to as provided in section 5 of Sindh Civil Servants Act, 1973. Such fact should also be mentioned in the advertisement specifically. Female candidates should also be provided equal opportunity to participate, which fact should also be mentioned in the advertisement.*

4. *Previous instructions for hiring the services of reputable Testing Services for different categories of posts shall be strictly followed and mentioned in the advertisement.*

5. *The process of scrutiny of application for eligible and ineligible candidates should be completed as early as possible not later than 30 days of closing date. The lists of eligible and ineligible candidates must be uploaded on the website by inviting objections, if any, on such scrutiny within 10 days of publication of the list on the website of concerned District Court and notice boards.*

6. *Initial test shall be conducted for each post and the result indicating the marks obtained with minimum passing marks shall be uploaded on the website and the notice boards within 03 working days after conducting of the test. Similar process shall be followed for tests conducted through concerned Testing Services.*

7. *The skill tests for relevant posts i.e. shorthand and typing test shall be taken on computer through Shorthand and Typing software so that the uniform marking system is adopted through such software. The printed copy of shorthand test and typing test containing the marks calculated by the software shall be printed soon after the taking of the*

test. In this regard, necessary guidance may be obtained from the IT Department of High Court of Sindh.

8. For the post of Stenographer, skill tests including shorthand and typing test shall be taken from those candidates who have qualified the initial test. Marks shall be awarded to all such candidates keeping in view the criteria of words per minute for both tests. The result of such skill test mentioning the minimum passing marks shall be uploaded on the website and notice boards within 03 working days after conducting the test.

9. For the post of Junior Clerk, English Clerk or other clerical posts, skill tests including typing test shall be taken from those candidates who have qualified the initial test. Marks shall be awarded to all such candidates keeping in view the criteria of words per minute for both tests. The result of such skill test mentioning the minimum passing marks shall be uploaded on the website and notice boards within 03 working days after conducting the test.

10. Only those candidates who secured minimum passing marks (i.e. achieved the minimum threshold of words per minute in shorthand and typing) shall be called for interview by the Selection Committee. While interviewing the candidate, each member of the Selection Committee shall assign the marks to every candidate and average of such marks shall be worked out

11. It must be ensured that initial test is assigned 25% weightage, skill test is assigned 50% weightage and the interview is assigned 25% weightage while compiling the final results. The final result sheet as per the above mentioned formula and merit shall be placed and affixed on notice boards within 3 days of the conclusion of the interview by the Selection Committee.

12. After issuance of Final result sheet, the same shall be transmitted to the Registrar, High Court of Sindh, Karachi explaining the detailed procedure followed by the Committee and annexing therewith the result sheets of each test duly signed by the Selection Committee.

13. The offer of appointment shall only be issued to those successful candidates who are eligible in all respect and their documents including educational documents, PRC, domicile and other certificates are verified from the concerned issuing authorities.

14. In case strict application of rules causes any undue hardship to any candidate then such case for relaxation of rules may be sent to Registrar High Court of Sindh containing justified reasons for relaxation of rules and thereupon the matter shall be placed before Honourable Chief Justice. The detailed reasons should indicate that the candidates who otherwise were eligible could not qualify the required criteria as per

rules and the recommended candidate qualifies all the criteria having some exceptional abilities to be considered for relaxation of rules.

You are therefore, required to follow the above instructions of the Hon'ble Chief Justice in true letter and spirit.

Sd/-
(ABDUL RAZZAQ)
REGISTRAR

7. From perusal of hereinabove Sindh Judicial Staff Services Rules, 1992, it is clear that appointments to the service in a Sessions Division are to be made by the concerned District Judges in accordance with the provisions of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 so far as they are applicable to the posts in the service and are not inconsistent with these rules, and such other general rules as Government may frame from time to time and also in accordance with "any instructions which the High Court may issue". It is admitted position that instructions have been issued by the High Court from time to time through Registrar in the shape of policy decision of the Administration Committee of the High Court relating to the appointment of son of deceased, retired and serving employees of District & Subordinate Courts in Sindh through letters dated 03.03.2010, 23.07.2012, 04.03.2013 and 03.08.2023, which, besides being also decision of the Administration Committee of the High Court, are also instructions issued. It appears that the aforesaid factual and legal position escaped the attention of the Hon'ble Division Bench, Circuit Court Larkana while observing in Para 2(c) and (d) in order dated 21.05.2024 passed in the aforesaid petitions to the following effect: -

(c) It has been noted from the edict that there is no statutory backing for the claim of son quota sought to be enforced in the judicial establishment. The pertinent rules, including the Sindh Judicial Staff Service Rules, 1992, also contain no provision for such dispensation.

(d) *The edict relies upon three letters manifestly issued on the administrative side, dated 03.03.2010, 23.07.2012 and 04.03.2013, referring to a proposal for giving preference to employees' children in appointment and record keeping in so far as such children are concerned. There is no reference to any policy ever having been framed or enacted in such regard.*

8. In view of hereinabove facts and circumstances of the instant cases, the policy decision of the Administration Committee of the High Court communicated to all the District & Sessions Judges, Province of Sindh from time to time through policy decision read with Rule 4 of the Sindh Judicial Staff Services Rules, 1992 relating to the appointment of son of deceased, retired and serving employees of District & Subordinate Courts in Sindh, is the policy as well as instructions issued by the High Court, as the backing of Administration Committee's decision as well as Rule 4 of the Sindh Judicial Staff Services Rules, 1992, therefore, cannot be disputed or questioned of the Administration Committee's policy decision. Reference in this regard can be made in the case of **GUL TAIZ KHAN MARWAT v. THE REGISTRAR, PESHAWAR HIGH COURT, PESHAWAR AND OTHERS [PLD 2021 SUPREME COURT 391]**, wherein, it has been held as under: -

"19. We differ with the view taken in the said judgment in the meaning, interpretation, scope, extent and interplay of Articles 199 and 208 of the Constitution. Keeping in view Articles 176, 192, 199 and 208 of the Constitution, and upon a harmonious interpretation thereof, in our c humble opinion, no distinction whatsoever has been made between the various functions of the Supreme Court and High Courts in the Constitution and the wording is clear, straightforward and unambiguous in this regard. There is no sound basis on which Judges acting in their judicial capacity fall within the definition of 'person' and Judges acting in their administrative, executive or consultative capacity do not fall C within such definition. In essence, the definitions of a High Court and Supreme Court provided in Articles 192 and 176 supra respectively are being split into two when the

Constitution itself does not disclose such intention. It is expressly or by implication a settled rule of interpretation of constitutional provisions that the doctrine of casus omissus does not apply to the same and nothing can be "read into" the Constitution. If the framers of the Constitution had intended there to be such a distinction, the language of the Constitution, particularly Article 199 supra, would have been very different. Therefore to bifurcate the functions on the basis of something which is manifestly absent is tantamount to reading something into the Constitution which we are not willing to do. In our opinion, strict and faithful adherence to the words of the Constitution, specially so where the words are simple, clear and unambiguous is the rule. Any effort to supply perceived omissions in the Constitution being subjective can have disastrous consequences. Furthermore, the powers exercisable under the rules framed pursuant to Article 208 supra form a part and parcel of the functioning of the superior Courts. In other words, the power under Article 208 supra would not be there but for the existence of the superior Courts. This 'but for' test, as mentioned by the learned Attorney General, is pivotal in determining whether or not a particular act or function carried out by a Judge is immune to challenge -under the writ jurisdiction under Article 199 supra. This test is employed by Courts in various jurisdictions to establish causation particularly in criminal and tort law but for the defendant's actions, would the harm have occurred? If the answer to this question is yes, then causation is not established. Similarly in the instant matter, but for the person's appointment as a Judge (thereby constituting a part of a High Court or the Supreme Court under Articles 192 and 176 supra respectively), would the function in issue be exercised? If the answer to this question is yes, then such function would not be immune to challenge under Article 199 supra. In this case with respect to the administrative, executive or consultative acts or orders in question, the answer to the "but for" test is an unqualified no, therefore such acts or orders would in our opinion be protected by Article 199(5) of the Constitution and thereby be immune to challenge under the writ jurisdiction of the High Court."

9. Accordingly, the findings as recorded by the Hon'ble Division Bench, Circuit Court Larkana in the aforesaid petitions vide order dated 21.05.2024 in Paragraph No.2(c) and (d) as well as highlighted
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portion of Para 5 of the aforesaid order are contrary to the factual and legal position attracted in the instant case, hence are declared to be of no legal consequences. It has been further observed that Hon'ble Division Bench, Circuit Court Larkana while passing order dated 21.05.2024 has been pleased to critically dilate upon the merits of the various Divisional Benches of this Court in order to make out a case for disagreeing with the policy decision and to refer the matter for constitution of the larger bench to resolve the controversy in view of the dicta laid down by the Hon'ble Supreme Court of Pakistan in the case of **MULTILINE ASSOCIATES v. ARDESHIR COWASJEE [1995 SCMR 362 / PLD 1995 SC 423].**

10. However, instead of formulating the legal proposition based on the various decisions by the Divisional Benches of this Court as referred in the impugned order and the legal grounds for taking a different view therefrom in the aforesaid petitions, Hon'ble Bench, Circuit Court Larkana has mainly objected to the very entertainment of the Constitution Petitions by the Hon'ble Division Bench of this Court, other than at Principal Seat at Karachi in violation of Rule 6 of the Roster set by the Hon'ble Chief Justice, while observing that there seems no directions issued by the Hon'ble Chief Justice in the respective files, who have decided such petitions without dilating upon this aspect of the matter. We are of the opinion that Hon'ble Division Bench, Circuit Court Larkana would have examined this aspect of the matter in the aforesaid Constitution Petitions during course of the hearing to the extent of lis pending before it, whereas, the cognizance could not have been taken in respect of the previous decisions by the various Division Benches of this Court, which have attained finality, whereas, the objections raised in these petitions in the above terms appears to have neither been agitated, nor decided by the Division

Bench in the earlier decisions, as referred to hereinabove. Once a decision is made by Court on merits, unless it is reviewed or set aside by the Competent Court in appeal or revision, attains finality and cannot be subject to re-examination or scrutiny by subsequent bench of equal strength, however, only to the extent where principle as enumerated in the case of Multiline Associates (supra) is attracted to the facts and legal position requiring a different view or decision by the constituting larger bench.

11. It appears that there is no statutory backing regarding hearing of the Constitution Petitions by different Division Benches of this Court either at Principal Seat at Karachi, Bench at Sukkur, Circuit Courts at Hyderabad, Larkana and Mirpurkhas, nor any Notification to this effect has been issued by the High Court. However, as per Rule 6 of the Roster set by the Hon'ble Chief Justice of this Court the cases in which the Registrar / MIT is party, are required to be fixed before the Bench of the Hon'ble Chief Justice of this Court, or before the bench with the permission of the Hon'ble Chief Justice of this Court. Whereas, it appears that on account of some confusion, recently in the month of May 2024, some references have been received from the different Circuit Benches of this Court seeking clarification to the effect, as to whether Rule 6 of the Roster set by the Hon'ble Chief Justice regarding fixation of such cases, is applicable to the cases pertaining to the Principal Seat Karachi only or also to the cases filed before Circuit Courts at Hyderabad, Larkana and Mirpurkhas and Bench at Sukkur. Whereas, on such references, it has been clarified by the Chief Justice of this Court that Rule 6 of the Roster is applicable to all the Benches and Circuit Courts, whereas, in order to avoid inconvenience to the litigant parties and counsel, permission has been accorded on such references to decide petitions relating to

appointment of sons of deceased, retired and serving employees in the District & Subordinate Courts in Sindh keeping in view the policy decision of the Administration Committee of the High Court and instructions issued by the High Court from time to time in this regard.

12. Accordingly, having clarified the factual and legal position in the above terms, we deem it appropriate to send these petitions to the Circuit Court Larkana to be decided by the respective division bench, who may decide the fate of both these petitions, however, keeping in view the facts, circumstances and merits of the case in accordance with law, whereas, the order passed by this larger bench shall have no bearing as to the merits of the case.

CHIEF JUSTICE

JUDGE

JUDGE

Farhan/PS
