IN THE HIGH COURT OF SINDH, AT KARACHI

CONSTITUTION PETITIONS NO. D-1365 of 2012

PRESENT:

Mr. Justice Faisal Arab; &

Mr. Justice Mohammad Shafi Siddiqui

M/s Syngenta Pakistan Ltd……. Petitioner

Versus

S.M. Asif & 2 others…… Respondents

Mr. Shahid Anwar Bajwa, Advocate.

Mr. Ejaz Ahmed, amicus curiae.

Ms. Meena Kumari, Advocate for the petitioner.

Mr. Abdul Ghaffar, Advocate.

Ms. Iqra Salim, State Counsel.

Date of hearing: 22.05.2013

Date of this Order: 31.05.2013

O R D E R

Faisal Arab, J: Mr. Shahid Anwar Bajwa, a permanent judge of this Court who retired recently has filed *Vakalatnama* in this and other connected cases and claimed right of audience. We asked him isn't there a prohibition under Article 207 (3) (b) of the Constitution of Pakistan on ex-judges of the High Court from pleading or acting before the Court of which they were permanent judges? He replied that such prohibition is confined only before the Courts that are subordinate to the High Court and not before the High Court itself.

2. Mr. Bajwa then read Article 207(3) (b) of 1973 Constitution and made its comparison with Article 166(3) of the 1956 Constitution. Articles 166(3) and 207 are reproduced below:-

Article 166(3) of 1956 Constitution read as follows:

*"**166(3)**. A person who has held office as a permanent Judge of a High Court shall not plead or act before that court or any court or authority within its jurisdiction".*

Article 207 of 1973 Constitution read as follows:

*"**207**. Judge not to hold office of profit, etc. (1) A Judge of the Supreme Court or of a High Court shall not—*

(a) Hold any other office of profit in the service of Pakistan if his remuneration is thereby increased; or

(b) Occupy any other position carrying the right to remuneration for the rendering of service.

(2) ……..

(3) A person who has held office as a permanent Judge—

(a) of the Supreme Court, shall not plead or act in any court or before any authority in Pakistan;

(b) of a High Court, shall not plead or act in any Court or before any authority within its jurisdiction; and

(c) ……

3. Mr. Bajwa elaborated his contention by stating that the phrase *"shall not plead or act in any Court or before any authority within its (High Court's) jurisdiction"* as contained in Article 207 (3) (b) of the Constitution speaks of the restriction that is only applicable before the Courts that are subordinate to the High Court and not before the High Court, whereas in Article 166(3) of the 1956 Constitution it is stated "*A person who has held office as a permanent Judge of a High Court shall not plead or act before that Court or any Court or authority within its jurisdiction*". After making comparison of the provisions of the two Constitutions, Mr. Bajwa submitted that both these provisions were intended to impose restriction on practice but the scope of restriction in both the Constitutional provisions is different. He stated that the words *"before that Court"* appearing in Article 166(3) of the 1956 Constitution clearly refer to High Court whereas such words have been omitted while drafting Article 207 (3) (b) of the 1973 Constitution. According to Mr. Bajwa this omission signifies that the restriction that was imposed under Article 166(3) of the 1956 Constitution on the appearance of an ex-judge before the High Court was not intended to be imposed under Article 207 (3) (b) of the 1973 Constitution. He further contended that provisions of Article 207(3) of the Constitution were borrowed from the provisions of Article 166(3) of the 1956 Constitution with the only omission of the words *'before that Court'* and thus the intention is

clear i.e. not to take away from an ex-judge his right of audience before the High Court of which he was a permanent judge. He submitted that words *'before that Court'* in Article 207 (3) of the 1973 Constitution were omitted not because they were redundant in the 1956 Constitution as redundancy cannot be attributed even to a single word when it comes to the interpretation of the provisions of a Constitution but because a deliberate attempt was made which was intended to lift the bar on ex-judges' right of audience before the High Court of which they were permanent judges. He submitted that restriction under Article 207(3) (b) is to be read only before the Courts that are subordinate to High Court. Mr. Bajwa also referred to provisions of Article 220 of the Indian Constitution and stated that no doubt there is restriction on an ex-judge of the High Court to practice before the High Court of which he was a permanent judge but such restriction has been expressed in very explicit terms leaving no room for any other interpretation.

4. As a question of interpretation of Article 207(3) of the constitution has arisen and such question has never been adjudicated upon after the 1973 Constitution came into effect, we issued notice to Attorney General of Pakistan and Advocate General of Sindh. At the same time we appointed Mr. Makhdoom Ali Khan and Mr. Ejaz Ahmed to act as *amicus curie* so that they may assist this Court.

5. Of the two *amicus curie*, Mr. Makhdoom Ali Khan, on account of his pre-occupation with his supreme court cases had not been able to address us on the issue. Mr. Ejaz Ahmed Advocate, the other *amicus curiae*, has been kind enough to assist this Court. He made submissions which were elaborate and

pertinent to the question involved. He traced the history of the laws on the subject and also referred to the relevant case law, provisions of the Constitutions, Report No.72 of the law Commission of India and Constitution (Amendment) Bill No.27, 2012 pending in the Indian Parliament as well as other Constitution making documents of our Parliament.

6. Mr. Ejaz Ahmed took us through various stages of our legislative history where the restriction on the practice of a retired permanent judge was imposed, then removed and then re-imposed with certain modifications in the restriction. He pointed out that prior to 1956 Constitution there was no bar on a permanent judge of a High Court after his retirement to practice in the High Court of which he was a member but there was a practice of procuring from him an undertaking at the time of his appointment to the effect that after his retirement he shall not practice before the High Court of which he was a judge. Then came the constitutional restriction in the shape of Article 166 (3) of the 1956 Constitution but such restriction ceased to exist after the abrogation of 1956 Constitution in the year 1958. Thereafter came the Retired Judges (Legal Practice) Order, 1962 (President's Order 21 of 1962) which re-introduced the restriction but this time the restriction was only on such judges who were removed from service. A retired judge however retained the right to practice under the President's Order No.21 of 1962 before the High Court of which he was permanent judge. In the 1962 Constitution there was no provision imposing restriction on a permanent judge of a High Court with regard to his right of audience before his Court after his retirement or removal. Then came the Legal Practice (Disqualifications) Ordinance, 1964 (Ordinance II of 1964). The Ordinance II of 1964 repealed President's Order No.21 of 1962 and re-introduced the bar. Lastly the restriction came in the form of Article 207 (3)

(b) of the Constitution. Sometime in 1981, Ordinance II of 1964 was also repealed as the provisions of Article 207(3) (b) had already defined the scope of restriction.

7. Mr. Ejaz Ahmed then referred to judgments reported in PLD 1961 SC 431; PLD 1965 SC 527 and PLD 1969 SC 623. The most relevant of all was the judgment of the Hon'ble Supreme Court in the case of *Government of Pakistan versus Syed Akhlaque Hussain* reported in PLD 1965 SC 527. He read various passages from *Akhlaque Hussain's* case authored by the then Chief Justice A.R. Cornelius. Some passages from the said judgment are reproduced below in order to understand the philosophy and ethics behind imposition of restriction on High Court judges on their appearance before the Court of which they had been permanent judges.

At page 546 of *Akhlaque Hussain's* case it is stated:-

> *"The intention behind the power given to the High Court to prescribe the place at which such an ex-official should or should not obtain undue advantage as against the other members of the profession through his previous connection with the executive or judicial administration, and perhaps also that the danger of his imposing upon the litigants or of his employees, e.g., his clerks so imposing upon the litigants, on the basis of his previous status in the administration should be avoided. The provision was one made in aid of keeping the processes of justice free from unhealthy*

influences and maintaining conditions of equality among the members of the legal profession in respect of their approach to the Courts."

At page 551 *Akhlaque Hussain's* it is stated:

"The propriety of an ex-Judge practicing in the Court of the Province where he has exercised judicial functions" and on this occasion, a fresh opinion was formed which may well have been that the danger to the whole system of justice, which it had previously been felt might result from allowing retired High Court Judges to re-enter the legal profession within the jurisdiction of the High Court of which they had formed part, may have been exaggerated, or in the alternative, that the need to allow such persons to supplement their income by the use of their legal knowledge and experience outweighed any considerations arising from a sense of such possible injury."

At pages 554 – 555 of *Akhlaque Hussain's* case it is stated:

"If it be appropriate that certain members of the legal profession should, by reason of the qualifications which they possess, be restricted to the lowest level of the Courts, and even in relation to the type of functions which in those Courts they may be safely

empowered to perform on behalf of their clients, surely there is nothing of unreason in requiring that those who have been plenipotentiaries of the law, in the capacity of Judges, should not thereafter descend into the well of the Court and join in the competitive activities of the legal profession, except under conditions which do not bring anything of criticism or disrepute upon the standing in the public eye of the Courts of which they have been members. The whole apparatus of justice functions under conditions of the most intense publicity. By the law, a person sitting in the high seat of justice is protected from every kind of criticism such as might reflect upon his capacity to do justice, or upon anything done by him in the dispensation of justice. On the contrary, a lawyer standing before a Court must expect to be treated with severity by the Court in regard to the propriety, the correctness, the comprehensiveness, and perhaps even the persuasiveness of everything which he places before the Court, and it cannot be without effect upon the public image which Judges of the Superior Courts are expected to, and for the most part indeed do create, that a person who is one day a Judge, should the next day be standing before Judges and perhaps receiving correction on point after point, in respect of his preparation of his case or his knowledge of the relevant law, or even of the manner of the presentation of his argument. On the other hand, should the fact of his having been a Judge be constantly borne in mind by the Court, there is little prospect of his argument receiving the intensive examination at the hands of the Courts, which is necessary for the correct dispensation of justice in the ultimate Courts, and consequently injury is done not

only to the case, but generally within the legal profession, which is devoted to the concept of equality among themselves, before the law, and before the Judges, If it become common practice for ex-judge to be practicing in their own High Court, making submission where previously they made only pronouncements, and if their submissions were subjected to constant criticism by their opponents, at the bar, as well as from the Bench, would this not necessarily produce in public mind a feeling that the position which these persons enjoyed and were under the law allowed, during their period on the Bench, was scarcely deserved by personal mind? Such a feeling, once it commenced, would tend to grow and eventually to develop into a large doubt in the public mind as to the efficacy of the entire system.

Therefore, in my view, it is an entirely reasonable move, on the part of the Legislature, in relation to this vexed question, of which solutions have been attempted in the sub-continent and since the Partition in Pakistan in a variety of different modes, to adopt the mode of confining ex-Judges, who may need a livelihood through professional work, to appearance only in the highest Courts of the country, and of these, only such Courts as they have not been members of. Such a drastic step would not have been necessary had it been the experience that ex-Judges in the pursuit of the profession, observed restraints such as were consistent with the dignity which still attached to them as ex-Judges. It is to be said with regard that occasions have been known in the recent past, when ex-Judges have appeared even before Magistrates in outlying stations in their search for a livelihood, and it may well

be that such instances, have operated on the minds of the law-making authority to produce the conviction that legislative control was indeed necessary. This was provided by a new regulatory law confining those who carried in themselves residue of high dignity within the Judiciary, to appearances before those Courts only where they could appear without any element of unbalance of inequality."

At page 556 – 557 of *Akhlaque Hussain's* case it is stated:

"For, it is fully recognized that such pronouncement cannot be understood in an absolute sense, and is subject to the rule of reasonable classification. I see no difficulty in holding that it is not only a reasonable classification, but a real necessity, for the proper continuance of the whole system of justice in our country, that ex-Judges who are active members of the legal profession should be placed in a class apart, and for the good of the judicial system should be confined in their professional activities to the highest Courts only, these being Courts of which they themselves have not been members".

"Therefore, in my opinion, the Ordinance of 1964 is to be understood as an instrument of regulation within the licensing system under which the whole profession of the law operates, and I do not find that the restrictions which it imposes are in

themselves unreasonable, or that they operate in violation of any of the Fundamental Rights of citizens embodied in the Constitution".

"The grounds on which retrospective operation has been found by the Full Bench, namely, the fact of litigants having to engage other counsel to replace the ex-Judges, and of the ex-Judges having to return fees which they had received is, in my opinion, and I say so with all respect, entirely disproportionate to the size and importance of the question involved in this case. The mere fact of a few cases being affected in this way and certain limited sums of money, appreciable though they may be in the eyes of their present holders, having to be returned, is an inadequate ground for declaring a law of the Central Legislature to be ultra vires".

8. After reading passages from *Akhlaque Hussain's* case, Mr. Ejaz Ahmed submitted that the object behind the imposition of the restriction on an ex-judge of a High Court under Article 207 (3) (b) of the Constitution is to protect the dignity and independence of the judiciary and to achieve this object permanent judges were restrained from appearing and pleading cases before the Courts of which they were members. Mr. Ejaz submitted that any interpretation, which does not bar a retired permanent judge of a High Court to practice before his High Court, is given then such an interpretation would

become irreconcilable with the provision of Article 207 (3) (a) of the Constitution which imposes complete bar on a permanent Judge of the Supreme Court to practice before the Supreme Court. He further submitted that for all such reasons the phrase *'within its jurisdiction'* is to be interpreted so as to mean territorial jurisdiction of the High Court which includes within its ambit the Courts that function under the umbrella of High Court.

9. Mr. Ejaz Ahmed then referred to the Chief Executive's Order NO.5 of 2000 whereby the two permanent judges of this Court i.e. Mr. Rasheed A. Rizvi and Mr. Mushtaq Ahmed Memon, who were earlier removed from their office under Oath of Office (Judges) Order 1999 (Order 10 of 1999), were given special permission to practice as advocates of this Court. Mr. Ejaz Ahmed submitted that this by itself demonstrates that the restriction imposed on ex-judges to act and plead before the High Court of which they were permanent judges under Article 207 (3) (b) of the Constitution needed to be lifted under the Chief Executive's Order No.5 of 2000. The Chief Executive's Order No.5 of 2000 was later given constitutional protection under 17th Constitutional Amendment through incorporation of Article 270AA of the Constitution.

10. Mr. Ejaz Ahmed then referred to a Report of the Law Commission of India. Relevant excerpts from the said Report are as follows:-

1. *"The Ministry for Law, Tamil Nadu, in a communication to the Minister for Law, Justice and Company Affairs has referred to lectures delivered by Justice P.B.Mukharji, the then Chief Justice of*

Calcutta High Court, in the course of which the learned Chief Justice had stated:

A more serious threat to the judiciary in the India is the confiscation of the Judge's right to practice in his own High Court, a professional right for which he has qualified in his life. Today the price of a seat on the bench is the confiscation of that professional right to practice in the High Court of his home, in the High Court where he was enrolled and where he practiced before being elevated to the Bench."

2. *Article 220 was amended by section 13 of the Constitution (Seventh Amendment) Act, 1956. Instead of the old article, the new article came to read:*

"220. No person who, after the commencement of his Constitution, has held office as a permanent Judge of a High Court shall plead or act in any Court or before any authority in India except the Supreme Court and the other High Courts.

Explanation.- In this Article, the expression 'High court' does not include a High Court for a State specified in Part B of the First Schedule as it existed before the commencement of the Constitution (Seventh Amendment) Act, 1956."

3. *……*

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4. ……..

5. *The position, as it emerges in the light of the new article, is that a person who, after commencement of the Constitution, has held office as a permanent Judge of a High Court is debarred from practicing in any Court and the other High Courts. The provision as it stands, in our opinion, is of a salutary nature. There is no bar to a person practicing in the Supreme Court and the other High Courts after having held the office of a permanent Judge of a High Court. To allow a person after he has been a permanent Judge of a high Court to practice in that very court or in a court subordinate to that court is bound to result in embarrassing and undesirable situations. <u>There are immense potentialities of abuse and also, possibly, of mischief in permitting such a course. It is also bound to detract from the dignity which attaches to the office of Judgeship.</u> The imposition of a time lag between the date on which a person ceases to hold office of High Court judge and the date on which he resumes practice would not propriety confer on a course which is inherently undesirable.*

6. *The Commission is unable to subscribe to the view that Article 220 as it stands in any way affects the independence of the judiciary. <u>On the contrary, in the view of the Commission, the ban on practice in a High Court by a person who has been a permanent Judge of that very High Court is a step towards securing the independence of the judiciary. Independence of the judiciary can be threatened not only by external pressure; it can equally be jeopardized by inner pressure. It cannot be disputed that the prospect of starting or resuming practice in a court of which one has been a Judge can sometimes generate mental pressure and colour one's approach even unconsciously.</u>*

7. ……

8. ……..

9. ……..

11. Standing counsel and State Counsel Ms. Iqra Salim, representing Federation and Province respectively, adopted the arguments of learned *amicus curiae* Mr. Ejaz Ahmed.

12. In rebuttal Mr. Bajwa argued that Article 207(3)(b) of the 1973 Constitution specifically deals with the question of restriction before the Courts which functions within the jurisdiction of a High Court. He submitted that it cannot be said that High Court itself is within its jurisdiction as it is only its subordinate Courts which can be said to be within its jurisdiction and, therefore, the restriction is to be read in that limited sense only. He further submitted that when a provision of a Constitution deals with a particular situation and defines its scope, then such scope cannot be enlarged. He then submitted that judgments delivered by High Court and Supreme Court on the subject prior to 1973 Constitution were on the basis of the then existing laws and Article 207 of the 1973 Constitution is not to be interpreted on the basis of the reasoning contained in such judgments as the ethical discourse in *Akhlaque Hussain's* case was opinion of the Chief Justice A. R. Cornelius only as the other three judges who concurred with him had concurred only with his conclusion and not the reasoning therefore the reasons given by Chief Justice Cornelius have no application to his right of practice before this Court granted to him

under section 22(2)(b) of Legal Practitioners & Bar Councils Act, 1973 and preserved under Article 207 (3) (b) of the Constitution.

13. Mr. Bajwa then contended that the phrase *'within its jurisdiction'* is not referable to territorial jurisdiction of the High Court as within the territorial jurisdiction of this High Court, Karachi Registry of the Supreme Court also functions where Supreme Court fixes its sittings and in case the restriction is read to be territorial then it would mean that the restriction would also apply before the Supreme Court as well which cannot be the intention of the framers of the Constitution.

14. In support of his arguments Mr. Bajwa referred to the judgments reported in PLD 1990 SC 57, PLD 2013 SC 279, PLD 1950 Lahore 384, excerpts from Mr. S.M. Zafar's Book "Understanding Statutes – Canons of Construction", Principle of Statutory Interpretation by Guru Prasanna Singh, N.S. Bindra's Interpretation of Statutes and Maxwell on the Interpretation of Statutes by P.St.J. Langan. He concluded by saying that the scope of restriction as is contained under Article 207(3) (b) of the 1973 Constitution is different from the restriction that was imposed under Article 166(3) of the 1956 Constitution and such a change is not without any purpose and the purpose is not to impose restriction on appearance before the High Court but only before the Courts that are subordinate to the High Court and Article 207(3) (b) may be interpreted in that sense only.

15. The real question that needs to be addressed is whether the phrase *'any Court within its jurisdiction'* appearing in Article 207 (3) (b) of the Constitution is referable only to the Courts which are subordinate to the High Court or it also includes the Courts that function as High Court. To whatever extent we decide to apply the restriction, one thing is very clear i.e. the object of imposing restriction on judges of the superior judiciary under Article 207 of the Constitution is to preserve the prestige and dignity of the institution of justice and the honour of its judges. This object must have been in the minds of the lawmakers while imposing restriction at various stages of our legislative history prior to coming into effect the 1973 Constitution and so also at the time of framing of the present 1973 Constitution. Keeping this object in mind the extent of prohibition as contained in the phrase *'a person who has held office as a permanent judge of the High Court shall not plead or act in any Court or before any authority within its (High Court's) jurisdiction'* is to be ascertained.

16. The term *'jurisdiction'* in legal parlance is used in a variety of senses. It takes its colour from its context. Conventionally the term *'jurisdiction'* is referable to territorial, pecuniary, relating to a person or as to the character of a question to be decided. It means control, power or authority. Whether the term *'any Court'* mentioned in Article 207 (3) (b) of the Constitution means such Courts that are subordinate to the High Court or they would also include the Courts that form part of the institution of the High Court. In other words, whether the phrase *'any Court within its jurisdiction'* would also bring within its ambit not only the Courts whose decisions come under judicial scrutiny before the High Court by way of appeals, revisions, references and constitutional petitions or would also include the Courts that function as High

Court. There are cases which are filed in the High Court that arise from the decisions of the subordinate Courts and there are cases of original nature that are initially filed in the High Court under any special law or under the provisions of the Constitution. When the proceedings, which are original in nature are decided by the High Court certain categories of such decisions are challengeable by way of Intra-Court appeal (as is the case in Lahore High Court) or by filing of High Court Appeal before a Division Bench of this High Court. The interpretation of the phrase *'any Court within its jurisdiction'* cannot be given restricted meaning so as to mean only the Courts that are subordinate as the term *'within its jurisdiction'* also includes the entire judicial jurisdiction of the High Court, including original jurisdiction as well as appellate jurisdiction. How then can we exclude the Courts that function as High Court from ambit of the phrase *"any Court within its jurisdiction"* as appearing in Article 207(3) of the Constitution. The term *"any Court"* appearing in Article 207(3) of the Constitution in fact embraces the entire judicial jurisdiction of the High Court under which the High Court functions as well as the Courts that are subordinate to the High Court. Thus when Article 207(3) of the Constitution speaks of *'any Courts'*, it refers not only to all Courts of the subordinate judiciary whose decisions can be brought under High Court's judicial scrutiny but also the Courts that function under the banner of the High Court under its Original or Appellate jurisdiction. The Constitution created the institution of High Court and all Courts that function under this institution, without any hesitation, can also be termed as Courts that are functioning within the jurisdiction of High Court. Mr. Bajwa had argued that the words *'in that Court'* appearing in Article 166 (3) of the 1956 Constitution were omitted from Article 207(3) (b) of the 1973 Constitution which by itself indicates that restriction has become narrower under 1973 Constitution than what was intended under 1956 Constitution and the words *'in that Court'* appearing in Article 166 (3) of the 1956

Constitution cannot be said to be redundant for these are Constitutional provisions and redundancy cannot be attributed to the provisions of the Constitution. We are of the view that it is not a case where while interpreting one provision of the Constitution the other provision of the same Constitution is being rendered redundant. Here while framing a new Constitution a provision from a defunct Constitution was borrowed and part of the borrowed provision was considered to be redundant. This can be done by omitting certain words of the provisions of the defunct Constitution and then incorporating the rest in the new Constitution and in doing so there occurs no variation in the object that was intended to be achieved under both the Constitutional provisions.

17. We may here also point out that there is similar restriction in England and Wales on a retired judge. Reference could be made to Section 75 of Courts and Legal Services Act 1990 from English statute book. In this Act, judges and registrars of various Courts who are holding full time appointment were debarred from holding any offices listed in Schedule 11 of the said Act. The offices which are listed in Schedule 11 include providing advocacy or litigation services in any jurisdiction or practicing as barristers. Reference could also be made to the terms and conditions of service of High Court Judges of England and Wales which provide for prohibition on practice after retirement.

18. For the purpose of clarification we may add here that the restriction under Article 207 (3) (b) is only with regard to the acting or pleading a case before the Courts. The Chief Justice of a High Court may, and occasionally he does, require a retired judge of his Court to render certain services for the institution of the High Court, which services in no way require a retired judge

to plead a case before a Court of law, be it a High Court or its subordinate courts. In that case certainly a retired judge's services can he engaged. In order to differentiate between these two situations, restriction has been imposed under Article 207 of the Constitution on an ex-judge of a High Court only from pleading or acting before his High Court and subordinate Courts and not on rendering services to his High Court which do not require Court appearances.

19. It doesn't at all look appropriate that a person after his retirement stands in the corridors of the very High Court of which he was a permanent judge waiting for his case to be called and then arguing the matter before the Court. One can visualize the perception that is going to be created in the minds of the litigants and the lawyers. If a former judge of a High Court is allowed to practice before the very same Court after his retirement or after relinquishing his office, a negative perception is bound to be created in the minds of the advocates and the litigants. They can legitimately feel that an ex-judge is likely to be in an advantageous position as against other advocates and the Court might show some favorable tilt towards him, which perception could be absolutely incorrect. Nevertheless, these perceptions would get stronger in the minds of the advocates or the litigants once a case is lost to an advocate who was an ex-judge of the very same High Court.

20. The main object behind imposing restriction is to maintain the dignity of the High Court and this object would be seriously impaired in case permanent judges after their retirement are allowed to plead their cases in High Court of

which they were permanent judges. A sense of inequality within the legal profession is bound to be created when a person who had only recently exercised and enjoyed full dignity of a High Court judge after his retirement starts practicing in that very Court. The office of judgeship confers a permanent kind of status which if allowed to be exercised by a retired permanent judge in his new role as an advocate of the same Court it might disturb the harmony within the legal profession on account of fear of unwanted decisions. Harmony can only be maintained within the legal fraternity when the judges of this Court are not allowed to start practicing in the very Court of which they were permanent judges.

21. The object to preserve the dignity and honour of the institution of justice would not be, in its entirety, achieved if the restriction imposed under Article 207 (3) (b) of the Constitution is so interpreted so as to make it applicable only before the Courts that are subordinate to the High Court and not before the Courts that function as High Court. This could not be the intention of the framers of the Constitution once they were conscious of the need to impose restriction. The framers of the Constitution could have done away with the restriction, as was done by the framers of the 1962 Constitution. Probably the preservence of the honour and dignity of the institution of justice was not under consideration at the time of drafting 1962 Constitution. However, at the time of framing 1973 Constitution the effect of private practice of ex-judges of the superior judiciary on the honour and dignity of the Court was taken into consideration and for such purpose Article 207 was incorporated in the Constitution. Therefore, the restriction that has been imposed under the provisions of Article 207(3) (b) of the Constitution is to be

interpreted keeping these aspects in mind as it is a matter relating to interpretation of the Constitution and not an ordinary statute. In the judgment cited by Mr. Bajwa reported in PLD 1950 Lahore 384, Justice M.R. Kayani has opined *"I think it has been truly said that when we interpret a Constitution, we do not confine ourselves to its wording, as we do in the case of a mere statute, but also take notice of its history and spirit"*.

22. A judge, like any other person takes pride in his work. If he is healthy, he can work in the field of law for a considerable period of time after his retirement and make use of his past experiences. Nobody knows what lies for him in his post retirement life. He may be constrained to work for economic considerations. But then the difficulties of an ex-judge may come face to face with the honour and dignity of the very institution of which he was a member. Here the right of an individual has to yield to the honour and independence of the institution of judiciary. The efficacy of the judicial system could not be made subservient to the interest of an individual who until recently was identified as part of the institution. A retired judge carries with him the dignity of the Court and this fact should not be lost sight of while interpreting provisions of Article 207 of the Constitution. It is for such reason that it was felt necessary to impose restriction. Keeping this object in mind we have interpreted the provisions of Article 207(3)(b) of the Constitution so that the very object that was intended to be achieved is not *'lost in translation'* we mean to say not lost by giving narrow meaning to the term *"within its jurisdiction"*. It must be this thought in mind of the framers of the 1973 Constitution that restriction was imposed on the right of audience of an ex-judge and this object could only be achieved if the restriction is so interpreted which debars a retired judge from appearing and pleading a case before the very same Court of which he was a permanent judge. Such restriction should

not at all be looked at as a penalty but as a part of licensing system based on reasonable classification as held by Justice A.R. Cornelius in *Akhlaque Hussain's* case.

23. It is also hard to imagine that on the one hand Article 207 (3) (b) envisages giving permission to a permanent Judge of a High Court to act and plead his case after his retirement before his High Court when such permission is not available to a retired judge of the Supreme Court. It gives a very disturbing feeling in visualizing the physiological impact of the fact that after retirement every permanent judge starts practicing before the High Court of which he was a permanent judge.

24. In the end we acknowledge the valuable assistance which Mr. Ejaz Ahmed Advocate as *amicus curiae* provided to this Court in arriving at this decision. We are thankful to him.

25. In view of the above discussion, we are of the view that the bar on a person who has been a permanent judge of a High Court as contained under Article 207 (3) b) of the Constitution is not limited only before the Courts which are under the administrative control of a High Court but it also encompasses within its ambit the Courts which function as High Court. Hence such bar would be applicable on Mr. Bajwa's appearance before this Court.

JUDGE

JUDGE

Dated:31.05.2013