

BEFORE THE APPEAL COMMITTEE (Pb-II)
PAKISTAN BAR COUNCIL

Present:

(1)	Mr. Abid Saqi	Chairman
(2)	Mr. Azam Nazeer Tarar	Member
(3)	Mr. Akhtar Hussain	Member

**Sub: Appeal under Section 13(2) of the Legal Practitioners
& Bar Council Act, 1973.**

Appeal No. 49/2017.

Mr. Muhammad Akhlaq r/o Lahore.

VERSUS

The Punjab Bar Council through its Secretary and others.

ORDER:

29-11-2018

The instant Appeal earlier was fixed before this Committee for hearing in its meeting held on 15-09-2018 when the parties were heard at length and the following Order was passed:-

“The Appellant is present in person. Mr. Tariq Jameel, Section Officer, Punjab Bar Council is also present with record.

The Appellant has been heard in detail and record of the case has also been perused. We are of the view that as the matter involves an important question of law and interpretation of Rules, it will be appropriate if the Appellant submit his written arguments as well. The learned Chairman, Executive Committee, Punjab Bar Council should also file detail reply to the instant Appeal which has been filed by the Appellant being aggrieved by letter No. 4585 dated 28-12-2016 of the Chairman, Executive Committee, Punjab Bar Council whereby the Appellant’s name has been deleted form the voters list.

The matter is adjourned till after receipt of written arguments of the Appellant and reply of the Chairman, Executive Committee, Punjab Bar Council.”

(ii) The Appellant appreciably has submitted his written arguments in compliance with above Order thus rendering valuable assistance to this Committee. However, we had been waiting for reply of the learned Chairman, Executive Committee of the Punjab Bar Council but despite lapse of considerable long time he has not done the needful as yet. Since the subject matter of the Appeal pertains to an important issue of exercise of right of vote of the Appellant, we are not inclined to wait further for reply of the Respondent Bar Council, and so have decided to dispose of the Appeal in hand.

(iii) This Appeal has been directed against the circular letter No. 4585 dated 28-12-2016 issued by the Chairman, Executive Committee of the Punjab Bar Council according to

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which name of the Appellant (*earlier appeared in the voters list, under the category of Advocates of High Court of the Bar Association, Zafarwal*) has been deleted therefrom for the reason that he is holding the office of Deputy Prosecutor General, Punjab. The parties have been heard at considerable length and the available record has also been perused.

(iv) The Appellant contends that as the nature of his job as Deputy Prosecutor General is to appear in the Courts to plead and conduct cases which is similar to the positions of Assistant/Additional Advocates-General; and as his name is to remain on the Roll of Advocates being maintained by respective Bar Councils, he cannot be debarred from being member of a Bar Association and disfranchised from the right to exercise his vote in Bar elections. He further contends that even the Rules of the Punjab Bar Council do not require suspension of practicing licence of an Advocate if he is holding some office/position connected with law.

(v) Our attention has been drawn to decision dated 09-12-2000 of Enrolment Committee of the Pakistan Bar Council, reported as (*PLJ 2001 Tribunal Cases (EC 461)*), taken while considering the matter of enrolment as Advocates of Supreme Court of M/s Muhammad Amin Lone and Fawazi Zaffar, both Assistant Advocates-General, Punjab and Mr. Imitaz Ali, Additional Advocate General, NWFP (now KP.), the operative of which is as under:-

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Now turning towards the case of applicants, who have been placed in category-B, it is to be seen that as far as the Additional Advocate General is concerned by virtue of Order-4 Rule-XII of the Pakistan Supreme Court Rules, 1980, he enjoys the status of Senior Advocate, it means that as per this rule, the services of Additional Advocate General are recognized to be the services of an Advocate of Supreme Court or in other words, he would be deemed to be a qualified Advocate having ten years standing on his credit as an Advocate of High Court, therefore, he has not only been allowed to appear before the Hon'ble Supreme Court, but the status of Senior Advocate has also been conferred upon him irrespective of the fact whether his name appears on the roll of senior Advocates of the Supreme Court. Undoubtedly Assistant Advocate General by virtue of his appointment cannot be considered to be an Advocate of Supreme Court nor without getting enrolment of the Supreme Court an Assistant Advocate General can appear before the Court. However, fact remains that Assistant Advocate General are appointed to appear on behalf of the State against permanent time scale of the pay, but on account of holding the licence of an enrolled Advocate of High Court, he appears before the Court in State cases. In as much as, his licence is not required to be suspended on joining the service. Therefore, it would be deemed that despite of the fact that he has joined the post of Assistant Advocate General, which will last till the pleasure of the Government, but he remains as practicing lawyer and gains experience before the High Courts. The job of Assistant Advocate General is not of perpetual nature, therefore, he is deemed to be in continuous practice of law and by joining such position, he would not be deemed in the service other than the profession of law for the purpose of Rule-175 of the Pakistan Bar Council Rules, 1976. As Additional Advocate General and Assistant Advocate General remain in active practice of the law and continuously appear before the High Court and they also get experience by

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attending the different cases, therefore, the period so spent by them would be considered to be the period of his experience/practice and while considering the application for enrolment as an Advocate of Supreme Court, the period of such experience can be counted to meet the requirement of the rule that a person, who has been in practice not less than ten years as an Advocate in a High Court he will qualify to be enrolled as Advocate of Supreme court. It is also important to note that as far as the applicants Imtiaz Ali, Additional Advocate General NWFP, Mr. Muhammad Amin Lone, Assistant Advocate General are concerned even, if their period of service is excluded despite of it they have completed the period of ten years as Advocates of High Court as per details of their experience available on record. As far as applicant Fawazi Zafar is concerned, he had experience of Assistant Advocate General, but less than ten years before joining the post and if the period during which he remained as Assistant Advocate General i.e. from 3rd April, 1995 up till now is counted towards his experience, he would also be deemed to have completed the period of ten years, thus he is also entitled for recommendation for enrolment as Advocate of the Supreme Court."

(vi) Similarly, vide another decision dated 01-07-2012 of the Enrolment Committee of the Pakistan Bar Council, taken while considering an application for enrolment as an Advocate of Mr. Ahmad Raza Gillani, who was working as Additional Prosecutor General, Punjab, on regular basis, with reference to the previous reported decision of Enrolment Committee, as mentioned above, arrived at the following decision:-

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As per letter No. SO(Admn)PPD/25-1/2010 dated 11-03-2010 of Public Prosecution Department, Government of Punjab the appointment of the applicant as Additional Prosecutor General, Punjab is of temporary nature. His primary duty as Additional Prosecution General, is to appear in Courts as and Advocate to plead cases of course on behalf of the Prosecution. For all practical intent and purposes his case is identical to aforementioned cases of Additional and/or Assistant Advocates-General and so could be equated with them. Even otherwise he had completed his 10 years practice as an Advocate of High Court before joining as Additional Prosecutor General, Punjab. He, as such, is entitled to be enrolled as an Advocate of the Supreme Court and thus was enrolled accordingly."

(vii) In view of above decisions of Enrolment Committee of the Pakistan Bar Council, which is the apex bar body, it is abundantly clear that joining of an office of Assistant/Additional Advocate-General or Additional/Deputy Prosecutor-General does not deprive an Advocate for being remained on the Roll of Advocates of the Bar Council and so also does not affect his being member of a Bar Association at least for exercising the right of his vote. We are, therefore, of the view that the law officers namely the Attorney-General, the Additional Attorney-General, the Deputy Attorney-General, Prosecutor General or the Additional Prosecutor General, or the Deputy Prosecutor General, can retain their names on the Roll of Advocates maintained by a Bar Council and so membership of a Bar Association. If the impugned letter/order remains in field, it will definitely cause discrimination to the Appellant. It is a settled principle of law that all similarly placed persons should be treated equally and not otherwise. We understand

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that the Respondent Provincial Bar Council allows the law Officers working in Advocate-General's office as well as Attorney-General's Office to be members of Bar Associations whereas the Appellant who is working as Deputy Prosecutor General, has been denied the similar benefit which amounts to discrimination and thus violation of Article 25 of the Constitution. A person equally placed, must be treated alike in the matter of privileges and liabilities under the rule of equal protection of law. Furthermore, as per the aforementioned decisions of Enrolment Committee of the Pakistan Bar Council persons holding the offices of Additional/Deputy Prosecutor-General, were declared fully eligible for enrolment as an Advocate of the Supreme Court and thus were granted such enrolment which means that they are entitled to remain on the Roll of Advocates being maintained by concerned Bar Councils and as such are also entitled to become members or retain their membership of Bar Association, and being so are fully entitled to exercise their right of vote in annual election of the Bar Association of which they are members.

(ix) For what has been discussed above, the instant Appeal is allowed and the impugned Circular letter dated 28-12-2016 of the Chairman, Executive Committee, Punjab Bar Council is set aside.

Sd/-
CHAIRMAN
Sd/-
MEMBER
Sd/-
MEMBER

Islamabad, the
29th November, 2018,
Waheed Murad