

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Mian Shakirullah Jan

Mr. Justice Raja Fayyaz Ahmed

Mr. Justice Jawwad S. Khawaja

Constitution Petitions No.2, 3 & 4 of 2010

Nadeem Ahmed Advocate

Khadim Nadeem Malik

Watan Party, etc.

(in Const.P.2/2010)

(in Const.P.3/2010)

(in Const.P.4/2010)

....Petitioner (s)

Versus

Federation of Pakistan etc.

...Respondents

in all petitions

For the petitioner(s): Nemo

For the respondents: Nemo

On Court's call: Qazi Sajid Mehmood, Additional Registrar

Date of hearing: 13.02.2010

ORDER

Today two notifications, one relating to the appointment of Mr. Justice Khawaja Muhammad Sharif, Chief Justice of the Lahore High Court as a Judge of the Supreme Court and the other with regard to the appointment of Mr. Justice Mian Saqib Nisar, Senior Puisne Judge of the Lahore High Court as Acting Chief Justice of that Court have been issued by the Government of Pakistan, Law, Justice and Parliamentary Affairs Division under the signatures of Malik Hakam Khan, Draftsman/Additional Secretary. The said notifications read as under: -

"No.F.2(1)/2010-A.II. - In exercise of the powers conferred by Article 177 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to appoint Mr. Justice Khawaja Muhammad Sharif, Chief Justice of Lahore High Court as Judge of the Supreme Court of Pakistan with immediate effect.

No.F.1(2)/2009-A.II.- In exercise of the powers conferred by Article 196 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to appoint Mr. Justice Mian Saqib Nisar, Judge, Lahore High Court as Acting Chief Justice of the said High Court with effect from the date of the notification of the appointment of Mr. Justice Khawaja Muhammad Sharif, Chief Justice of Lahore High Court as Judge of the Supreme Court of Pakistan."

2. The Additional Registrar, who appeared on Court's call, informed the Court that a news was telecast in the electronic media regarding the aforesaid notifications and it was also in the news that Mr. Justice Mian Saqib Nisar would be administered oath by tomorrow morning (Sunday), which necessitated the hearing of this case as an urgent one and this Bench was constituted. Since it was an important matter, the Additional Registrar was directed to issue notice to the learned Attorney General including through telephone and we retired for a while until we were informed about the service of the notice upon the learned Attorney General. After some time we were informed by the Court Associate that the Additional Registrar, after informing the learned Attorney General through telephone about the hearing of the case had come to the Court, so we re-assembled.

3. The Additional Registrar, in his report stated that he informed the learned Attorney General for Pakistan through telephone who told him (Additional Registrar) that he was in Karachi at the moment and that the last scheduled flight from Karachi to Islamabad had already departed at 7:00 p.m., he expressed his inability to appear before the Court. Since the matter was of urgent nature, as stated earlier, steps would be required to be taken by the Governor of the Punjab to administer oath to Mr. Justice Mian Saqib Nisar as Acting Chief Justice of the Lahore High Court by tomorrow morning, hearing could not be postponed without passing an appropriate interim order.

4. Article 177 of the Constitution of Islamic Republic of Pakistan provides that a Judge of the Supreme Court shall be appointed by the President after consultation with the Chief Justice of Pakistan. The Additional Registrar stated that according to the record of this Court no consultation had taken place by the President with the Hon'ble Chief Justice of Pakistan regarding the appointment of Mr. Justice Khawaja Muhammad Sharif, Chief Justice of the Lahore High Court as Judge of the Supreme Court. In the light of the statement of Additional Registrar and also the note submitted by him and placed on the file of Constitution Petitions No.2,3 and 4 of 2010 relating to the same/almost the same matter, already pending before this Court in which notices had been issued and a larger Bench constituted for 18-2-2010, the notification of the appointment of Mr. Justice Khawaja Muhammad Sharif as a Judge of the Supreme Court, prima facie, appears to have been issued in

violation of the provisions of the Constitution, particularly, Article 177, hence the same is suspended subject to notice to the Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs Division, the Attorney General for Pakistan and the learned Advocate General Punjab. Mr. Justice Khawaja Muhammad Sharif shall continue to perform his duties as Chief Justice of the Lahore High Court until further orders of this Court. No steps to administer oath to him will be taken.

5. In view of the suspension of notification No.F.2(1)2010-A.II. dated 13.2.2010 regarding the appointment of Mr. Justice Khawaja Muhammad Sharif as a Judge of the Supreme Court, the office of Chief Justice of Lahore High Court will not fall vacant, therefore, the second notification No.F.1(2)/2009-A.II of even date regarding the appointment of Mr. Justice Mian Saqib Nisar as Acting Chief Justice of the Lahore High Court cannot be acted upon. Therefore, the same too is suspended. In consequence, Mr. Justice Mian Saqib Nisar will also continue to perform his duties as a Judge of the Lahore High Court until further orders. Resultantly, no steps including administering of oath to Mr. Justice Mian Saqib Nisar as Acting Chief Justice of Lahore High Court shall be taken by the concerned functionaries.

6. The Draftsman/Additional Secretary, Ministry of Law, Justice and Parliamentary Affairs, under whose signatures the aforesaid notifications have been issued, is directed to appear in Court on 18.02.2010, the date already fixed in the titled cases. The Registrar of the Lahore High Court shall also appear on the said date.

Judge

Judge

Judge

Islamabad, the
13th February, 2010
M.Ali/*