

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Larger Bench**

Mr. Justice Amin-ud-Din Khan  
Mr. Justice Jamal Khan Mandokhail  
Mr. Justice Syed Hasan Azhar Rizvi  
Ms. Justice Musarrat Hilali  
Mr. Justice Irfan Saadat Khan

**Intra Court Appeals No.1 and 2/2024 in Constitutional Petition No.19/2020.**

*On appeal from the judgment of this Court dated 27.06.2023 passed in Constitution Petition No. 19 of 2020.*

*Federation of Pakistan through the Secretary, Ministry  
of Law and Justice, Islamabad  
(Intra Court Appeal No.1/2024)  
Afiya Shehrbano Zia and others  
(Intra Court Appeal No.2/2024)*

*....Appellants*

***Versus***

*Supreme Judicial Council through its Secretary,  
Supreme Court Building, Islamabad and others*

*.Respondents*

For appellants in ICA  
No.1/2024 and  
respondent No.5 in ICA  
No.2/2024:

Mr. Mansoor Usman Awan, Attorney  
General for Pakistan assisted by Ms.  
Maryam Ali Abbasi, Advocate and Ms.  
Maryam Rashid, Advocate.  
Ch. Aamir Rehman, Additional Attorney  
General for Pakistan.  
Malik Javid Iqbal Wains, Additional  
Attorney General for Pakistan.  
Raja M. Shafqat Abbasi, Deputy Attorney  
General.  
Mr. Anis Muhammad Shahzad, AOR.

For appellants in ICA  
No. 2/2024 and  
respondent Nos.  
3,4,6,7,8 and 10 in ICA  
No.1.

Mr. Waqqas Ahmad Mir, ASC assisted by  
Mr. Hammad Hussain Shah, Advocate &  
Mr. Anas Irtiza, Advocate.  
(At Islamabad on 31.01.2024, 19.02.2024  
and 21.02.2024 and via video link from  
Lahore on 12.02.2024)  
Ch. Akhtar Ali, AOR.

Amici Curiae:

Kh. Muhammad Haris, Sr.ASC assisted by  
Mr. Yaser Aman Khan, ASC.

Mr. Faisal Siddiqi, ASC assisted by Mr.  
Muhammad Usman Mumtaz, Advocate (At  
Islamabad on 19.2.2024 and via video link  
from Karachi on 21.2.2024.)

Mr. Muhammad Akram Sheikh, Sr.ASC  
assisted by Mr. Abu Bakar Siddique,  
Advocate and Ms. Sehar Mahsud,  
Advocate.  
Mr. Abdul Moiz Jaferii, Advocate High  
Court (through video link from Karachi.)

Dates of Hearing: 31.01.2024, 12.02.2024, 19.02.2024 and  
21.02.2024

**JUDGMENT**

**AMIN-UD-DIN KHAN, J.** Through these appeals filed under section 5 of the Supreme Court (Practice & Procedure) Act, 2023 read with Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 (**‘the Constitution’**), appellants have challenged the judgment passed by the learned two member bench of this Court dated 27.06.2023 in Constitution Petition No. 19 of 2020 filed under Article 184(3) of the Constitution by the appellants of ICA No. 2 of 2024 which was dismissed *in limine*.

2. According to the brief facts of the case, appellants of ICA No. 2 of 2024 filed a petition under Article 184(3) of the Constitution against the Supreme Judicial Council (**‘SJC’**), Registrar of the Supreme Court, the President of Islamic Republic of Pakistan and Justice (R) Mian Saqib Nisar with the following prayer:

“In view of the above, the Petitioners most respectfully pray that this Honorable Court may graciously be pleased to:

- A. Direct the Honorable Council to take up References and to render its opinion on the allegations of misconduct contained therein and report its opinion to the President under Article 209(6) of the Constitution.
- B. Pass directions to structure the Honorable Council’s discretion in relation to the priority, listing and hearing of complaints/references and to ensure that the eventual findings of Honorable Council are publicly disclosed and direct the Honorable Council to amend the Supreme Judicial Council Procedure of Enquiry 2005 accordingly.
- C. Give any other directions or pass any interim orders that are required and are necessary for the effective implementation of Article 209.”

3. Office raised some objections on the petition filed under Article 184(3) of the Constitution, which were contested and after the acceptance of Miscellaneous Chamber Appeal, the petition was numbered as 19 of 2020, which was heard by the learned two member bench of this Court on 13.06.2023 and the judgment was announced as dismissed *in limine* on 27.06.2023. Hence, these appeals, ICA No.2 of 2024 by the petitioners of Constitution Petition No.19 of 2020 and ICA No. 1 of 2024 by the Federation of Pakistan.

4. The office has noted that ICA No.1/2024 is barred by 180 days whereas ICA No. 2/2024 is barred by 187 days. On the first date of hearing before this Court on 31.01.2024 after hearing the learned counsel for the appellants, notice was issued to the other side subject to limitation. As the case of Federation is that interpretation of an Article of the Constitution has been made through the impugned judgment and without any notice required under Order XXVII-A of the Code of Civil Procedure, 1908 to the Attorney General for Pakistan and even without any notice to the Federation or the respondents of the Constitution Petition, same was decided *in limine*, though the petition was dismissed but some interpretation of Article 209 of the Constitution was made, therefore, order impugned is not sustainable under the law. Notice was also issued in ICA No.2 of 2024 as both the appeals were being heard together. In CMA No. 555 of 2024 the case of the appellant is that without any notice the matter was decided, therefore, the appellant was having no knowledge of the impugned judgment holding the field and it was only after the SJC's meeting dated 09.01.2024 when the impugned judgment dated 27.06.2023 was brought to the knowledge of the Attorney General for Pakistan and in consequence thereof the instant appeal was filed. It is further pleaded that as substantial questions pertaining to interpretation of the Constitution particularly Article 209(6) are involved, therefore, it is imperative that delay in filing the instant appeal may be condoned to prevent the ends of justice being defeated.

5. Learned counsel for the appellants in ICA No. 2 of 2024 argued that after hearing of their petition, the judgment was reserved and their counsel fell seriously ill, therefore, the announcement of judgment could not be attended by her nor it was in her knowledge and even it was not conveyed to the appellants. It is further argued that the Supreme Court (Practice & Procedure) Act, 2023 came into force on 21.04.2023 and even before its enforcement it was suspended by the order of learned eight member bench of this Court through an injunctive order dated 13.04.2023 while hearing Constitution Petition Nos.6 of 2023 etc. and subsequently the said petitions i.e. Const. Petition Nos. 6 of 2023 etc. were dismissed by the learned Full Bench of this Court on 11.10.2023 except the application of section 5 with retrospective effect was not approved by majority, therefore, actually the application of Act came into

field from the announcement of the judgment of dismissal of Constitution Petitions dated 11.10.2023 and further that if ICA No.1 of 2024 on the basis of the ground mentioned for condonation is heard on merits, their appeal be also heard on merits. In the above circumstances, we condone the delay in filing of both these appeals. CMA No.555 of 2024 and CMA No.1695 of 2024 are allowed and disposed of.

6. The Secretary, SJC appeared and told the Court that SJC has received 15 complaints against Ex-CJP Mian Saqib Nisar on 12 October, 2018 which were taken up by the Council on 14.2.2019 and dismissed for being infructuous because Justice Mian Saqib Nisar had retired on January 17, 2019.

7. Now we come to the merits of the case. On 12.02.2024, after hearing the learned counsel for the appellants in ICA No. 2/2024, notice under Order XXVII-A of the CPC was issued to the Attorney General for Pakistan, who waived the issuance of formal notice and accepted the same. After hearing the learned counsel for the appellants in ICA No. 2 of 2024 as well as learned Attorney General for Pakistan we were of the view that both are on the same page and showing one side of the picture to this Court, therefore, it was felt necessary to appoint some Amicus Curiae for assistance of the Court to show both the sides of the matter in issue and render their precious opinion about matter in issue and office was directed to send a letter of request along with copy of order to M/s. Makhdoom Ali Khan, Sr.ASC, Khawaja Muhammad Haris, Sr.ASC, Khalid Javed Khan, ASC, Abdul Moiz Jaferii, Advocate High Court and Faisal Siddiqi, ASC on the following questions of law which were framed by the learned Attorney General for Pakistan and produced in the order dated 12.02.2024. Though the learned counsel for the appellants in ICA No. 2 of 2024 also sent some questions of law through CMA No. 1221 of 2024 but as the same were received late, therefore, could not be incorporated in the said order. The questions of law framed by the learned AGP are reproduced as under:

- A. Whether pending proceedings before the Supreme Judicial Council (the 'SJC') do not stand abated on account of retirement and resignation of a Judge?

- B. Whether a Judge who retires or resigns during pendency of proceedings against him/her before the SJC should be allowed to escape the consequences of removal?
- C. Whether resignation by a Judge during pendency of proceedings against him/her before the SJC tantamount to circumvention/avoidance of accountability enshrined and envisaged under Article 209 of the Constitution of the Islamic Republic of Pakistan, 1973?
- D. Whether circumvention of proceedings under Article 209 of the Constitution would result in erosion of public trust in the Judiciary?

8. The learned Amicus Curiae appointed by the Court namely Makhdoom Ali Khan, Senior ASC and Mr. Khalid Javed Khan, ASC recused, therefore, Mr. Faisal Siddiqui, ASC and Mr. Abdul Moiz Jafferii, AHC were heard. Learned Muhammad Akram Sheikh, Sr.ASC also offered his assistance as Amicus Curiae, he was also heard.

9. Learned Attorney General for Pakistan has reiterated his argument that the impugned order without notice under Order XXVII-A of the CPC to the Attorney General for Pakistan is defective one and not sustainable under the law; that through the impugned judgment Article 209 has been interpreted in a way that the jurisdiction and powers of the SJC have been curtailed in case the Council has taken the cognizance of a complaint/reference/information against a Judge and started proceedings after notice to the Judge and on his resignation if it is declared that the power to proceed with the matter by the Council ends, will be to circumvent the powers of the Council which is not the correct interpretation of Article 209, therefore, AGP has relied upon "Federal Government of Pakistan through the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad versus M.D.Tahir, Advocate and 12 others" (1989 SCMR 2069) to argue that question of public importance relating to the interpretation of the Constitution needed the consideration of this Court with regard to necessity of issuance of mandatory notice of Order XXVII-A of the CPC. He has also relied upon "Federal Government of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others versus Aftab Ahmad Khan Sherpao and others" (PLD 1992 SC 723), "Federal Public Service Commission and others versus Syed Muhammad Afaq and others" (PLD 2002 SC 167), "Pakistan

*Automobile Corporation Limited through Chairman versus Mansoor-ul-Haque and 2 others*” (2004 SCMR 1308), “*Superintendent Central Jail, Adyala, Rawalpindi versus Hammad Abbas*” (PLD 2013 SC 223) and “*Heman Santlal v. State of Bombay*” (AIR (38) 1951 Bombay 121). He has also argued in the light of legislative history/constitutional comparison, right from Government of India Act, 1935, Judicial Committee Act, 1833, Constitution of Pakistan, 1956, Constitution of Islamic Republic of Pakistan, 1962, Interim Constitution of the Islamic Republic of Pakistan, 1972, Constitution of Pakistan (pre-18<sup>th</sup> Amendment), Constitution of Pakistan (Post-18<sup>th</sup> Amendment) and the Constitution of India. He has also referred the provisions of Code of Conduct to be observed by the Judges of the Supreme Court and High Courts as notified on 02.09.2009 with regard to Judicial Accountability while relying upon “*The State versus Mr. Justice Akhlaque Husain, Judge of the High Court of West Pakistan*” (PLD 1960 SC Pak. 26), “*Justice Qazi Faez Isa and others versus The President of Pakistan and others*” (PLD 2021 SC 1), “*Justice Qazi Faez Isa and others versus President of Pakistan and others*” (PLD 2022 SC 119) and an American Jurisdiction Case titled “*Johnson v. United States*” reported as 208 (Fed Cl.1948), prayed that the appeal be allowed and in the instant case at least it be declared that during the proceedings by the SJC retirement as well as resignation by a Judge cannot circumvent the proceedings before the SJC. Learned AGP has further argued that tenor of the impugned judgment shows that it is the SJC to conduct its proceedings, no direction can be given by the Supreme Court by stating that SJC is independent to proceed with the matters. While referring paragraph No. 95 of Shaukat Aziz Siddiqui’s case from the judgment of this Court reported as PLD 2018 SC 538 the prayer of open proceeding by SJC was not acceded to, whereas the prayer made by Justice Mazahar Ali Akbar Naqvi in the misconduct proceedings against him was accepted. Therefore, it is SJC to proceed with the matter as it wants is within its jurisdiction.

10. Further stated that it is a case of first impression where Government is an aggrieved party, therefore, the appellant should have been heard in the petition. While referring Sections 16 and 16-A of the Supreme Court Judges (Leave, Pension and Privileges) Ordinance, 1997 with regard to payable pension and pension on re-employment etc. states that the retired Judge can be re-employed, therefore, as per the stance of the Federation it is necessary that once the proceedings by the Supreme Judicial Council start against a Judge on a complaint by any person or on its own or on a reference sent by the President, the proceedings shall

reach to a logical end despite the fact the Judge resigns during those proceedings or retired after attaining the age of superannuation.

11. Learned counsel for the appellants in ICA No.2 of 2024 while adopting the arguments advanced by the learned AGP has further stated that in fact the complaint was filed by the appellants when Mr. Justice Mian Saqib Nisar was Chief Justice of Supreme Court of Pakistan but unfortunately till his retirement the complaint/reference was not taken up by the SJC, therefore, on his retirement the appellants were forced to file a petition under Article 184(3) of the Constitution, which has been decided by the two member bench of this Court which is under challenge in these appeals. Prays for acceptance of the appeal and setting aside of the order passed by this Court while dismissing the petition of the appellants under Article 184(3) of the Constitution as well as the order of the SJC and prays even if the Judge has retired after superannuation or has resigned, the reference or complaint once filed cannot be consigned to record or dismissed on the ground that the Judge has been retired after superannuation or has resigned from his office.

12. Learned Amicus Mr. Faisal Siddiqui has firstly stated that as the impugned judgment is defective on the basis that notice under Order XXVII-A of the CPC was not issued to Attorney General for Pakistan, therefore, matter be sent back for re-decision after requisite notice. In the alternate initially given his opinion that with the retirement on superannuation or resignation of a Judge, the proceedings of the SJC automatically come to an end and no complaint or reference can be proceeded with by the SJC after the retirement or resignation of a Judge either the proceedings started in his tenure serving as a Judge or pending at that time. While concluding his submissions and opinion stated that to the extent of continuation of proceedings by the SJC in case the cognizance has been taken and proceedings started against a Judge who retires or resigns may continue for a logical end but for the other questions stated that the very important questions of public importance as well as relating to independence of judiciary are concerned, therefore, same may be decided in an appropriate matter in future. The other learned Amicus Abdul Moiz Jafferii is of the view that the retirement as well as resignation by a Judge does not effect upon the pendency of any reference or complaint against a Judge even if the SJC has not yet taken the cognizance of the matter. Just filing of complaint is sufficient before his/her retirement or resignation. It is the prerogative of the SJC to proceed with the matter.

13. On the other hand, Khawaja Muhammad Haris stated as he is representing a Judge before SJC against whom proceedings are going on despite the fact that Judge has resigned, his opinion may not be considered as biased and not an independent opinion, therefore, he is before the Court to give his opinion if it is taken as independent opinion, he was asked to give the opinion, as it is to assist the Court as friend of the Court. He has submitted lengthy arguments while relying upon the case Law reported as “Chief Justice of Pakistan Iftikhar Muhammad Chaudhry versus President of Pakistan through Secretary and others” (PLD 2010 SC 61), “The State versus Mr. Justice Akhlaque Husain, Judge of the High Court of West Pakistan” (PLD 1960 SC Pak. 26), “Justice Shaukat Aziz Siddiqui and others versus Federation of Pakistan through Secretary Law and Justice, Islamabad and others” (PLD 2018 SC 538), “The President versus Mr. Justice Shaukat Ali” (PLD 1971 SC 585), “Muhammad Ikram Chaudhry and others versus Federation of Pakistan and others” (PLD SC 1998 SC 103), “Syed Zafar Ali Shah and others versus General Pervez Musharraf, Chief Executive of Pakistan and others” (PLD 2000 SC 869), “Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahabb-ul-Khairi and others versus Federation of Pakistan and others” (PLD 1996 SC 324), “Justice Qazi Faez Isa and others versus President of Pakistan and others” (PLD 2022 SC 119), “Justice Qazi Faez Isa and others versus The President of Pakistan and others” (PLD 2021 SC 1), “Mr. Justice Ghulam Hyder Lakho, High Court of Sindh, Karachi and others versus Federation of Pakistan through Law, Justice and Parliamentary Affairs, Islamabad and others” (PLD 2000 SC 179), “Khan Asfandyar Wali and others versus Federation of Pakistan through Cabinet Division, Islamabad and others” (PLD 2001 SC 607), “Imran Ahmad Khan Niazi versus Federation of Pakistan through Secretary, Law and Justice Division, Islamabad and another” (PLD 2024 SC 102), Articles 209-211 of the Constitution, Supreme Court Judges (Leave, Pension and Privileges) Order, 1997, “K.Veerawami vs. Union of India and others” (1991) 3 SC Case 655, “Krishna Swami versus Union of India and others”(1992) 4 Supreme Court Cases 605, “Union of India etc. versus Gopal Chandra Misra and others, etc.” (AIR 1978 Supreme Court 694), Constitution of India 9<sup>th</sup> Edition, Constitution Law of India, Independence and Accountability of the Indian Higher Judiciary as well as with regard to constitutional history of various countries and opined that as per his opinion the proceedings with the retirement or resignation of a Judge come to an end when the Council cannot recommend for removal of a Judge, therefore, as per his opinion it will be a futile exercise by the SJC.



14. The other learned Amicus Mr. Muhammad Akram Sheikh has addressed the Court and has given the opinion that as per his opinion the resignation or retirement of a Judge does not effect the proceedings pending before the SJC and he has given his opinion that for independence of judiciary and in accordance with the Islamic principles it is necessary that an effective method of accountability of a Judge which is available in the shape of SJC should be effective as well as without any clog even from any judgment of this Court that the SJC may have independence to proceed with the matter in accordance with law. As per his opinion the resignation or retirement does not effect the proceedings pending as well as reference or complaints available with the SJC.

15. We have considered the arguments advanced by learned counsel for the appellants as well as opinion rendered by the learned Amicus Curiae.

16. The first and foremost consideration before us is that as SJC is an independent constitutional body, it is the prerogative of the Council to proceed with the matter in accordance with the Constitution and the law. In the instant case the basic question is whether Article 209 envisages that by resignation of a Judge or retirement on superannuation the proceedings which are pending before the SJC will automatically come to end or it is the prerogative of the SJC to proceed with the matter. The Amicus Curiae who are of the opinion that with the resignation of a Judge, proceedings automatically end or become infructuous have banked upon their opinion or argument that when the misconduct proceedings are underway and the Judge resigns or is retired, his removal cannot be reported to the President, therefore, there is no need to continue the proceedings whereas the view of the learned AGP and learned counsel for the appellants in ICA No. 2 of 2024 as well as Mr. Muhammad Akram Sheikh and Abdul Moiz Jaffarii is on the basis that there is no clog available in Article 209 that the Council will be having no jurisdiction to proceed with the matter, when the judge retires on superannuation or resigns. Even reference is made to Sub Article 6(a) read with Sections 16 and 16-A of the Supreme Court Judges (Leave, Pension and Privileges) Order, 1997 to state that if the proceedings on the retirement or resignation of a Judge are automatically drop then even a complaint of serious misconduct which was underway and visibly proven, the SJC having a solid material with it, if cannot proceed further upon resignation or retirement of a Judge, the proceeding as well as the question will remain incomplete and unanswered in case the proceedings are not completed and the opinion of the Council is not reported to the

President, it will be on record and while dealing with the matters section 16 and 16-A will be effected. We posed a question to the Amicus Curiae, who were having the view that the proceedings end with the superannuation or resignation of a Judge, if there are any proceedings of misconduct pending against a Judge of the High Court and he resigns in order to avoid the proceedings, whether he can be appointed/elevated as a Judge of the Supreme Court or Federal Shariat Court etc. thereafter, the answer of this query was 'yes', he can be appointed. The further question was, if upon completion of proceedings there is a report of misconduct with the President whether in that case the Judge of a High Court who resigns can be appointed as Judge of Supreme Court or Federal Shariat Court etc., the answer was that if the matter is brought in the knowledge of the Judicial Commission constituted under Article 175-A then he may not be appointed as Judge of the Supreme Court or the Federal Shariat Court.

17. We have noted that at the time of hearing of petition filed by the appellants of ICA No. 2 of 2024, the Judge had already been retired against whom complaints filed by the said appellants were pressed, though the complaint was filed against the Judge when he was a Chief Justice but unfortunately the complaint could not be placed before the SJC and after the retirement of said Judge when it was placed before the SJC same was dismissed as having become infructuous. The main consideration before the learned two member Bench of this Court while hearing the Constitution Petition was that the SJC has declared the complaint as having become infructuous, therefore, mainly the emphasis of the Court was upon the said point whereas it was not a case before the Court that after considering the complaint some steps were taken in the complaint i.e. issuance of notice to the Judge against whom complaint was filed or any reply or the response to the complaint, not it was the question before the Court that during the pendency of the complaint after issuance of notice by the SJC the effect of retirement of a Judge or resignation but the effect of the impugned judgment is that even if the complaint is pending after taking cognizance by the SJC, it abates on retirement of a Judge or resignation, therefore, Federal Government was aggrieved and filed the instant appeal, on which point we agree with the appellant. So far as other prayers like passing of direction to the SJC as prayer B in the original petition and prayer C are concerned, we are of the view that the SJC can consider all these points or same may be taken in any other suitable case as we are dealing with the matter in appeal when without any notice the original Constitutional Petition was dismissed by the learned two member Bench of this Court *in limine*.

18. In this view of the matter, we partially allow both the appeals, we are of the view that it is the prerogative of the SJC to proceed with the matter and the proceedings pending before the SJC which are initiated after issuance of notice to a Judge do not automatically drop or become infructuous on superannuation or resignation of a Judge. These are the reasons of our short order announced on 21.02.2024, which is reproduced:

“For the reasons to be recorded later, the delay in filing both the appeals is condoned. Both the appeals are partially allowed to the extent that if the proceedings have already been initiated by the Supreme Judicial Council (“SJC”) against a Judge, same shall not abate on his resignation or retirement, as the case may be, during such proceedings. It is the prerogative of the SJC to proceed with the matter accordingly. The impugned judgment is modified to that extent. This order is with the majority of four by one disagreeing (Syed Hasan Azhar Rizvi, J.) on the point of limitation as well as on merits.”

19. These appeals are partially allowed in the above terms.

I have also gone through the additional note added by Mr. J. Jamal Khan Mandokhail. I agree with the additional note.

Judge

I agree. However, I have appended my additional note.

Judge

I am disagreed and will file my separate note.

Judge

I agree with the findings of this judgment.

Judge

I agree with the findings recorded by my brothers namely Aminuddin Khan J. and Jamal Khan Mandokhail J.

Judge

Islamabad  
21 February 2024.  
(Mazhar Javed Bhatti)

APPROVED FOR REPORTING

**Jamal Khan Mandokhail, J.**-I have had the privilege of going through the judgment authored by my learned brother Amin-un-Din Khan, J. Although, I fully subscribe to the conclusions drawn in the judgment, however, I feel it appropriate to add my own opinion to further supplement the resolution of issues involved in these appeals.

**Facts:**

2. Detailed facts of the instant case have already been given in the main judgment, however, at the expense of repetition, I would like to reiterate some facts of the case. The private appellants (in ICA No. 02 of 2024) filed a complaint on 10 October 2018, before the Supreme Judicial Council (“**SJC**”) against Mr Justice Mian Saqib Nisar, the Hon’ble Chief Justice (“**H CJ**”) of this Court, as he then was. The complaint was unattended and subsequently was dismissed on 08.03.2019 for having become infructuous on account of retirement of the HCJ on 17 January 2019. Feeling aggrieved, the private appellants filed a petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”) against the respondents and the former HCJ, but, by the order of this Court, the name of former HCJ was deleted. The petition was dismissed by a Division Bench of this Court on 27.06.2023. The Federation of Pakistan assailed the said judgment through ICA No 01 of 2024 and so by the private appellants through ICA No. 02 of 2024. In the impugned judgement, a two member Bench of this Court has held as under:

*“5. Therefore, it is our conclusion that on any view of the matter Article 209 does not apply to a person who has retired or resigned from the office of a Judge of this Court or a High Court.”*

**Objection of Limitation:**

3. An objection regarding delay in filing of appeals has been discussed by his lordship Amin-ud-Din Khan, J.- in detail, however, I would like to add in support of the reasoning in the main judgment. It is a fact that the petition under Article 184(3) of the Constitution was filed by the private appellants,

but the Federal Government was not arrayed as party to the proceedings. Through the said petition, interpretation of Article 209 of the Constitution was required, therefore, it was mandatory for the Court to have had issued a notice to the Attorney General for Pakistan (“AG”) as required by Order XXVII-A Rule 1 CPC. The ground mentioned in the application by the Federation of Pakistan is that the impugned judgment was not within the knowledge of the Federation of Pakistan; and that the learned AG came to know about the said judgment for the first time on 9 January 2024 during the proceedings of the Supreme Judicial Council. The AG states that even otherwise, the question of public importance relating to interpretation of Constitution is involved, therefore, the delay in filing of appeal may be condoned. He relied upon the case reported as Federal Govt. of Pakistan vs. M.D.Tahir Advocate<sup>1</sup>. I have no doubt in my mind that the matter involved in these appeals is of great public importance and has great significance. The reasoning advanced by the learned AG is reasonable. Since neither the Federal Government was arrayed as party to the proceedings nor mandatory notice required under Order XXVII-A Rule 1 CPC was issued to the AG, therefore, there is no reason to disbelieve his contention regarding his unawareness of the date of the pronouncement of the impugned judgment. Even otherwise, a Ten Member Bench of this Court through the referred judgment has condoned the delay of 257 days in filing of petition solely on the ground of public importance, therefore, I concur with Aminud-Din Khan, J. for condoning the delay in filing of these appeals.

**Independence of Judiciary:**

4. Judiciary is one of the fundamental pillars of the State, comprising of judges, vested with the authority to preside over, hear, determine legal matters and safeguard the fundamental rights of citizens. The judges also serve to protect the Constitution and democracy and deal with politically sensitive cases, thereby, are exposed to the general public. In order to

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<sup>1</sup> 1989 SCMR 2069

perform its judicial functions and deliver justice, an independent, impartial and strong judiciary is essential, without which, the fundamental rights of the citizens guaranteed by the Constitution and the democracy cannot be safeguarded. Preamble of the Constitution, therefore, explicitly states and guarantees that independence of judiciary shall be fully secured. Reliance is placed in the case of Muhammad Aslam Awan<sup>2</sup>, relevant portion whereof is reproduced herein below:

*“Judicial independence both of the individual judge and of the judiciary as an institution is essential so that those who bring their causes/cases before the Judges and the public in general have confidence that their cases would be decided justly and in accordance with law. Judicial independence is one of the foundational values of the Constitution of Islamic Republic of Pakistan which is based on trichotomy of powers in which the functions of each organ of the State have been constitutionally delineated. The very Preamble of the Constitution pledges “wherein the independence of judiciary shall be fully secured.” The Constitution makers conferred this independence because they wanted the Judges to “do right to all manner of people” according to law, without fear or favour, affection or ill-will.” (Oath of office of Judges). The fundamental rights guaranteed under the Constitution cannot be secured unless Judiciary is independent because the enforcement of these rights has been left to Judiciary in terms of Articles 184(3) and 199 of the Constitution and the relevant law. Judiciary has not been made part of the Executive or the Legislature (Article 7). The separation of judiciary from the Executive was made a Constitutional mandate (Article 175(3)).” (Emphasis supplied)*

5. To ensure independence of judiciary, the judges require protection of their judicial work. Though, the Islamic Law and our Constitution requires absolute equality between men, between the ruler and the ruled, between the rich and the poor and so on, but judicial immunity is the only exception for judges in performance of their judicial work, in order to protect and shield them from any external pressure, harm or from prosecution. Article 68 of the Constitution provides that the conduct of any judge of the

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<sup>2</sup> 2014 SCMR 1289

Supreme Court or of a High Court in the discharge of his duties is immune from discussion in the Parliament. Similarly, section 77 of the Pakistan Penal Code (“PPC”) protects judges from criminal liability for the act, performed during their judicial work. Such protection extended to the judges is not harmful for others. It is not a favour to the judges nor is it for their personal benefit, rather it is essential so that judges could perform their judicial functions independently, freely, without fear or favour, and with peace of mind. The sole purpose of an independent and impartial judiciary as an institution and of a judge is to provide justice to the citizens and to protect their fundamental rights, guaranteed by the Constitution, in order to enjoy the confidence of citizens.

#### **Accountability of Judges:**

6. A person who chooses to become a judge has a notion in mind that upon his elevation, he must be God fearing, trustworthy, honest; he has to maintain and enforce high moral and professional standards of conduct, in order to preserve his integrity and ensure independence to serve justice. The public has a right to expect that of him and if he does not choose to impose such a standard on himself, he should not accept judicial appointment. The Prophet Muhammad (PBUH) said that *Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell*<sup>3</sup>. Basing on such principle of higher morality, a reference is also made to a situation where in the year 763 AD, Abu Jafar Abdullah ibn Mohammad Al-Mansur, the ruler/Khalifa at that time, offered a renowned Muslim Jurist and Scholar Imam Abu Hanifa, the post of Chief Justice of the State, “but the Imam declined the offer because he knew that on becoming a judge, the ruler/Khalifa would pressure him into passing

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<sup>3</sup> Sunan Abu-Dawud: The Office of the Judge (Kitab Al-Aqdiyah), Book 18, Number 3566

judgments according to his own desire. He refused the offer saying that he would never be able to pass fair judgment according to his conscience". This regarded the position of a judge so sacred, because justice is one of the most important moral concepts that individuals are to be treated in a manner that is equitable and fair. On becoming a judge, the following Oath is administered to him:

CHIEF JUSTICE OF PAKISTAN OR OF A HIGH COURT  
OR JUDGE OF THE SUPREME COURT  
OR A HIGH COURT

[Articles 178 and 194]

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

(In the name of Allah, the most Beneficent, the most Merciful.)

I, \_\_\_\_\_, do solemnly swear that I will bear true faith and allegiance to Pakistan:

That, as Chief Justice of Pakistan (or a Judge of the Supreme Court of Pakistan or Chief Justice or a Judge of the High Court for the Province or Provinces of.....), I will discharge my duties, and perform my functions, honestly, to the best of my ability, and faithfully, in accordance with the Constitution of the Islamic Republic of Pakistan and the law :

That I will abide by the code of conduct issued by the Supreme Judicial Council:

That I will not allow my personal interest to influence my official conduct or my official decisions :

That I will preserve, protect and defend the Constitution of the Islamic Republic of Pakistan :

And that, in all circumstances, I will do right to all manner of people, according to law, without fear or favour, affection or ill-will.

<sup>1</sup>[May Allah Almighty help and guide me (A'meen).]

7. An Oath is a public pledge under "Allah Almighty" (God), in presence of witnesses that a person will perform his duty honestly and truthfully; to maintain and restore public confidence in the integrity, independence and impartiality of judiciary. Holding such a prestigious post, a judge is expected to abide strictly by each and every word of the Oath and is supposed to follow the Constitution, law and the Code of Conduct issued by the Council. In this way, a person who becomes a judge imposes a mechanism of self-



accountability. Rule of law is a principle under which all persons, institutions and entities are accountable. In holding the judges of the Supreme Court and a High Court accountable for guilty of misconduct, Article 209 of the Constitution has bestowed upon the Council being the only forum, the power to investigate and inquire into their capacity or conduct. The formation and functions of the Council are as under:

**“209. (1)** There shall be a Supreme Judicial Council of Pakistan, in this Chapter referred to as the Council.

(2) The Council shall consist of-----

- (a) the Chief Justice of Pakistan;
- (b) the two next most senior Judges of the Supreme Court; and
- (c) the two most senior Chief Justices of High Courts.

*Explanation.*---For the purpose of this clause, the *inter se* seniority of the Chief Justices of the High Courts shall be determined with reference to their dates of appointment as Chief Justice [otherwise than as acting Chief Justice], and in case the dates of such appointment are the same, with reference to their dates of appointment as Judges of any of the High Courts.

(3) If at any time the Council is inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or any other cause, then---

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- (a) if such member is the Chief Justice of the Supreme Court, the Judge of the Supreme Court who is next in seniority below the Judges referred to in paragraph (b) of clause (2), and
- (b) if such member is the Chief Justice of a High Court, the Chief Justice of another High Court who is next in seniority amongst the Chief Justices of the remaining High Courts,

shall act as a member of the Council in his place.

(4) If, upon any matter inquired into by the Council, there is a difference of opinion amongst its members, the opinion of the majority shall prevail, and the report of the Council to the President shall be expressed in terms of the view of the majority.

(5) If, on information from any source, the Council or the President is of the opinion that a Judge of the Supreme Court or of a High Court----

- (a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or
- (b) may have been guilty of misconduct,

the President shall direct the Council to, or the Council may, on its own motion, inquire into the matter.

(6) If, after inquiring into the matter, the Council reports to the President that it is of the opinion---

- (a) that the Judge is incapable of performing the duties of his office or has been guilty of misconduct, and
- (b) that he should be removed from office,

the President may remove the Judge from office.

(7) A Judge of the Supreme Court or of a High Court shall not be removed from office except as provided by this Article.

(8) The Council shall issue a code of conduct to be observed by Judges of the Supreme Court and of the High Courts."

8. The members of the Council are the highest adjudicators of the country, who are independent from legislature and executive, and are under Oath, to perform functions of accountability of their brother judges, honestly, independently and without fear or favour. The concept of

assigning power to the Council to inquire into the capacity or conduct of a judge, is to eliminate a slightest possibility of external interference, or pressure and undue influence from within the judiciary, and to protect judges from frivolous and malicious prosecution to guarantee their independence. Reliance is placed in the case of Justice Shaukat Ali, wherein this Court has determined as under:

*Moreover, an inquiry into the conduct of a Judge is neither a criminal indictment nor even a quasi-criminal proceeding but it is mainly an administrative proceeding conducted by a domestic forum to examine the professional fitness of a Judge. The subject-matter of these proceedings is neither civil rights and duties nor criminal liabilities. It is simply the conduct of a Judge which is to be properly reviewed in the interest of the purity and honour of the judiciary. The forum consists of Judges of superior Courts who also belong to the same profession. To be tried by one's peers is a protection because they understand one's difficulties, problems and the situation in which one was. Doctors, architects, accountants and lawyers aim at having and have their domestic tribunals, that is to say, the tribunals which judge their conduct are manned by their own peers<sup>4</sup>." (Emphasis supplied).*

Even otherwise, If the task of inquiring into the conduct of judges is assigned to any institution, other than the Council, it would put the judges in fear of repercussions that could hinder delivery of justice, and independence of judiciary would be undermined. Self-regulating method of supervising judges conferred upon the Council by the Constitution is on account of separation of judiciary from the legislature and executive, as provided by Article 175 of the Constitution. It also reflects the confidence of Constitution makers in the highest constitutional disciplinary body.

### **Jurisdiction and Power of the Council:**

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<sup>4</sup> THE PRESIDENT versus MR. JUSTICE SHAUKAT ALI P L D 1971 Supreme Court 585, reaffirmed in CHIEF JUSTICE OF PAKISTAN IFTIKHAR MUHAMMAD CHAUDHRY Versus PRESIDENT OF PAKISTAN through Secretary and others P L D 2010 Supreme Court 61

9. The moot question before this Court is to consider as to whether the Council can inquire into the capacity or conduct of a judge, who has retired or has resigned from his office? And whether the Council can continue to inquire into the conduct or capacity of a judge, who during the pendency of the inquiry proceedings, retires or resigns from his office? Sub-Article (5) of Article 209 of the Constitution provides the following mechanism to inquire into the matter as under:

Article 209(5) If, on information from any source, the Council or] the President is of the opinion that a Judge of the Supreme Court or of a High Court---

(a) may be incapable of properly performing the duties of his office by reason of physical or mental incapacity; or

(b) may have been guilty of misconduct,

the President shall direct the Council to, or the Council may, on its own motion,] inquire into the matter.

10. A plain reading of the said provision of the Constitution makes it clear that the Constitution has mandated the President that on information from any source, he shall direct the Council to inquire into the matter. The phrase, '*the President Shall direct the Council*' used in this provision of the Constitution makes it mandatory upon the Council that it has no option, but to initiate inquiry against the judge accordingly in a case the reference is received from the president. Similarly, if the Council deems it appropriate, may on its own motion inquire into the matter. After a preliminary inquiry, the Council may dismiss the complaint for lack of evidence or untrue information. In both circumstances, once the Council invokes its constitutional jurisdiction by initiating inquiry into the matter against a judge, it has to take the proceedings to its logical conclusion. Sub-Article (6) of Article 209 of the Constitution starts with words *if, after inquiring into the matter*, that further shows the intent of the Legislature that before

invoking the said provisions of the Constitution, the Council has to comply the mandate of sub-Article (5) of Article 209 of the Constitution, pursuant to which, it has to conclude inquiry initiated against a judge. Upon completion of the inquiry proceedings, the Council can form its opinion pursuant to sub-Article (6). If, the Council is of the opinion that the judge is incapable of properly performing the duties of his office by reason of physical or mental incapacity or has been guilty of misconduct, shall report to the President with a recommendation that he should be removed from his office; the President may then remove the judge from the office. However, if, after inquiring into the matter upon a reference from the President, the Council opines that nothing adverse was found against the judge, it has to close the proceedings and report to the President with its opinion accordingly. Moreover, upon completion of inquiry initiated by the Council on its own motion on information from any source, nothing adverse could be found against the judge, the Council has to close the inquiry with an observation in this behalf, without report to the President.

11. Without prejudice to above, even otherwise, a judge is appointed for the interest of general public and his judicial conduct is a matter of great public interest. Without the trust and confidence of people, judiciary cannot exist. Therefore, the purpose of inquiring into the conduct of a judge while in office, is to ensure accountability, to preserve the integrity of judicial process, maintain public trust and confidence in the judiciary. As a general rule, the Authority inquiring into the conduct of a judge loses its jurisdiction to initiate proceedings against a person who retires or resigns from his office, before initiation of inquiry proceedings. Whereas, when an inquiry about the conduct of a judge in office is initiated by the Council, it is the constitutional obligation of the Council to conclude the proceedings, form its opinion and report to the President with recommendations. In this provision of the Constitution, the word 'inquiry' has been used. The primary purpose of inquiry is to gather information in order to address a specific issue of public interest and to make recommendations for improvement

and prevention of future occurrences. It is not to focus on enforcing laws or prosecuting individuals as is mandated in investigation, rather to inquire into the ethical violations and misconduct of a judge. It promotes accountability and trust in the process by the public. Reliance is placed in the case of *In re Proceedings before the Common. On Judicial Tenure & Discipline*,<sup>5</sup> relevant portion whereof is reproduced herein below:

*“This statutory scheme enables the commission to regulate the conduct of judges. The regulation of judges is necessary to ensure that judges behave properly and to preserve the public’s confidence in the judiciary. The public’s confidence in the judiciary and the commission would be shaken if the system for the regulation of the conduct of the judiciary could be frustrated simply by the resignation of the judge under investigation. Hence I do not believe that the Legislature intended to allow the frustration of the statutory scheme by denying the commission’s jurisdiction over a judge who has resigned.”*

It is for good reason in the public interest that citizens having fundamental right to know about the fate of the proceedings. When an inquiry into conduct of a judge initiated by the Council is terminated without an opinion, on account of retirement or resignation of a judge from his office, it would render Article 209 (5) & (6) of the Constitution redundant and would also give an authority to the judge to make the constitutional body abandoned.

12. Termination of inquiry proceedings upon retirement of a judge would otherwise give an impression that the Council is dependent on the will of the judge, who can overpower the control of the constitutional body. It may create a perception that the judges are above the law. After his retirement or resignation, prior to inquiry initiated, a judge enjoys a status of a retired judge, with lucrative post-retirement benefits from public exchequer. He is also eligible for his re-appointment against some important constitutional, quasi-judicial and administrative posts, for which evaluation

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<sup>5</sup> In re Proceedings before the Commn. on Judicial Tenure & Discipline, 578 A.2d 1387

of his conduct and reputation is essential. The jurisdiction of the Council to inquire into the matter pertaining to misconduct of a judge is a constitutional mandate. In absence of express words or an enactment, preventing the Council from inquiring into the matter upon resignation or retirement of a judge, jurisdiction of the Council cannot be abolished, ousted or terminated. Since there is no express provision in the Constitution, nor is there any enactment, preventing the Council from continuing its proceedings of inquiry in a situation where a judge is retired or resigns before conclusion of the inquiry, it is the constitutional obligation of the Council to conclude the inquiry initiated against a judge and form an opinion regarding his conduct. If after inquiring into the matter, the Council is of the opinion that the judge has been guilty of misconduct, under such circumstances, he shall not be eligible for post-retirement benefits. The purpose of removal of a judge is not a punishment, rather a judge may only be removed in the larger interest of the people. His Removal is to protect the public from an unfit judge and to appoint a better one<sup>6</sup>. It would also be an appropriate way to discourage others from violating oath of office and will be a precedent for the judges. . Reliance is placed on *Steensland v. Ala. Judicial Inquiry Comm'n*<sup>7</sup>. Relevant portion whereof is reproduced herein below:

*"Once the jurisdiction of a court or administrative agency attaches, the general rule is that it will not be ousted by subsequent events." In re Peoples, 296 N.C. 109, 146, 250 S.E.2d 890, 911 (1978). The jurisdiction of the court or administrative agency, thus invoked, continues until the process is completed. See In re Marriage of Clark, 232 Ill. App. 3d 342, 347, 597 N.E.2d 240, 243, 173 Ill. Dec. 532 (1992) ("It is clear that once jurisdiction attaches in a cause, it continues until all issues of fact and law have been finally determined."). Indeed, HN8 the COJ is constitutionally required to convene and to entertain the charges brought by the JIC.4 See In re Fuyat, 578 A.2d 1387, 1388-89 (R.I. 1990) [\*\*19] (HN9 "[A] judge ... who has removed himself or herself from judicial office by resignation [during the pendency of an investigation*

<sup>6</sup> In re Seaman, 627 A. 2d 106, 121 (N.J 1993) And In re Nowell, 293 N.C. 235

<sup>7</sup> Steensland v. Ala. Judicial Inquiry Comm'n 87 So. 3d 535

*commenced by the 'Commission on Judicial Tenure and Discipline' ('the commission'), but before the 'institution of formal proceedings,'] is not by that fact immune from action by the commission, which may recommend some sanction other than removal."'). In short, we hold that Judge Steensland's retirement during the JIC's pending investigation of the complaints filed against him did not deprive the JIC or the COJ of jurisdiction to adjudicate the charges in the complaint."*

### **Impact of Resignation of a Judge:**

13. The person who wishes to resign from his office is mostly on the basis of his personal reasons, including health issues, or on account of instances where he wishes an honourable exit, before initiation of any proceedings regarding his conduct. But, when a judge who is facing inquiry on the allegations of misconduct, initiated by the Council by invoking Article 209 of the Constitution, if senses an adverse outcome of the proceedings, resigns and leaves the Bench in response to credible allegations, it would be an attempt to escape the consequence of inquiry proceedings and bad faith. If the proceedings are made dependent upon the will of the judge on account of his resignation, at any stage before conclusion of inquiry, it would let the judge, who is guilty of misconduct, to go Scott free by defeating the process of accountability. This would damage rule of law norms and public trust in the role of judges and the judiciary. In a situation, where inquiry into the matter in respect of misconduct of a judge is underway, and he considers himself innocent, he would not opt for resignation, rather would like to face the proceedings even after his retirement, to get rid of the baseless and frivolous reference of complaint. He will naturally want to secure his integrity and would prefer to not live with stigma. For these reasons, it is imperative that once the Council in exercise of its constitutional authority, initiates inquiry into conduct of a judge, it cannot terminate or abate upon retirement or resignation of the judge from his office. The citizens have a right to know about the outcome of the complaints.



**Procedure for Inquiry:**

14. For effective performance of functions and proceedings to give effect to Article 209 of the Constitution, the Council has laid down a procedure called 'the Supreme Judicial Council Procedure of Inquiry, 2005' ("**Procedure of 2005**"). Paragraph 7(1) thereof provides that once information in respect of inquiry into the capacity or conduct of a judge is received by any member of the Council, it shall be presented to the Chairman of the Council for further action. Under Article 209 of the Constitution, if a reference/complaint is received against any of the member, who is a judge of the Supreme Court, the judge of the Supreme Court who is next in seniority shall become a member of the Council in his place. In the present case, admittedly, the complaint was filed by the private appellants against the former HCJ, but he sat upon the same and did not refer the matter to the Council by recusing himself, rather held the Council hostage by not convening a meeting. It was not only his constitutional obligation, but was also moral and ethical responsibility to have had referred the matter to the Council and asked a judge of the Supreme Court who was next in seniority below him to become a member, with further request to the Council to proceed against him accordingly. As a Chief Justice, he was burdened with more responsibility to maintain a high moral and ethical standard by placing himself before the Council for his accountability, but he failed to do so, what was expected from him. Failure to refer his matter to the Council by the former HCJ, not only resulted into undermining the constitutional provisions, but also amounts to preventing the Council from performing its constitutional function. It is a fact that during his tenure, under his chairmanship, the Council conducted proceedings against some other judges, but withholding the complaint filed against him, is a violation of principle of equality regarding accountability amongst the judges. It is important to mention here that it was equally the responsibility of other Hon'ble Members of the Council to have had inquired about

pendency of references or complaints against judges of the Supreme Court or a High Court(s), but unfortunately they also did not vigilantly perform their constitutional duty, which rendered several complaints, including the one against former HCJ as infructuous on account of retirement or resignation of judges. It had shattered the confidence of the appellants and many more, which had a negative impact upon the mechanism and procedure of inquiry proceedings into the conduct of judges. Had that complaint and many more filed against other judges been taken up and decided in time by the Council, before the retirement of the former HCJ and other judges, there would not have been any violation of the relevant provision of the Constitution nor would have created any doubt regarding the working of the Council and integrity of its Chairman and members. The private appellants and the public could have been satisfied and thereby their confidence and trust in the working of the Council would not have been shattered. In any case, it was necessary for the Council to have decided the fate of the complaint before retirement of the former HCJ, but the needful was not done, therefore, after his retirement, the Council cannot proceed.

15. We have observed that in the past, the Hon'ble Members of the Council did not take pain to convene its meeting in time and on regular basis. The complaints remained unattended and institution of new ones was going on, which resulted into increase in the number of complaints manifold. During this period, several judges were retired or resigned from their offices. The petition filed under Article 184(3) of the Constitution by the private appellants and the present appeals poses a valid question on the mechanism of initiating inquiry and working of the Council. The appellants presume that the Council by not taking action on the complaints has facilitated the judges to retire or resign, who were required to be subjected to disciplinary proceedings. No doubt, majority of the complaints against the judges are frivolous and baseless, but still, it is the constitutional obligation of the Council to decide fate of the same as early as possible. The

Procedure of 2005 has empowered the Chief Justice being Chairman of the Council to convene a meeting for the purpose of inquiring into the matter. Empowering the Chairman of the Council alone to convene a meeting would make the Council subservient the Chairman, hence, undermines the independence and authority of the Council. In order to ensure independence of the Council, it is imperative that the Procedure of 2005 is suitably amended in line with the provisions of Article 209 of the Constitution, to introduce a regular vigilant mechanism for convening a meeting of the Council on a regular interval, for initiating and concluding the inquiry proceedings upon a reference or a complaint by the Council before retirement or resignation of a judge. Independent, effective and vigilant Council will strengthen the trust and confidence of the citizens of Pakistan in the disciplinary proceedings, involving judges of the Supreme Court, the Federal Shariat Court and of the High Courts. It will also enable the judges to perform their judicial functions with peace of mind, freely, without any fear or favour and without any external or internal pressure. However, disciplinary proceedings against judges must be based on the rule of law and in accordance with the basic principles of justice and internal safeguards, to ensure judicial independence.

**Result:**

16. On the basis of what has been discussed herein above, the questions framed by this Court on 12.02.2024 are answered as under:

- A. Whether pending proceedings before the Supreme Judicial Council (the 'Council') do not stand abated on account of retirement and resignation of a Judge?

**Answer:** My answer to this question is "No". Proceedings, once initiated by the Council, shall not abate upon the retirement and resignation of a judge.<sup>8</sup>

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<sup>8</sup> See Para 10, 11 & 12 of instant note.

B. Whether a Judge who retires or resigns during pendency of proceedings against him/her before the Council should be allowed to escape the consequences of removal?

**Answer:** My answer to this question is also in negative.<sup>9</sup>

C. Whether resignation by a Judge during pendency of proceedings against him/her before the Council tantamount to circumvention/avoidance of accountability enshrined and envisaged under Article 209 of the Constitution of the Islamic Republic of Pakistan, 1973?

**Answer:** This question is easily answered as “Yes”<sup>10</sup>.

D. Whether circumvention of proceedings under Article 209 of the Constitution would result in erosion of public trust in the Judiciary?

**Answer:** This question is also answered in affirmative.<sup>11</sup>

**(Jamal Khan Mandokhail)**  
Judge

ISLAMABAD  
K.Anees and Waqas Ahmad, L.C.

**APPROVED FOR REPORTING**

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<sup>9</sup> See Para 12 & 13 *ibid*.

<sup>10</sup> *ibid*

<sup>11</sup> See Para 4,5,6,7 & 12 *ibid*.