

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE MUHAMMAD ALI MAZHAR

MR. JUSTICE ATHAR MINALLAH

C.Ps. No.2314, 2317, 2318 of 2022

(Against judgment dated 10.05.2022 passed by the Peshawar High Court, Peshawar in W.P. No.712-P/2022, 370-P/2022 and 377-P/2022.)

And

C.M.A.863-P, 866-P and 869-P /2022 IN CP

No. Nil of 2022

(Permission to file and argue)

Federation of Pakistan through Secretary Ministry of Law and Justice Islamabad	...	Petitioner (in all CPs)
Muhammad Hamid Mughal	...	Applicant (in all CMAs)
Vs.		
Mr. Fazal-e-Subhan& other	:	(In C.P.2314/22)
Mr. Naeem Ahmad Khattak and another	:	(In C.P.2317/22)
Dr. Khurshid Iqbal and others	:	(In C.P.2318/22)
FazalSubhan and another	:	(In C.M.A.863-P/22)
Naeem Ahmad Khattak and others	:	(In C.M.A.866-P/22)
Dr. Khurshid Iqbal and others	:	(In C.M.A.869-P/22)
... Respondents		
For the Petitioner		Ch. AamirRehman, Addl. AGP (in all CPs.)
For the Applicant	:	Mr. M. Siddique Haider Qureshi, ASC C.M.As.863-P, 866-P and 869-P/2022
For Respondents No.1-2	:	Syed Mudassar Ameer, ASC CP No.2314/2022
For Respondent	:	N.R. (In CP No.2317/2022)
For Respondent No.1	:	Dr. Adnan Khan, ASC.(In CP No.2318/22)
For Respondent No.1	:	Syed Mudassar Ameer, ASC CMA No.863-P/2022
Other Respondents	:	N.R.(all CPs and CMAs.)
Date of Hearing	:	30.05.2023

ORDER

Athar Minallah, J.-The Federation of Pakistan and other private petitioners have sought leave against the judgment, dated 10.05.2022, of the Peshawar High Court whereby the decision of the Parliamentary Committee ("**Committee**"), established under Article 175A of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"), dated 19-01-2022, was set-aside and a writ was granted to give effect to the nominations forwarded by the Judicial Commission ("**Commission**").

2. The Chief Justice of the Peshawar High Court had initiated the cases of six candidates for elevation as judges against the vacancies in terms of rule 3 of the Judicial Commission of Pakistan Rules, 2010 ("**Rules of 2010**"). The proposed candidates included three each from amongst the members of the Bar and the District Judiciary respectively. The Chairman i.e the Chief Justice of Pakistan, called the meeting of the Commission on 05.01.2022 to consider the proposed candidates. After exhaustive deliberations, which were duly recorded in the minutes of the meeting, dated 05.01.2022 ("**minutes of the meeting**"), the Commission, by a majority of ten to two, decided to nominate the three judicial officers while in the case of the members of the Bar, the proposed candidates were approved by a majority of twelve. One of the members chose to abstain and the reasons have been duly recorded in the minutes. Consequently, the nominations were forwarded to the Committee along with the Commission's record. The latter, in its meeting held on 19.01.2022, unanimously confirmed the nominated candidates from amongst the members of the Bar. However, the nominations of the three judicial officers from the District Judiciary were not confirmed. Nonetheless,

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the Commission was advised to reconsider the matter by examining the suitability of all the eligible judicial officers. The relevant portion of the minutes of the meeting is reproduced as follows:-

“While considering the nominations of Mr. Fazal Subhan, D&SJ, Mr. Shahid Khan, D&SJ and Dr. Khurshid Iqbal, D&SJ the Committee perused the record/details forwarded by the Judicial Commission of Pakistan along with other record available before it and decided as under:

“The Committee has gone through the observations and recommendations of the Judicial Commission of Pakistan. District & Session Judges Mr. Kaleem Arshad and Mr. Asim Imam have been superseded without any adequate material against them regarding their integrity and competence. Furthermore, the seniority of Mr. Kaleem Arshad has to be re-fixed by the “Administrative Committee” in accordance with the judgment pronounced by the Service Tribunal in his favour. Mr. Kaleem Arshad would then be placed at Serial No.1 due to supersession of senior most District and Session Judge Mr. Asim Imam. Thus it is apparent that Mr. Asim Imam though placed at Sr. 1 in order of seniority has been superseded from being elevated as a Judge of the High Court. It has been mentioned in the minutes that Mr. Asim Imam is a very brave and courageous officer who served for three years as ATC Judge in Swat during the time of uprising. He also remained ATC Judge at Kohat where he was dealing with miscreants in Hangu. The Judicial Commission of Pakistan has not been able to judge the competency of Mr. Kaleem Arshad and Mr. Asim Imam D&SJs as the judgments pronounced by them were not placed

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in front of them being not recommended for elevation/appointment.

From the above not only the issue of seniority will arise but also discrimination will take place if the three nominees namely (i) Mr. Fazal Subhan, D&SJ, (ii) Mr. Shahid Khan, D&SJ (iii) Dr. Khurshid Iqbal, D&SJ are confirmed by the Parliamentary Committee.

The Committee is, therefore, of the unanimous opinion that three positions for which three District & Session Judges have been nominated for appointment as Additional Judges of the Peshawar High Court be kept vacant and the names of all the five District & Session Judges namely (i) Mr. Fazal Subhan (ii) Mr. Shahid Khan (iii) Dr. Khurshid Iqbal, (iv) Mr. Kaleem Arshad and (v) Mr. Asim Imam may be reconsidered keeping in view their seniority and competence. Accordingly the names of three District & Session Judges namely (i) Mr. Fazal Subhan, D&SJ (ii) Mr. Shahid Khan, D&SJ (iii) Dr. Khurshid Iqbal, D&SJ, are not confirmed and the matter is referred back for reconsideration as stated herein above."

3. It is an admitted position that the Chief Justice of the High Court had not proposed the four judges of the District Judiciary, who were senior and thus eligible to be considered by the Commission and, consequently, the relevant record was also not placed before its members. The names were initiated for consideration of the Commission by the Chief Justice of the High Court in terms of rule 3 of the Rules of 2010. As will be discussed later, there was no clog on the inherent power of the Commission to have called for the record relating to the superseded senior judicial officers so as to enable its members to satisfy themselves whether the exclusion was justified.

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The Commission, despite strong reservations raised by some of its members, nominated the proposed candidates for the consideration of the Committee as required under clause 12 of Article 175A of the Constitution. The Committee, after deliberations and by a three fourth majority, did not confirm the nominations of the judicial officers. The non-confirmation was challenged by the judicial officers before the High Court by invoking its jurisdiction vested under Article 199 of the Constitution. The petitions were allowed vide the impugned judgment. The High Court granted a writ, directing the executive to issue the notifications of the respondents pursuant to the decision of the Commission. The writ granted by the High Court had the effect of rendering sub articles 9 to 13 of Article 175A redundant and thus the process of appointment of judges prescribed under the Constitution was circumvented by preventing the Committee from exercising its constitutional duty. In order to appreciate the questions raised before us it would be beneficial to examine the proceedings of the Commission, which were duly recorded in the minutes of the meeting.

4. Proceedings of the Commission recorded in the minutes

It is not disputed that the candidates were proposed to the Commission by the Chief Justice of the High Court and, while doing so, four eligible senior judicial officers of the District Judiciary had been excluded, rather superseded. The relevant record relating to the superseded officers was also not placed before the Commission so as to enable its members to independently satisfy themselves, as a collegium, whether the decision was justified, fair and germane to the purpose for which the Commission has been established under Article 175A of the Constitution. The minutes of the meeting manifest that the Subordinate Service Tribunal (Tribunal) vide its judgment,

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dated 18.12.2021, had allowed the appeal of one of the superseded judicial officers, Kaleem Arshad, and undeniably he had become senior to the proposed judicial officers. The Chief Justice, in the meeting, had not raised any reservation regarding his competence, integrity or other antecedents, rather, at one stage he agreed not to fill one vacancy so that his case could be initiated for consideration. The members of the Commission had suggested that consideration of the judicial officers be deferred but the Chief Justice of the High Court was not inclined, solely on the ground that there was a considerable 'backlog' of cases. The Chief Justice of the High Court had raised questions regarding the integrity of the senior most superseded judicial officer, Asim Imam, but the opinion could not be substantiated on the basis of any material let alone credible information. Most of the members were of the opinion that condemning the judicial officer in the circumstances would not be fair and just. The member representing the Bar, on the other hand, had appreciated the performance of the judicial officer while posted as the presiding judge of the antiterrorism courts at Kohat and Swat during the most challenging times. The third superseded senior judicial officer was alleged to have been involved in domestic violence. He was said to have been nominated in a criminal case which had been registered on his wife's complaint. According to the minutes, the trial was terminated on the basis of compromise between the parties. The fourth superseded officer, in the opinion of the Chief Justice of the High Court, was not competent though he was posted as a presiding judge of a competent court. The minutes manifest that the suppression of the four judicial officers had the concurrence of all the judges of the High Court because, according to the statement of the Chief Justice, they had been consulted before sending the proposals

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to the Commission. It is obvious from the minutes of the meeting that most of the members of the Commission were of the view that the matter be deferred so that all the eligible judicial officers could be considered. The Commission ultimately gave primacy to the subjective opinion of the Chief Justice despite the strong reservations raised by members and without forming an independent opinion pursuant to examining the relevant record. The members of the committee, constituted by the Commission under rule 6 of the Rules of 2010, had also raised questions regarding the unconfirmed contradictory subjective assessment in the context of the reputation of one of the superseded judicial officers. The conclusions and the final decision of the Commission does not appear to be in conformity with the discussion recorded in the minutes of the meeting. The most crucial aspect relating to the legality and propriety of the proceedings stem from the opinions of two members of the Commission, both of whom were senior judges of this Court. One of them had raised the fundamental question regarding transparency, fairness and procedural propriety of the proceedings and decision making process of the Commission. The members had questioned the validity of the decision making process in the absence of predetermined objective criteria set out for selecting the candidates, followed by their evaluation by the Commission. It is implicit from the minutes that the entire process was undertaken by the Commission in the absence of any objective predetermined criteria. It is also obvious from a plain reading of the minutes that the Chief Justice of the High Court did acknowledge that one of the superseded judicial officers was eligible to be considered.

In a nutshell, the minutes of the meeting clearly manifest that; the Commission had acted in a manner that was inconsistent with

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the purpose for which the power has been conferred under Article 175A of the Constitution; there was no predetermined objective criteria for selection and evaluation of the candidates; the names were initiated by the Chief Justice of the High Court in consultation with the other judges; the power conferred under Article 175A was neither exercised in a transparent manner nor for the purpose for which it has been conferred there under; absence of predetermined and clear objective criteria had unquestionably rendered the entire decision making process non transparent; the subjective opinion of the Chief Justice of the High Court was given primacy by the Commission; the decision of the Commission had endorsed the supersession of four judicial officers, solely relying on the subjective opinion of the Chief Justice of the High Court; the members of the Commission had no opportunity to apply an independent mind as a collegium in the absence of the relevant record; the decision of the Commission in the absence of predetermined objective criteria suffered from lack of transparency and thus was not a valid exercise of power for the purpose contemplated under Article 175A of the Constitution.

The High Court has relied on the judgments of this Court for granting the writ and, therefore, it would be appropriate to examine the principles enunciated therein. The Munir Bhatti¹ case is the basic judgment relied upon.

5. Article 175A interpreted by this Court in the earlier judgments

(a) Munir Bhatti's case

The facts involved in the case were peculiar. The Chief Justices of two distinct High Courts had initiated the cases for consideration

¹Munir Hussain Bhatti & others v. Federation of Pakistan and another (PLD 2011 SC 407)

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of the Commission relating to confirmation of serving Additional Judges. After deliberations, the Commission had unanimously nominated the judges to the Committee for extension in their tenure. The unanimously approved nominations were in conflict with the evaluation made by the Chief Justices of the respective High Courts which they had recorded in the 'Proforma for initiation of nomination for appointment as judge of the High Court' and on this ground the Committee refused to confirm the nominations. The decision was challenged before this Court by invoking its original jurisdiction under Article 184(3) of the Constitution. This Court held that the power to appoint a judge was in the nature of an executive function. The Commission and the Committee were forums created by the Constitution to function as two distinct entities related to the decision making process prescribed under Article 175A. This Court drew a distinction between the functions and limits of power conferred on the two forums. It was held that the opinion of the judicial consultee regarding suitability of a person had primacy and that such opinion was subjective and not open to judicial review. The judicial consultee was, therefore, held to be best suited to determine the calibre, competence, legal acumen and over all suitability of a person for appointment to a judicial post. On the other hand, the executive functions were more appropriate for evaluating the antecedents and, that too, on the basis of 'factual data and reasoning'. The Committee could not be seen as a superior forum sitting in appeal over the 'well considered' evaluation of suitability of a candidate made by the Commission while functioning as a 'collegium'. It was held that the Committee did not have the ability to reverse the 'well considered opinion' of the Commission. The process of making judicial appointments was to remain independent of the

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executive or legislature except for such executive inputs in decision making which would ensure and advance the independence of the judiciary. The decisions of the Committee were held to be justiciable and subject to judicial review. The collective decision making process mandated under Article 175A was spread over the members of the Commission who perform their functions as a 'collegium'. The process was meant to ensure greater degree of objectivity. The technical evaluation of a candidate's calibre was to be made by the Commission and, once evaluated, the recommendations are to be viewed as one. With the insertion of Article 175A, the special primacy earlier given to the opinion of one man, the Chief Justice, had been substituted by decisions collectively taken by a collegium. The evaluation of professional skill, legal acumen, quality and over all suitability of the nominee fell within the exclusive domain of the Commission and the Committee had no jurisdiction nor the ability to review or re-examine the decisions of the Commission taken collectively. The Committee could evaluate the antecedents on the basis of independent inputs in the decision making process which would advance and promote the independence of the judiciary. The determination of professional calibre, judicial skill, legal acumen and suitability once examined and a well considered opinion formed by the Commission was not open to re-examination or review by the Committee. The Committee was not part of the Majlis-e-Shoora (Parliament) and its members did not perform the functions entrusted to the parliamentarians.

In order to properly appreciate how this Court has elaborated its interpretation of Article 175A it would be essential to examine the subsequent judgment while reviewing the Munir Bhatti case.

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(b) Review judgment in Munir Bhatti's case²

The Court has reiterated that under Article 175A of the Constitution the base of the decision making process had been substantially broadened. The Committee is empowered to exercise the powers which, under the earlier dispensation, were exercisable by the Prime Minister i.e the role which the Prime Minister and the President were performing in the earlier legal set up. The Committee could examine the antecedents of a nominee and form an opinion regarding his/her suitability for the judicial office. Such opinion must conform to standards which would pass judicial scrutiny because the decision is subject to judicial review. The functions of the Commission and the Committee may overlap and thus the role of the latter cannot be eliminated nor can it be made redundant. The Committee is required to engage in a conscious and rigorous exercise of its own which will ensure that a person who has dubious antecedents is filtered out in the selection and appointment process. The Committee cannot base its decision by picking up on an observation of one of the members of the Commission. The Committee has to perform its role in a meaningful way and with the application of mind which will withstand judicial scrutiny in accordance with recognized standards. The appointment of judges cannot be dealt with in a casual manner. In case the Committee subordinates itself to the opinion of one member of the Commission then it must give its own reasons which would withstand judicial scrutiny, otherwise the decision could be struck down as an unreasonable and arbitrary exercise of discretionary powers. The Court observed that the Committee does not have untrammelled power to choose to rely on the opinion of one member of the

² Federation of Pakistan v. Munir Hussain Bhatti & others (PLD 2011 SC 752)

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Commission and exclusion of opinions formed by others. The Committee fell in error by basing its decision on the views formed by one of the members prior to the matter having been considered and discussed in the Commission. In paragraph 25 of the judgment this Court has unequivocally recognized that eventualities could arise in the future distinct from the facts and circumstances involved in the Munir Bhatti case. This Court, therefore, made no attempt to provide for the possibilities of future eventualities and left it open for the purposes of judicial review.

(c) Sindh High Court Bar Association case³

The facts involved in this case were similar to those in Munir Bhatti's case. The Commission, after detailed deliberation, had nominated six Additional Judges of the High Court for extension. The Committee had refused to accept the nominations of two Additional Judges on the basis of evaluations made by the Chief Justice of the High Court while initiating the names for consideration of the Commission. The Sindh High Court had allowed the petition on the touchstone of the principles and law enunciated in Munir Bhatti's case and the judgment was later upheld by this Court.

(d) Is the Munir Bhatti case a binding precedent in all eventualities?

As noted above, the facts and circumstances in the above discussed cases were similar. The judgments were in the context of extension, confirmation or non confirmation of Additional Judges after they had served for a considerable period pursuant to having been appointed under Article 175A of the Constitution. The lis was

³ Federation of Pakistan v. Sindh High Court Bar Association (PLD 2012 SC 1067)

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not regarding fresh appointments. The relevant record of each judge was before the Commission and the evaluation was also made on its basis. The evaluation was found by this Court as being 'well considered'. The evaluation was found to have been made by the members functioning as a collegium and it was followed by forwarding the nominations to the Committee. The latter did not confirm some of the nominations on the sole ground that while initiating their cases for consideration of the Commission, the Chief Justices of the respective High Courts had recorded adverse opinions regarding their caliber and suitability. The Munir Bhatti judgment was, therefore, rendered specifically in the context of the aforementioned distinct and peculiar facts and eventualities. The *ratio decidendi* of Munir Bhatti's case was based on the satisfaction that the Commission, which consisted of law knowing persons who, after taking all the relevant matters into consideration, had evaluated each candidate. The evaluation was 'well considered' and it was undertaken by the members functioning as a collegium. It was not a case of evaluation having been made in the absence of the record, more particularly without the existence of predetermined objective criteria. In Munir Bhatti's case the Committee had solely based its decision on the opinion of the Chief Justices recorded in the 'proformas' sent to the Commission before its proceedings and, thus, primacy was given to their opinions over the evaluation collectively made by the Commission as a collegium. The decision in the circumstances was found by this Court to be flawed, illegal, arbitrary, in breach of procedural propriety and based on taking irrelevant matters into consideration.

This Court had later explained in the review judgment that the Munir Bhatti case did not cover nor had it laid down a binding

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precedent for other distinct eventualities which could arise in the future. By no stretch of the imagination can the Munir Bhatti judgment be construed as having granted immunity to the proceedings or decisions of the Commission from being subjected to the scrutiny of the Committee, even if it has acted arbitrarily or in violation of the principles laid down by this Court for others to follow. If the judgment is interpreted otherwise then this Court will be declaring the power and proceedings of the Commission to be beyond the pale of accountability and judicial review. We would be declaring the decisions to be sacrosanct and shielded no matter how flawed they may be. The Committee would become redundant and bereft of the power to question the decisions of the Commission even when they are patently illegal, irrational and based on irrelevant consideration. Such an interpretation will make a forum involved in an executive function omnipotent merely because a majority of its members happen to be serving judges. In order to achieve this goal this Court will have to read into the Constitution something not intended by the framers of the Constitution; to give absolute, untrammelled and unfettered authority to a forum involved in an executive function. With humility and reverence, this was definitely not nor could have been the intent of the framers of the Constitution while inserting Article 175A. It is a deeply embedded principle in our jurisprudence that no power can be exercised in an unfettered or unbridled manner nor can it be immune from scrutiny. If Munir Bhatti's judgment is treated as giving a carte blanche, untrammelled and unfettered absolute power to the Commission, merely because its majority consists of the Chief Justices and judges, we will be negating the standards and principles by which the courts hold others to account. As will be discussed later, the procedure

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prescribed for the appointment of judges under Article 175A in the Constitution was a radical departure from the process that had existed for decades based on the principle of 'judges appointing the judges'. It is noted that, notwithstanding serving judges of the constitutional courts deliberating and taking decisions as members of the Commission, by no stretch of the imagination do they function or exercise powers of the respective courts. Rather, their status is that of *persona designata* and as members of the Commission they are involved in an executive function. There is no doubt that the role of the Committee as an oversight forum is exhaustive and the aforementioned judgments have not laid down a law or principles that would apply in all eventualities. The interpretation of Article 175A by this Court in the above discussed judgments is confined and explicitly in the context to the facts, circumstances and eventualities involved in those cases. It does not apply, nor are the judgments binding when the eventualities are distinct.

The Munir Bhatti judgment is based on interpreting Article 175A in the context of independence of the judiciary. This Court has held that the process of appointment of a judge must remain independent of the executive and legislature except for such inputs in decision making which would 'ensure and advance the independence of the judiciary'. Before we proceed further and examine whether the decisions of the Commission as well as the Committee in the case in hand met the threshold of protecting and advancing the independence of the judiciary, it would be pertinent to understand its concept.

6. Independence of judiciary; its relevance in the context of the process of appointment of judges;

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Article 4 of the Constitution declares that it is the inalienable right of every citizen to enjoy the protection of the law and to be treated in accordance with the law. This right describes the essence of the rule of law, which is the premise for the existence of a stable, sustainable and just society governed under the framework of constitutional democracy. Judicial independence is the bedrock of the rule of law and a fundamental guarantee to every citizen that the latter will be dealt with accordingly. Judicial independence aims at ensuring and guaranteeing to each litigant access to an independent, impartial and competent court or a judge. Inappropriate influences or the appearance of being compromised and partial undermines and erodes the independence of justice. The concept is multifaceted and involves different aspects of judicial independence. It is not secured merely by insulating the judiciary from the other branches of the state i.e the executive and the legislature. There are other aspects, which are equally important if not more, such as inappropriate pressures and influences from within the judiciary and factors that operate and influence at the institutional level. The judiciary may be independent from the other political branches of the state on the touchstone of the trichotomy of powers, yet the individual judges may not be so because of lack of internal and institutional independence. The oath each judge has to take under the Constitution describes the essential characteristics of an independent judge. Every judge swears on oath to 'discharge duties and perform functions honestly, to the best of his/her abilities, faithfully in accordance with the Constitution and the law'; to abide by the code of conduct; not to allow personal interest to influence official conduct or official decisions; to protect and preserve the Constitution in all circumstances; to do right to all manner of people, according to law,

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without fear and favor, affection or ill-will. The basic principles of independence of the judiciary, endorsed by the General Assembly of the United Nations,⁴ are; to decide matters brought before a court impartially, on the basis of facts and in accordance with law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason'; the jurisdiction of the judiciary over all issues of judicial nature; no unwarranted or inappropriate interference with the judicial proceedings'. The 'Universal Charter of the Judge'⁵ explicitly declares that 'Judicial independence must be ensured by law creating and protecting judicial office that is genuinely and effectively independent from the other state powers. The judge, as a holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressures, and independently from other judges and the administration of the judiciary'. The Bangalore Principles of Judicial Conduct emphasize that it is not sufficient for a judge to be free from inappropriate connections and influence by the executive and legislative branches but 'must also appear to a reasonable observer to be free there from'. Article 1.4 further provides that a 'judge shall be independent of judicial colleagues in respect of decisions that the judge is obliged to make independently'. Article 9 of the Mount Scopus International Standards of Judicial Independence highlights the importance of the internal independence of the judiciary.

The internal and institutional independence have been recognized as pivotal aspects of overall judicial independence. The concept of 'independence of judiciary' is not an end in itself nor a

⁴ Basic Principles on the independence of the judiciary – endorsed by the General Assembly Resolution 40/32 of 29th November 1985 and 40/146 of 13th December 1985.

⁵ "The Universal Charter of the Judges" approved by the members associates association of the International Association of Judges.

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shield to protect the judges from being accountable. It also does not grant immunity against arbitrary actions or decisions of the judges. Independence of judiciary is essential because it ensures the ability of the courts and judges to serve the society and the litigants impartially and independently. It is not a privilege nor a prerogative of a judge to serve the society and the litigants but a solemn duty. The aspects of Internal and institutional independence are of paramount importance because they ensure the liberty of a judge to perform duties without undue influence and interference from within the judiciary i.e from fellow judges or on account of operational and supervisory administrative powers relating to the governance of the court system. The undue interference, influence and pressures from within the judiciary could have more profound, subtle and insidious effect vis-a-vis the judicial independence. The organizational structure, nature of administrative and supervisory powers, professional values, hierarchy, mindsets, ethos, deeply ingrained institutional culture, exercise of powers regarding the mode and procedure of appointments, terms and conditions of tenure, conduct and manner of accountability are factors that have consequences for the internal and institutional independence of the judiciary. The concentration of unstructured and unfettered discretionary administrative powers in one office in the context of the governance of court systems or in decision making process relating to appointment of judges undermines the internal and institutional independence. As an illustration, the unfettered power of the Chief Justice to identify eligible persons in the absence of an objective predetermined criteria by no stretch of the imagination promotes or advances independence of judiciary. These crucial aspects of judicial independence have not received attention since the focus of the jurisprudence of this Court

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has remained on securing independence from the executive and the legislature. The internal and institutional independence is pivotal in relation to appointment of judicial officers.

Transparency, accountability and effective checks and balances in relation to the judicial appointments are foundational principles in order to ensure internal and institutional independence. The existence of the aforementioned factors reinforces public confidence in the appointment process and guarantees that each appointment shall be made on merit i.e on the basis of identifying, selecting and ultimately appointing the best and worthy from amongst the eligible persons. Transparency in the process of judicial appointments is the most critical and overarching principle for achieving the goal of independence of judiciary. It must permeate at each stage of the appointment process. Public confidence is enhanced and, consequently, judicial independence is promoted and guaranteed by adopting predictable and transparent processes. On the other hand, secrecy, arbitrary decisions, subjective opinions, unstructured exercise of discretion and lack of checks and balances erodes independence of judiciary. The onerous task of appointing a judge on merit can only be achieved by ensuring that the entire process, from identifying the eligible persons to the final decision of appointment, is based on the principle of transparency. Each appointment should not only be made on merit but it must be seen by a reasonable observer to have been made so. The predictability of the decision making process is the test of transparency and its pre-condition is the existence of an objective predetermined criteria; a clearly defined criteria notified to the public in advance. The objective criteria must apply and extend to each stage of the process i.e identification of eligible persons, selection, evaluation and then followed by

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appointment. Judicial appointments sans a transparent process at any stage erodes confidence of the people and enables decision makers to make appointments for extraneous and inappropriate purposes. Even if the appointment has been made on merit, lack of transparency will still not exclude legitimate doubts being raised by a reasonable observer. In a nutshell, transparency entails clear predetermined objective criteria that has been placed in the public realm in advance, absence of concentration of powers and taking decisions on the basis of subjective discretionary choices, an effective system of checks and balances that makes all those involved in the process to be accountable for their decisions.

The independence from other branches of the state, therefore, is not sufficient to secure and advance the independence of judiciary unless the other aspects i.e the internal and institutional independence have also been ensured. The unaccountable self-governance system and exercise of unfettered powers exercised by individual judges in relation to the process of appointment of judges has a chilling effect on the internal independence. The pressures could be latent in nature. A deeply entrenched institutional culture that does not value independent judges enables the power wielding judicial hierarchy to flout merit if the process is not transparent. In such an eventuality the system loses its capability to ensure that the judges are appointed on merit i.e the best amongst the eligible persons. The independence of judiciary, therefore, can only be secured, advanced and protected when the process of appointment of judges at each stage is so transparent and free from unfettered discretionary powers exercised by individuals that each appointment is seen by a reasonable observer without a legitimate doubt to have been made on merit. .

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The next question that needs to be examined is whether the traditional model of appointment of judges prior to the insertion of Article 175A had failed to secure independence of judiciary and why a need was felt by the chosen representatives to prescribe the revision of the process through a constitutional amendment.

7. The mode of appointment before insertion of Article 175A; 'Judges appointing Judges'; Did it secure and safeguard independence of judiciary. What 'mischief' was intended to be removed?

The mode of appointment of judges prior to insertion of Article 175A was based on the control and self-governance by the judiciary or, more particularly, the judicial consultee. The powers were exclusively concentrated in the office of the Chief Justice, whether of the High Court or this Court, as the case may be. As will be discussed later, the executive seemed to have a significant role in appointment of judges during the validated authoritarian regimes. As an illustration, appointment of judges of the High Court during the legitimized rule of Field Marshal Mohammad Ayub Khan was subject to the latter's satisfaction attained pursuant to interviewing the candidates. There is no jurisprudence of this Court that would reflect friction between the judicial consultees and the validated authoritarian regimes over appointment of judges of constitutional courts. There is also no jurisprudence to suggest that the judicial branch during such periods may have had legitimate apprehensions regarding erosion or undermining of the independence of the judiciary because of the significant role of the validated authoritarian executive. The jurisprudence regarding safeguarding the powers of the judicial consultee, the Chief Justice, on the premise of independence of judiciary relate to frictions over the mode of

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appointments with the democratically elected executive. The cases of Al Jihad⁶ and Malik Asad⁷ virtually made the role of the executive ineffective. The powers were exclusively concentrated in the Chief Justice, as judicial consultee and the latter's subjective opinion was held to be unquestionably binding. The mode of appointment was, therefore, exclusively dominated by the judicial consultee and, therefore, it was reasonable to assume that 'judges appointed judges'. This model was followed and practiced since the emergence of Pakistan as an independent state till the process was exhaustively revised through a constitutional amendment. The reasoning of this Court in the Al Jihad and Malik Asad cases is based on the principle of securing independence of the judiciary. In reality, was the goal achieved? Did the model, which was based on the concept of 'judges appointing judges', ensure independence in all its facets; external, internal, institutional and individual independence of a judge? Were the chosen representatives justified in revising the process through an amendment in the Constitution? Was there a legitimate need for revising the process? Would it seem to a reasonable informed observer that the mode of appointment of judges prior to the insertion of Article 175A had secured the independence of the judiciary? The answers to these crucial questions are rooted in our constitutional history.

At the time when Pakistan emerged as an independent sovereign state it was governed under the Government of India Act, 1935. On August 11, 1947 the President of the first Constituent Assembly, Quaid-e-Azam Muhammad Ali Jinnah, addressed the chosen representatives from the two wings of the country, East and

⁶ Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324)

⁷ Asad Ali v. Federation of Pakistan (PLD 1998 SC 161)

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West, and emphasized to them the onerous task of framing the future constitution. He had explicitly referred to the Constituent Assembly as a 'full and complete sovereign body' which was to function as the Federal Legislature of the newly emerged independent state. The unelected bureaucracy led by the Governor General struck the first fatal blow to the future constitutionalism of the independent state by dismissing the Constituent Assembly and depriving the people of their fundamental right to choose how they were to be governed. Maulvi Tamizuddin Khan, the Speaker of the 'sovereign body,' challenged its dissolution and the Sindh Chief Court declared the act to be illegal⁸. The judgment was challenged and the predecessor of this Court, the Federal Court, upheld the dissolution by contriving the 'doctrine of necessity' which would later become imbedded in our jurisprudence⁹. It changed the future course of constitutional pursuit and enabled usurpers to rule the people under authoritarian regimes for prolonged spells. The validation of the first martial law by this Court in the Dosso case¹⁰ paved the way for establishing the undemocratic rule of Field Marshall Muhammad Ayub Khan followed by General Mohammad Yahya Khan. Together they ruled the country from 1958 to 1971. General Mohammad Zia ul Haq could not have governed the country from 1977 till 1988 nor abrogate the Constitution without the collaboration of the judiciary. The act of high treason was validated by this Court through the Begum Nusrat Bhutto judgment.¹¹ The deposed elected Prime Minister was sent to the gallows and questions were later raised regarding the impartiality and independence of the judiciary, so much so, that a judge on the Bench of this Court had also publically supported the perception.

⁸ Maulvi Tamizuddin Khan v. Federation of Pakistan and others (PLD 1955 Sindh 96)

⁹ Federation of Pakistan v. Maulvi Tamizuddin Khan (PLD 1955 FC 240)

¹⁰ The State v. DOSSO (PLD 1958 SC 533)

¹¹ Begum Nusrat Bhutto v. Chief of Army Staff and others (PLD 1977 SC 657)

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Syed Zafar Ali Shah's verdict¹² by this Court enabled yet another usurper, General Pervaiz Musharraf, to abrogate/subvert the Constitution and govern the country in military uniform from 1999 to 2008. The governance of the country under the authoritarian and oppressive regimes, pursuant to the abrogation or subversion of the Constitution for most of its history would not have been possible without the collaboration of the judiciary, particularly this Court. Despite being a creation of the Constitution, this Court had repeatedly validated acts of high treason and had allowed the legitimized usurpers to tamper with its provisions.

The dissolution of the Majlis-e-Shoora (Parliament) by the President under Article 58(2)(b), rather than being resisted was endorsed by this Court. The chosen representatives fell prey to the mischief under Article 62(1)(f) and many were disqualified for life even for such trivial errors as omission to declare details of an expired identity card. Three elected Prime Ministers and scores of chosen representatives were disqualified. Barring a few, the judges of the superior courts willingly took fresh oaths, swearing allegiance to the legitimized usurpers despite having earlier sworn to defend, protect and preserve the Constitution. The chosen representatives were held guilty and sentenced under the law of contempt because of their speech but restraint was exercised against the powerful undemocratic forces even when the contemptuous acts were grave in nature. Judges of the superior courts were administered oath under the provisional constitutional order in violation of the restraining order, dated November 3, 2007, passed by a seven member bench followed by the illegal detention of scores of judges. No one was held to account even after the judiciary was restored. Extraordinary restraint

¹² Zafar Ali Shah v. Federation of Pakistan and others (PLD 2000 SC 869)

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was also displayed when the Area Commander of Multan, during the second martial law, had issued a notice to two serving judges of the Lahore High Court to show cause why proceedings should not be taken against them for 'contempt of Martial Law'¹³. The few judges who showed courage by upholding their independence and rendering verdicts according to their conscience were subjected to being prosecuted by brother judges merely because the powerful forces were displeased with the judgments. The historic lawyers' movement of 2007 had aimed at ensuring that the Constitution was upheld and supremacy of Majlis-e-Shoora (Parliament) was respected. The 'judicial activism' and jurisprudence developed after the restoration of the judges does not appear to be consistent with the stated aims of the movement. Some of the jurisprudence of this Court may also give the appearance of being inconsistent with democratic values e.g observations supporting Article 58(2)(b)¹⁴ or relating to the parliamentary form of government.¹⁵

The jurisprudential history of this Court and its role in upholding and defending the Constitution or the democratic representative institutions of the people has definitely not been flattering. The validation of so many episodes of unconstitutional adventurism, giving legitimacy to acts of high treason, granting immunity against desecration of the sanctity of supremacy of institutions representative of the people, sending an elected Prime Minister to the gallows, disqualification of three other Prime Ministers and scores of other representatives of the people by a few unelected judges cannot be erased from the law books. No usurper nor a collaborator has ever been held accountable for committing the

¹³ Page 340 Memoirs and Reflections, Justice Nasim Hasan Shah)

¹⁴ Watan Party v. Chief Executive/President of Pakistan and others (PLD 2003 SC 74)

¹⁵ Pakistan Lawyers Forum v. Federation of Pakistan & others (PLD 2005 SC 719)

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gravest offence of high treason. All this happened during seven decades when judges had the exclusive power to appoint judges. A reasonable informed observer would be justified in not having confidence in such a mode of appointment of judges. It would also be justified if it seems to the reasonable observer that the judiciary has not remained independent and impartial when judges were appointed by judges. The exclusive stakeholders of the judicial branch of the state, the litigant in particular and the society in general, have undoubtedly suffered irreparably. The litigants and the society becomes voiceless when the authority and sanctity of their representative forums is allowed to be undermined and desecrated. The independence of judiciary was never secured, rather it was undermined when judges were appointing judges and a reasonable observer will be justified if the judicial branch seems to the latter as an adversary of the representative forums, rather than its defender and protector. The role of the judiciary in its historical context is sufficient to justify lack of public confidence in its independence and impartiality. It is obvious that it was this mischief which the representatives of the people, particularly the litigants, had aimed to do away with by revising the process of appointment of judges through the insertion of Article 175A in the Constitution. The mode of appointment, exclusively controlled and regulated by the judges, particularly by the Chief Justice, had eroded the independence of the judiciary as has been evident from its historical role. What process of appointment was prescribed and intended by the framers of the Constitution through the insertion of Article 175A?

8. Article 175A - Duty to appoint each judge on merit

The Majlis-e-Shoora (Parliament), pursuant to undertaking an extensive exercise and deliberations, passed the Eighteenth

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Amendment. It introduced exhaustive constitutional reforms and the insertion of Article 175A was one of the fundamental changes regarding the process of appointment of judges in the High Courts and the Supreme Court. The vires of the amendments was challenged and the petitions were entertained by this Court. However, to the extent of Article 175A, this Court, vide its order passed in Nadeem Ahmed's case¹⁶, referred the matter to the Majlis-e-Shoora (Parliament) with advice, suggesting further amendments. The Majlis-e-Shoora (Parliament) further amended Article 175A in the light of the advice of this Court through the 19th Amendment. The revised procedure was based on proceedings before two independent forums specifically created by the Constitution, the Commission and the Committee.

The Commission

The Commission is chaired by the Chief Justice of Pakistan and includes senior serving and retired judges, representatives of the executive i.e the Federal or Provincial Ministers for Law, as the case may be, the Attorney General for Pakistan and representatives of the Pakistan Bar Council or respective Bar Councils. The majority of members of the Commission consist of serving and retired judges. Article 175A (8) explicitly provides that the Commission, by a majority of its total membership 'shall nominate to the Parliamentary Committee one person, for each vacancy of a Judge in the Supreme Court, a High Court or the Federal Shariat Court, as the case may be'. The language is unambiguous and describes the terms of the power which authorizes the Commission to make a nomination and

¹⁶ Nadeem Ahmed and others v. Federation of Pakistan and others (PLD 2010 SC 1165)

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also the purpose or object for which the power has been conferred. It is not a power that grants a discretion to choose between alternatives. The power clearly does not imply giving a discretion because the Commission can only adopt one lawful course; to nominate to the Committee one person for each vacancy. The decision of the Commission, therefore, is a constitutional duty. It is implicit in the language of Article 175A (8) that the Commission has to perform two fundamental duties. First, make a nomination against each vacancy; second to perform this duty as soon as the vacancy occurs. The performance of the latter duty has to be prompt. Does the Commission enjoy the liberty or prerogative to make any nomination as it may deem appropriate. The answer is an emphatic 'no'. It is implicit in the duty to make the nomination on merit; the best and worthy amongst the eligible. This onerous duty is owed by the Commission to the society in general and the litigants in particular. In order to achieve the object for which the power has been conferred it becomes a duty of the Commission to ensure transparency in its proceedings and the decision making process to reinforce public confidence. The principles relating to transparency have already been discussed. It, therefore, is a duty of the Commission to identify, evaluate and ultimately nominate for each vacancy in accordance with an objective predetermined criteria. The terms of the power that authorizes the Commission to make the nomination for each vacancy implies that it will conduct its proceedings as a collegium, rather being influenced by the subjective opinion of one of the members. The decisions and nominations must be based on relevant considerations and for the objective for which the power has been conferred. The Commission, despite the presence of serving or retired judges, performs an executive function;

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appointment of judges and its proceedings are therefore not immune from the power of oversight conferred on the Committee. There is no reason why the grounds that renders a decision void and unenforceable e.g illegality, irrationality, procedural impropriety or taking irrelevant matters into consideration, will not apply and be attracted in the case of the proceedings and decisions of the Commission. The Commission involved in the performance of a duty as an executive feat is definitely not above the law nor immune from oversight scrutiny of the Committee. It will be a breach of the terms of the power conferred on the Commission to make a nomination otherwise than on merit. As a corollary, lack of transparency will render the proceedings and nomination as illegal and flawed. It is noted that, pursuant to powers conferred under Article 175A (4), the Commission has made the Rules of 2010 to regulate its procedure. Rule 3 confer powers on the Chief Justices, as the case may be, to initiate nominations in the Commission. The Commission has not prescribed an objective criteria in this regard. The initiation of nominations relates to identifying eligible persons to be considered by the Commission. This is the most crucial stage because it deprives the Commission of exercising its inherent duty of identification of the eligible candidates. Rule 3 creates a bottleneck by allowing the Chief Justices to regulate the entire process and that too in the absence of predetermined objective criteria. The Commission contravenes the terms of its powers and fails in pursuing the objective for which they have been conferred. Rule 3, therefore, is ultra vires Article 175A of the Constitution. Notwithstanding Rule 3, powers conferred under Article 175A to nominate also includes the power to identify the eligible persons and such duty has to be performed by the Commission functioning as a collegium

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The Committee

The Committee is the second forum involved in the executive function; the appointment of a judge. Its composition is unique because of its representative character. It consists of eight members, four each from the two Houses of the Majlis-e-Shoora (Parliament), the National Assembly and Senate, respectively. Four members are nominated by the Leader of the House and four by the Leader of the Opposition. It is manifest from the composition and nominations that the Committee virtually represents the entire Majlis-e-Shoora (Parliament). The unique representative character of the Committee has a symbolic significance; representing the voice and aspirations of the actual stakeholders of the judicial system, the litigant and the society. Article 175A (12) describes the terms of power conferred on the Committee as well as the objective thereof; 'The Committee on receipt of a nomination may confirm the nominee by majority of its total membership within fourteen days, failing which the nomination shall be deemed to have been confirmed'. The first proviso empowers the Committee not to confirm the nomination by a three fourth majority and by recording reasons. The third proviso further provides that the Commission shall send another nomination if a nomination has not been confirmed. The terms of the power which authorizes the Committee to either confirm or not to confirm a nomination received from the Commission is a continuation of performance of the duty to nominate and confirm an appointment on merit; the best and worthy amongst the eligible. The scheme of the revised process and the significance of the role of the Committee has been aptly described by a full bench of this Court in the Nadeem Ahmed case in these words; 'Only the appointment process has been changed and the avowed objective seems to be to strike a balance between judicial

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independence and democratic accountability/parliamentary oversight'. The Committee, therefore, performs the duty of democratic accountability or, in other words, oversight. It forms part of the performance of a duty of paramount public importance; appointing each judge on merit. It is, therefore, a duty, not a discretion, of the Committee to ensure that the Commission has not breached or exceeded the terms of its power and has performed the duty for the objective for which it has been conferred. The Committee will be within its powers if it does not confirm a nomination if it finds that the Commission had breached or failed to perform its public duty i.e to nominate on the basis of merit; the best and most worthy amongst the eligible. As already discussed above, the Committee cannot sit in appeal or review the 'well considered evaluation' relating to caliber, competence, legal acumen and over all suitability of a nominee as has been held in Munir Bhatti's case. In that case the well-considered nomination, having been made after considering all the eligible persons, was not in doubt. The Committee had relied on the opinion of only one of the members and, that too, prior to commencement of the Commissions proceedings. Moreover, it related to the evaluation of Additional Judges and did not involve fresh appointments. The Committee will be within its terms of powers if it does not confirm a nomination made by the Commission in contravention of or in excess of the terms of powers or when it performs its duty for an objective other than for which the power has been conferred, or it has failed to perform the duty of paramount public importance. The terms of powers that authorizes the Commission to nominate for each vacancy does not give it an option to adopt any course other than making a nomination on merit. A nomination made without complying with the principles of transparency, particularly in the absence of

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predetermined objective criteria will vitiate the decision because the Commission, in such an eventuality, would have contravened the terms of powers and thus failed in performing its duty under Article 175A of the Constitution.

Commission and Committee are not adversaries

The Committee and Commission are forums created by the Constitution to perform a public duty; to appoint each judge on merit. They are not adversaries and no one is superior to the other. Both have been created to perform a duty of paramount public importance that have consequences for every citizen and their rights and freedoms. This duty can only be performed in accordance with the intent of the framers of the Constitution and mutual respect by both forums for each other. The objective for which the power has been conferred on the Commission is to identify, evaluate and then decide to make a nomination for each vacancy on merit. The public confidence cannot be reposed in the Commission merely because of its composition, rather it depends on the transparency and credibility of its proceedings. The Committee is worthy of respect because of its unique representative character. Its role as a forum of democratic accountability and oversight is because it represents the stakeholders of the judicial organ of the state; the society and the litigant.

9. **CONCLUSION**

The proceedings of the Commission, duly recorded in the minutes of the meeting have been discussed above. The majority of members of the Commission are serving and retired judges. The Commission performs its constitutional duty in relation to the appointment of judges which essentially is an executive function.

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Judges hold exalted positions and they are expected to display exemplary conduct while performing their duties. They lay down principles of fairness and conduct for others to follow as benchmarks for judging the legitimacy and legality of proceedings or taking decisions in conformity with powers conferred under the law. In Tariq Aziz ud Din's case¹⁷ this Court had set aside the promotions made by the executive because it was concluded that eligible candidates had been ignored and thus the selection was not made on merit. In Orya Maqbool's case,¹⁸ promotions to a higher grade were found to have been made illegally because the objective criteria lacked transparency. In Dr. Muhammad Arif's case¹⁹ the promotions were annulled because evaluation of integrity had been made on the basis of personal knowledge and opinions of the members of the Board. Should the same principles not apply in the case of the Commission merely because the majority of its members happen to be serving or retired judges? Not only should the principles apply, they should be applied more rigorously to forums consisting of serving judges than in the case of others. The proceedings of a forum consisting of judges should be so transparent and conducted in such a manner that no one has an opportunity to raise doubts regarding the legality of the decisions or procedural propriety. The minutes of the meeting have been discussed above, and undoubtedly they cannot withstand judicial scrutiny in accordance with the recognized standards. They definitely do not conform to standards that would pass judicial scrutiny. Admittedly, the entire process lacked transparency. There was no objective predetermined criteria to identify the eligible judicial officers. The personal opinion of the Chief Justice regarding integrity

¹⁷ Tariq Aziz-ud-Din (2010 SCMR 1301)

¹⁸ Orya Maqbool Abbasi v. Federation of Pakistan and others (2014 SCMR 817)

¹⁹ Federation of Pakistan and others v. Dr. Muhammad Arif and others (2017 SCMR 969)

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of one of the superseded judicial officers was accepted and no credible information could be placed on record. The reputational damage caused to the judicial officer in the absence of any material in support of the allegations was not justified. The Chief Justice had conceded that one of the superseded judicial officer was suitable to be considered and he had agreed not to fill one vacancy. However, on the ground of 'backlog' in the High Court, an eligible judicial officer was ignored, rather superseded though his competence and integrity was not doubted. The decision was irrational and based on irrelevant consideration. The other three judicial officers were also eligible to be considered but their record was not sent nor placed before the Commission because in the opinion of the Chief Justice they were not suitable.

There were serious allegation against the three judicial officers but yet they were serving as District Judges. If they were suitable to perform their duties as adjudicators in the District judiciary then why were they disqualified from being considered to be appointed as judges of the High Court? Are the functions and responsibilities of judges of the District Courts inferior to those of the judges of the High Court? The Commission had relied on the subjective opinion of the Chief Justice and had thus endorsed the allegations against the three judicial officers. The judicial officers were condemned unheard but should they have been allowed to continue to serve as District Judges? These questions have arisen because the proceedings of the Commission were not in conformity with the standards that would pass judicial scrutiny. The Commission, by giving primacy to the opinion formed by the Chief Justice prior to the commencement of the proceedings, had violated the principle laid down in Munir Bhatti's case. The Commission had failed to perform its duty and the

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terms of power conferred under Article 175A were breached. The power to nominate was also not exercised for achieving the objective for which the power has been conferred. In the absence of predetermined objective criteria and lack of transparency the nominations could not have been made on merit. The bottleneck created by the Chief Justice at the stage of identification of the eligible persons had prevented the Commission from performing its duty in accordance with the terms of its powers under Article 175A. If all the eligible persons had been considered by the Commission on the basis of the relevant record a legitimate doubt would not have arisen even if the nominations had been the same. On the touchstone of the principles discussed above, the Committee was justified and had acted within the powers authorizing it under Article 175A not to confirm the nomination. All that the Committee had done was to highlight the illegality of the nomination and contravention of the terms of powers conferred on the Commission under Article 175A. The eventualities were distinct and explicitly distinguishable from the one involved in Munir Bhatti's case. The Commission had failed in its duty to make the nominations on the basis of merit and on the touchstone of the principles discussed above. The High Court, while passing the impugned judgment, has not appreciated that the eventualities were distinct and did not attract the law laid down in the Munir Bhatti case.

The Additional Attorney General has rightly pointed out that the time has come to revisit the jurisprudence laid down in the Munir Bhatti case. The judgment is binding on this Bench but with profound respect and reverence it seems that proper assistance was not extended. This Court ought to recognize the unique representative character of the Parliamentary Committee and its role

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as a forum created for democratic accountability and oversight. It represents the litigants and the people, who are the sole stakeholders of the judicial organ of the state. It is their interest that is of paramount importance because they suffer when an appointment is not made on merit.

The forgoing are the reasons for the short order whereby leave was granted and the petitions were converted into appeals and allowed by setting aside the impugned judgment of the High Court. The short order is reproduced as follows:

“For detailed reasons to be recorded later, these matters are disposed of in the following manner:

- 1) CP No.2314, 2317 and 2318/2022: By majority of two to one (Mr. Justice Athar Minallah dissenting) are dismissed. Leave to appeal is refused.
- 2) CMAs. No.863-P, 866-P and 869-P/2022: are unanimously held not to be maintainable and dismissed.”

(Justice Athar Minallah)

APPROVED FOR REPORTING