CITATION AWAITED

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.3607 of 2019

Muhammad Khizer Aziz, etc
Vs.
Election Commission of Pakistan, through Chief Election Commissioner, etc.

Date of hearing	:	21.08.2025
Petitioners by	:	Mr. Sajeel Sheyar Swati, Advocate.
Respondent No.1 by	:	M/s. Yasir Ali Raja, Director Law, ECP, Muhammad Jafar, Assistant Director,Law ECP, Waseem Ahmed, Director HR, ECP, Ishtiaq Ahmed Khan and Deputy Director, ECP.
Respondent No.2 to 4 by	:	Ms. Shaista Tabussam, AAG a/w Dr. Amin Khan, Section Officer, Legal-I.

MUHAMMAD ASIF, J.- Through the instant Writ Petition, the petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), seeking the following reliefs:

> *"This Honorable Court may graciously declare and order*
>
> *A. The Petitioners are entitled for the 50% Special Allowance of running basic pay granted by the Chief Election Commissioner's order dated 20th of February 2019.*
> B. *Any interpretation or observation against the vested rights of the petitioners under reference Order dated 20th February 2019 passed by the Chief Election Commissioner is unconstitutional being against the constitutional and legal and equitable rights of the petitioners.*
> C. *Respondents be directed to enforce, implement and grant the benefits accrued to*

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> *the petitioners and all the employees accorded through the order under reference and its enforcement from 1st of February 2019.*
>
> *Any other equitable relief the Honorable Court may find justifiable in the given circumstances."*

2. The epigrammatic facts, as set out in the petition, are that the Chief Election Commissioner ("**CEC**"), vide order dated 20th February, 2019, sanctioned a **Special Allowance @ 50% of the running basic pay** to all officers and staff of the Election Commission of Pakistan ("**ECP**"), with effect from 1st February, 2019. The order was duly vetted by the Ministry of Law and Justice at the request of the Accountant General Pakistan Revenues ("**AGPR**"). However, when the AGPR referred the matter to the Ministry of Finance for guidance, the latter raised objections regarding the validity of the CEC's order. Consequently, the AGPR declined to implement the order, giving rise to the filing of this petition by the employees of the Election Commission of Pakistan ("**ECP**"). The petitioners assert that the ECP, being an independent constitutional body, enjoys legislative, executive, quasi-judicial, and financial independence under the scheme of the Constitution, democracy, and separation of powers. Its essential constitutional functions, such as conduct of general and by-elections, delimitation of constituencies, preparation of electoral rolls, polling schemes, adjudication of election disputes, and related responsibilities, require extensive infrastructure and a competent workforce. With the adoption of modern technology, including the Computerized Electoral Rolls System, Results Management System, GIS-based polling station geo-tagging, Electronic Voting Machines, biometric verification systems, and monitoring of political finance and gender affairs, the workload on employees has significantly increased. To ensure that ECP employees are compensated in line with other constitutional bodies (such as the Hon'ble Supreme Court of Pakistan, High Courts, Senate, National Assembly, and Auditor General of Pakistan), and to safeguard its institutional independence, the CEC sanctioned the above allowance. The Law Division endorsed the legality of the order, noting that it was in

conformity with constitutional and statutory provisions. However, the Ministry of Finance refused to implement it on the grounds that:

> *i. The order had not been issued after consultation with the Finance Division, as required under Rule 12 of the Rules of Business, 1973;*
> *ii. No budgetary allocation for the allowance existed in the relevant financial year and*
> *iii. The re-appropriation of funds from the "Conduct of Elections" head was contrary to re-appropriation policy.*

The petitioners, being aggrieved of the refusal to implement a lawful order of the CEC, and having no alternate remedy, have filed the present writ petition.

3. Learned counsel for the petitioners argued that the order of the CEC dated 20th February, 2019, being lawful and issued in exercise of constitutional and statutory powers, created vested rights in favour of the petitioners. Its non-implementation constitutes a violation of their fundamental rights guaranteed under Articles 4, 8, 9, 14, and 23 of the Constitution. It was submitted that the employees of other constitutional organs have been granted similar allowances, and denial of the same to ECP employee's amounts to hostile discrimination, violating Articles 24 and 25 of the Constitution. He further argued that the doctrine of legitimate expectation and estoppel also support the petitioners' claim, particularly as the Law Division itself validated the impugned order. It was contend that financial autonomy of an independent institution cannot be curtailed, as this would compromise the principle of separation of powers. In support of his contentions, learned counsel relied upon several judicial precedents, including 2016 PLC (CS) 1074 (Government of the Punjab v. Syed Riaz Ali Zaidi) to 2014 Lahore 531, 2025 Islamabad 48, 2022 CLC 1315, 2013 SC 120, 2013 Sindh 117, 2010 SC 573, 2012 SC 681, 2016 SC 808, 2000 YLR 2655, 1997 SC 84, 1999 P Cr L J 166, 2012 SC 1, 1989 Karachi 404, 2015 Lahore 463, 2015 Lahore 522, 2013 Lahore 343, 2019 Islamabad 591, 2014 SC 471, 2022 SCMR 1, 2016 PIC CC 491 and PLD 1994 SC 105.

4. Learned law officers of the ECP supported the petitioners' case, while arguing that the order dated 20th February, 2019 was passed by the CEC in lawful exercise of powers under Articles 81 and 221 of the Constitution, Sections 6 and 11 of the Elections Act, 2017 ("**the Act 2017**"), and Rule 5 the Elections Rules, 2017 ("**the Rules 2017**"). They acknowledged that the Law Division had endorsed the order, and that the objections raised by the Ministry of Finance were misconceived. It was further contended that Rule 12 of the Rules of Business, 1973 applies only to administrative "Divisions" of the Federal Government, and the ECP, being a constitutional body, is neither a Division nor an attached department. Therefore, the requirement of consultation with the Finance Division was inapplicable. They further submitted that the employees of the ECP are entitled to be treated at par with employees of other constitutional bodies, whose expenditures are also charged upon the Federal Consolidated Fund ("**FCF**").

5. Conversely, learned AAG appearing for respondent No.2 (Ministry of Law and Justice) submitted that the petition suffers from misjoinder and non-joinder of necessary parties, and that the impleadment of the Law Ministry is unnecessary. She prayed for deletion of respondent No.2 from the array of parties. She contended that the order of the CEC was issued without lawful authority, as it violated Rule 12 of the Rules of Business, 1973, and created an unlawful recurring financial liability exceeding Rs.400 million. She further submitted that the matter of grant of allowances to employees of constitutional bodies is already subjudice before the Honorable Supreme Court of Pakistan in **Civil Petitions No.2577/2017 and 1810-L/2018**, where leave has been granted. Until the apex Court decides the issue, no relief can be granted in the present petition. In this context she also relied upon the **Public Finance Management Act, 2019**, to contend that no expenditure from the FCF can be incurred without express sanction of the competent authority. She argued that AGPR is merely an implementing agency of the Finance Division, with no independent role in policy matters. Since the Ministry

of Finance has already declared the allowance as unauthorized, AGPR is bound to follow that direction.

6. I have carefully considered the submissions advanced by the learned counsel for the parties and perused the record with their able assistance. The pivotal question for determination is whether the Chief Election Commissioner, in exercise of powers under the Constitution and Elections Act, 2017, was competent to sanction the grant of **Special Allowance @ 50% of running basic pay** to all employees of the ECP, and if so, whether refusal of the Finance Division/AGPR to implement the said order is sustainable in law.

7. It is an admitted position that under Article 81 of the Constitution, the expenses of the Election Commission of Pakistan are charged upon the Federal Consolidated Fund. However, this provision cannot be read in isolation. Article 81 of the Constitution only grants constitutional protection in terms of prioritization of payment, but the mechanism for release, appropriation, and sanction of expenditure is still regulated through statutory instruments such as the Public Finance Management Act, 2019, the General Financial Rules, and the annual budgetary process approved by the National Assembly. To hold otherwise would amount to granting a carte blanche to every constitutional or statutory office to determine allowances and emoluments without any financial discipline, which would be contrary to the scheme of fiscal federalism envisaged under the Constitution.

8. At the outset, it must be appreciated that the constitutional autonomy of the Election Commission of Pakistan is a settled principle, flowing from Articles 218 to 222 of the Constitution. However, such autonomy is not unbridled or unfettered. The Hon'ble Supreme Court in *Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, and others* (**PLD 2016 SC 808**) held that financial autonomy must be exercised within the four corners of the law, and that fiscal discipline mandated by the Constitution cannot be circumvented by unilateral executive or institutional orders. Similarly,

the Honorable Supreme Court of Pakistan in number of cases it strongly emphasizes the role of Parliament in financial matters and the constitutional limits on the executive's power to spend public money. The Hon'ble Supreme Court in *Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, and others* (**PLD 2016 SC 808**) further held that the Parliament holds the sole authority to authorize expenditure from the Federal Consolidated Fund ("**FCF**"), as detailed in Articles 80 to 83 of the Constitution, and any departure from this constitutional requirement would be considered unconstitutional and void.

9. The petitioners' reliance on the order dated 20.02.2019 of the Chief Election Commissioner as creating a vested right is misplaced. The Hon'ble Supreme Court of Pakistan, in a long line of cases, has consistently held that no vested right can be claimed on the basis of an order or notification, which is issued without lawful authority or jurisdiction. It is trite law that no benefit, allowance, or financial advantage can be claimed as a vested right, unless lawfully created and sanctioned by the competent authority under the constitutional scheme. In *Government of Khyber Pakhtunkhwa v. Adnanullah* (**2016 SCMR 1375**), the apex Court held that an order issued without lawful sanction, even if acted upon, does not create an enforceable vested right. Likewise, the Hon'ble Supreme Court of Pakistan, in a number of cases, has consistently held that "legitimate expectation" cannot be pressed into service to perpetuate an illegality or to claim a financial entitlement contrary to law.

10. As regards the argument based on parity with other constitutional bodies, it is settled law that claims of equal treatment under Article 25 of the Constitution must be predicated upon a valid and lawful entitlement. The Supreme Court of Pakistan held that equality cannot be claimed in illegality. Thus, even if other organs have been granted certain allowances, unless such grants were made within lawful sanction, the same cannot form the basis of a claim by the petitioners. The Honorable Supreme Court further held that an unlawful act cannot

be made a standard for enforcing the right to equality guaranteed by the Constitution. One illegality cannot be allowed to be compounded by applying the right to equality. The extension of the right to equality to the acts done in violation of law would amount to perpetuating previous unlawful acts and motivating the commission of further illegalities. The Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances, are denied that benefit. It added that such other persons cannot be discriminated against to deny the same benefit, in view of their right to equality before law and equal protection of law guaranteed by Article 25 of the Constitution. But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the court accept such a plea, that the same benefit must be allowed to them also in violation of law. The plea of parity with other constitutional bodies also does not hold merit. Parity is not an abstract concept; it can only be claimed where there exist a lawful entitlement duly sanctioned through statute, rules, or budgetary allocation. Even if other institutions are in receipt of similar allowances, the same by itself cannot create a legal foundation for the petitioners, unless their claim independently stands upon a valid legal footing. The Hon'ble Supreme Court in Provincial Selection Board, Government of Khyber Pakhtunkhwa through Chairman/Chief Secretary, Khyber Pakhtunkhwa versus Hidayat Ullah Khan Gandapur (**2022 PLC (C.S) 486 SC**) held that "A wrong order or benefit cannot become a foundation for avowing equality or equal opportunity for enforcement of treatment alike rather such right should be founded on a legitimate and legally implementable right. A wrong order cannot be allowed to carry on which hardly confers any right to claim parity or equality."

11. The objection raised by the Ministry of Finance under Rule 12 of the Rules of Business, 1973, also cannot be brushed aside lightly. The Supreme Court of Pakistan emphasized the binding nature of the Rules of Business as regulating the business of the Federal Government,

including financial matters. More importantly, the Public Finance Management Act, 2019, now provides a comprehensive statutory regime ensuring fiscal discipline and accountability in public expenditure. The mandate of the Constitution, as interpreted in *Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, and others* (**PLD 2016 SC 808**), is that all expenditures from the Federal Consolidated Fund must be lawfully sanctioned and appropriated and any deviation is unconstitutional.

12. The pendency of Civil Petitions No.2577/2017 and 1810-L/2018 before the Hon'ble Supreme Court, wherein the broader issue of financial autonomy of constitutional and statutory bodies is sub judice, also weighs heavily against granting relief at this stage. It is a well-recognized principle that when a matter is pending adjudication before the apex Court, parallel proceedings before the High Court must not culminate in conflicting or pre-emptive findings.

13. The submission that the Law Division had vetted the order does not alter the legal position. The advisory opinion of a Division of the Federal Government cannot override express constitutional and statutory limitations. The Supreme Court of Pakistan underscored that executive opinions or departmental endorsements do not have the force of law, unless backed by proper constitutional or statutory sanction.

14. The plea of discrimination is equally untenable. Article 25 of the Constitution ensures equality before law, but it does not envisage equal treatment in contravention of law. The Honorable Supreme Court of Pakistan observed that discrimination presupposes a lawful entitlement denied to some, but extended to others. Where the very entitlement is lacking in law, the plea of discrimination cannot succeed.

15. In view of the above discussion, this Court is of the considered view that the order dated 20.02.2019 issued by the Chief Election Commissioner sanctioning Special Allowance @ 50% of the running basic pay was not backed by lawful budgetary sanction or constitutional authorization under Articles 80 to 83 of the Constitution and the Public

Finance Management Act, 2019. Accordingly, no vested right accrued to the petitioners. The refusal by the Finance Division and AGPR to implement the said order cannot be termed illegal, arbitrary, or unconstitutional. The doctrine of legitimate expectation is inapplicable in the absence of a lawful entitlement, and the plea of parity with other constitutional bodies is untenable in law. Accordingly, no case for interference under Article 199 of the Constitution is made out.

16. Resultantly, the instant Writ Petition No.3607 of 2019 is devoid of merit and is hereby **dismissed**. No order as to costs.

(MUHAMMAD ASIF)
JUDGE

Announced in open Court on_____September, 2025.

JUDGE

/MALIK KAKAR/

APPROVED FOR REPORTING