Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

REVIEW APPLICATION NO. 15 OF 2021

Khurram Manzoor Ch. & others

Vs

Suriya Begum

PETITIONERS BY: Mr. Aftab Rashid, Advocate.
Petitioner in person.

RESPONDENTS BY: Raja Khalid Mehmood Khan, DAG.
Mr. Rabi Bin Tariq, State Counsel.
Mr. Arshad Mehmood, Advocate for CDA.

DATE OF HEARING: 12.11.2021.

==========

BABAR SATTAR, J.- Through the instant Review Application, the petitioners have assailed the impugned judgment dated 04.06.2021, passed by this Court in Civil Revision No. 388/2019.

2. The petitioner is a Member Executive Committee of Pakistan Bar Council and filed the instant review application for being aggrieved by observations of this Court in judgment dated 04.06.2021, regarding the role of clerks and the direction issued to Member Inspection Team **("MIT")** to take steps in order to ensure that the practice of affording the right of audience and appearance before the Civil Courts is brought to an end.

3. The learned counsel for the petitioner submitted that pursuant to Section 8 of the Islamabad High Court Act 2010, the practice and procedure applicable to the learned Sindh High

Court was adopted by the Islamabad High Court, until varied and revoked by Rules and Orders made by the Islamabad High Court. He contended that under the Rule 192 of the Sindh Chief Court Rules, a registered clerk was defined as a clerk employed by an advocate in connection with his legal business who was to be registered in accordance with provisions of the Sindh Chief Court Rules. An application for registration was to be made by the advocate, who was the employer of the clerk, to the Registrar and the Registrar maintained a register of clerks reflecting the names of registered clerks. That Rule 191 provided that only registered clerks were to have access to the Sindh Chief Court or any of the office attached thereto for purposes of performing ministerial functions. And Rule 200 provided that registered clerks were entitled to contract offices of the Sindh Chief Court in relation to business of a ministerial nature. Learned counsel for the petitioner further contended that pursuant to notification No.354/Legis/IHC dated 28.08.2019, the Islamabad High Court in exercise its power under Article 202 of the Constitution, adopted the Rules and Orders of the learned Lahore High Court till the framing of Rules and Orders by Islamabad High Court. That pursuant to Part J of Chapter 6 of Volume V of the High Court Rules and Orders, the employment of clerks was regulated. That the Secretary of the Islamabad Bar Association was required to prepare a list of clerks hired by the Legal Practitioners and share it with the learned District Judge during the first week of January of each year and such clerks were entitled to act on behalf of the Legal Practitioners in relation to transactions with the ministerial staff of the Court. While the

learned counsel for the petitioner acknowledged that the clerks did not have a right of advocacy or appearance before the Court, he submitted that the clerks had various functions, which were recognized under the High Court Rules and Orders, which ought to have been taken into account by this Court while passing the impugned judgment dated 04.06.2021, the review of which had been sought. He lastly contended that at stake in the instant matter was the right of the clerks to engage in a profession, which was guaranteed by Article 18 of the Constitution.

4. The learned Deputy Attorney General made no submissions on behalf of the State.

5. The learned State Counsel appearing on behalf of the office of the Advocate General, Islamabad, submitted that there was no error floating on the surface of the judgment in which the review was sought. He submitted that the Rules of both the learned Sindh High Court and the learned Lahore High Court referred to by the petitioner explicitly state that clerks were only allowed to perform ministerial functions and that too while working with the administrative staff of the Courts and had no right or responsibility in relation to judicial proceedings. He contended that the august Supreme Court in ***Rai Muhammad Riaz Vs. Ejaz Ahmed*** ***(PLD 2021 SC 761)*** had held that appearance of the clerk before a Court constituted non-appearance and the law as enumerated by this Court in the judgment, the review of which has been sought, was in consonance with the law laid down by the august Supreme Court in ***Rai Muhammad Riaz Vs. Ejaz Ahmed*** ***(PLD 2021 SC***

761). He contended that the grievance of the petitioner was a consequence of continuing practice on part of Legal Practitioners whereby clerks assumed the right to appear before Civil Courts in breach of the provisions of the law. Through the impugned judgment, this Court had only directed that the practice regarding the role of clerks be brought in line with the law. He submitted that it was settled law that review jurisdiction of the Court could only be availed to correct errors floating on the surface of the judgment and no such error had been pointed out by the petitioner in the instant review application.

6. The observations of the Court that are sought to be reviewed are in Para No.10 of the impugned judgment, which is reproduced below:-

> *10. From the above, it is obvious that it is either a party itself or a duly authorized attorney or pleader who is entitled to appear before a Court on a date fixed for the hearing of a case. The current practice of clerks appearing before Civil Courts and their presence being recorded and deemed as the presence of the party whom they purport to represent has no backing of law and needs to be deprecated. It is a settled principle of law that a thing that requires to be done in a certain way must be done in that way or not at all. A clerk of a counsel has no right of appearance or audience or advocacy before the Civil Court and has no authority to sign any pleadings. Appearance of clerks in place of parties and their counsel disables the Court from undertaking effective case management, as a clerk has no skin in the game: he neither has an interest to protect such as the party itself, nor is he bound by professional ethics prescribed for lawyer under the Legal Practitioners and Bar Councils Act, 1973. Thus care must be employed by the learned*

> *Civil Court not to allow appearance of a clerk of a counsel in the stead of parties or their counsel or mark their presence on order sheets, which unsanctioned and retrograde practice has culminated into the current sorry state of affairs where clerks are now executing pleadings, as in the instant case.*

7. Based on the aforementioned, the following directions were issued:-

> *14.The office is directed to share a copy of this judgment with the learned Member Inspection Team (MIT) so that steps can be taken on the administrative side to ensure that (i) the practice to affording the right of audience and appearance to clerks before Civil Courts can be brought to an end.*

8. In compliance of the aforementioned directions, the learned MIT advised the learned judicial officers of the District Courts by letter dated 18.06.2021 that *"the practice to affording the right of audience and appearance to clerks before Civil Courts should be brought to an end"*.

9. Let us first consider the relevant Rule of the Sindh Chief Court Rules referred to by the petitioner. Rule 200 of Sindh Chief Court Rules, which identifies the acts which may be undertaken by registered clerks states the following:-

> ***200. What ministerial acts may be done by registered clerk.-*** *(1) A registered clerk shall be entitled to transact with the offices of the Chief Court business of a ministerial nature only such as—*
>
> *(i) presenting pleadings, applications and other proceedings in the same manner and to the same extent as his advocate may do:*
>
> *(ii) Taking delivery of copies;*

(iii) depositing money;

(iv) Paying process fee and preparing process; and

(v) identifying persons wherever necessary before the Sheristedars of other official of the Court.

(2) A registered clerk is forbidden to address the Court or the Registrar or the Registrar (O.S) when those officers perform judicial or quasi-Judicial duties or to inspect or handle records.

10. Sub-Rule 2 of aforementioned Rule very clearly provides that a registered clerk is forbidden from addressing the Court or the Registrar performing judicial or quasi-judicial duties. The Sindh Chief Court Rules, therefore, clearly bar registered clerks from addressing the Court or even a Registrar while performing judicial or quasi-judicial duties, and on the basis of such rule no argument can be advanced that registered clerks performing functions on behest of Legal Practitioners before the District Courts of Islamabad ought to be permitted to address the Court or granted a right to appearance or audience before the Court.

11. The learned counsel for the petitioner also relied on Part J of Chapter 6 of Volume V of the Lahore High Court Rules and Orders and submitted that a mechanism was provided therein to register clerks and that the rule envisaged that such registered clerks can perform various functions on behalf of Legal Practitioners. The relevant Rules of the learned Lahore High Court relied upon by the learned counsel for the petitioner also make no allowance

for registered clerks to engage with the Courts or judicial officers discharging judicial functions. Rule 8 of part J of Chapter 6 of Volume V of the High Court Rules and Orders states the following:-

> *8. Clerks mentioned in the list shall be entitled to act on behalf of their masters, but on their responsibility, in all transactions which have to be done before or with the ministerial staff of the Court.*

12. The Rule reproduced above limits the scope of clerks' functions to transactions undertaken before or with the ministerial staff of the Court. Thus, the learned Lahore High Court Rules and Orders also very clearly circumscribe the role of clerks to ministerial functions and only allow clerks to engage with the ministerial staff of the Court and not with the Court itself or with judicial officers. The learned Lahore High Court Rules and Orders, therefore, also do not advance the argument of the petitioner.

13. The question of clerks appearing before the Courts and their appearance being marked incidentally came before the august Supreme Court in ***Rai Muhammad Riaz Vs. Ejaz Ahmed (PLD 2021 SC 761),*** which while abhorring the delinquency of the petitioner in the said matter for causing delays, observed the following:-

> *"Between 2014 to 2016, there were 56 dates of hearing. Nobody appeared for the petitioners on 5 dates of hearing, only the Clerk of the learned counsel appeared on 8 different dates (which also constitutes non-appearance) and multiple "last and final opportunities" were granted by the Court to the petitioners to file replies to applications and other pleadings from time to time. We may note that the practice*

> *of granting multiple "last and final opportunities" has strongly been deprecated by this Court on repeated occasions. Reference may be made to Moon Enterpriser CNG Station v. Sui Northern Gas Pipelines Limited (2020 SCMR 300). This practice must stop forthwith and the trial Courts must implement judgments of this Court in letter and spirit as the same are binding on them in terms of Article 189 of the Constitution and failure to comply can entail serious penal consequences for judicial officers failing or refusing to follow and implement clear and categorical judgments and orders of this Court".*

14. The dicta of the august Supreme Court clearly lays down that the appearance of a clerk before a Court is no appearance at all by holding that such appearance constitutes non-appearance. It was apparent from the arguments of the learned counsel for the petitioner that the petitioner understood that clerks do not have any right or entitlement to appear before a Court in place of a party or a counsel for a party and has no right of audience before the Court, and yet the instant petition was filed. The practice of clerks appearing before Courts in place of parties to a suit or counsels for such parties has emerged not due to any law supporting it, but despite clear law making provisions prohibiting such action. The lamentable practice highlights the chasm between what the letter and spirit of the law require and the continuing practice in breach thereof. Rule of law requires allegiance to the law as it exists as opposed to seeking that clear mandate of the law be ignored or its plain meaning defiled to bring the law in sync with a delinquent practice.

15. In view of the rules regulating the practice and procedure of the learned Sindh High Court as well as the learned

Lahore High Court it can be stated unequivocally that clerks, even when registered in accordance with the procedure prescribed in the relevant Rules and Orders, have no right or authority or permission to engage with the Court or a judicial officer of the Court discharging judicial or quasi-judicial functions and the role of the clerks is strictly limited to undertaking ministerial acts while engaging with the administrative staff of the Courts. This understanding of the law is re-affirmed by the august Supreme Court in ***Rai Muhammad Riaz Vs. Ejaz Ahmed (PLD 2021 SC 761),*** which was what was reiterated by this Court in the impugned judgment. It was apparent from the arguments of the learned counsel for the petitioner that the petitioner understood that clerks do not have any right or entitlement to appear before a court in place of a party or a counsel for a party and has no right of audience before the court, and yet the instant petition was filed. The practice of clerks appearing before courts in place of parties to a suit or counsels for such parties has emerged not due to any law supporting it, but despite clear law making provisions prohibiting such action. The lamentable practice highlights the chasm between what the letter and spirit of the law require and the continuing practice in breach thereof. Rule of law requires allegiance to the law as it exists as opposed to seeking that clear mandate of the law be ignored or its plain meanings defiled to bring the law in sync with a delinquent practice.

16. The petitioner appearing in person as well as his counsel has failed to point out any error in the impugned

judgment. The arguments of the petitioner that Article 18 rights of registered clerks are being fettered due to the direction issued by the learned MIT in compliance with the impugned judgment is also without merit. Article 18 of the Constitution states that:-

> ***18. Freedom of trade, business or profession.***
>
> *Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:*
>
> *Provided that nothing in this Article shall prevent:-*
>
> *(a) the regulation of any trade or profession by a licensing system; or*
>
> *(b) the regulation of trade, commerce or industry in the interest of free competition therein; or*
>
> *(c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.*

17. It is evident from plain language of Article 18 of the Constitution that the right to engage in a lawful profession is subject to such qualifications as may be prescribed by the law. The law as referred to in the impugned judgment, wherein, provisions of the Legal Practitioners and Bar Councils Act, 1973, as well as the Code of Civil Procedure, 1908, have been referred to, only vests in licensed Legal Practitioners the right to audience and appearance before the Courts.

18. Further, the Rules and Orders of the learned Sindh Chief Court Rules and the learned Lahore High Court explicitly

prohibit registered clerks from appearing before Civil Courts or judicial officers while discharging judicial or quasi-judicial functions. Consequently, there is no merit in the argument that the observations of this Court in the impugned judgment have fettered the right of registered clerks to perform the functions of their profession. The functions of their profession include no right or entitlement to be granted audience by the Court or permission to appear before a judicial officer.

19. In view of the above, the Review Application is without merit and is accordingly ***dismissed.***

(BABAR SATTAR)
JUDGE

Announced in the open Court on 25.01.2022.

JUDGE

Approved for reporting.

Shakeel Afzal/-