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

W.P. No. 2155/2026

Dr. G. M. Chaudhry, Advocate

Versus

Federation of Pakistan, etc.

Petitioner: Dr. G. M. Chaudhry, Advocate, in person.

Respondents by: Mr. Rashid Hafeez, Addl. Attorney General.
Mr. Sarfraz Rauf and Mr. Asif Khan Jadoon and Ms. Asia Batool, AAGs.

Date of Hearing: 30.06.2026.

KHADIM HUSSAIN SOOMRO, J: Through the instant petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks, inter alia, a declaration that Section 3(1) of the Islamabad High Court Act, 2010 (Act No. XVII of 2010), to the extent it permits appointment of Judges of the Islamabad High Court from amongst persons belonging to the Provinces and other territories of Pakistan, is unconstitutional, being allegedly inconsistent with Articles 175, 193 and other provisions of the Constitution. Consequential declarations have also been sought that the appointments of respondent Nos. 4 [Justice Arbab Muhammad Tahir] and 5 [Justice Saman Rafat Imtiaz] as Judges of the Islamabad High Court are without lawful authority and of no legal effect, and directions have been sought for the official respondents to make future appointments strictly in accordance with the constitutional scheme as propounded by the petitioner.

2. The facts, as set forth in the memo of petition, are that the petitioner claims to be a citizen of Pakistan and an Advocate of the Supreme Court of Pakistan, invoking the constitutional jurisdiction of this Court in public interest. It is pleaded that Islamabad Capital Territory enjoys a distinct constitutional and administrative status under the Constitution as well as the Islamabad Capital Territory (Administration) Order, 1980, and is administered separately from the Provinces. The petitioner pleaded that the Islamabad High Court is a constitutional High Court established for the Islamabad Capital Territory and is not a Federal High Court. It is averred that although Article 193 of the Constitution prescribes the qualifications for appointment of Judges of a High Court, Section 3(1) of the Islamabad High Court Act, 2010 impermissibly enlarges the field of eligibility by providing that Judges may be appointed from amongst persons belonging to the Provinces and other territories of Pakistan. The petitioner asserts that the said statutory provision is inconsistent with the constitutional scheme and has resulted in the appointment of persons who neither possess domicile in the Islamabad Capital Territory nor maintain professional affiliation with the Islamabad Bar Council. The petitioner further pleads that advocates practicing in Islamabad Capital Territory are entitled to equal treatment in matters relating to appointments to the Islamabad High Court. It is alleged that appointments made from Provincial Bars are discriminatory and offend Articles 4, 5, 9 and 25 of the Constitution. On these premises, the petitioner has prayed that Section 3(1) of the Islamabad High Court Act, 2010 be declared unconstitutional to the impugned extent;

that the appointments of respondent Nos. 4 and 5 be declared to be without lawful authority; and that directions be issued to the competent authorities to ensure that future appointments to the Islamabad High Court are made strictly in accordance with the constitutional interpretation advanced in the petition.

3. Learned counsel for the petitioner submits that the Islamabad High Court is constitutionally established exclusively for Islamabad Capital Territory and, therefore, appointments to this Court ought to be confined to advocates having domicile and permanent professional association with Islamabad Capital Territory. It is contended that the expression "Provinces and other territories of Pakistan" incorporated in Section 3(1) of the Islamabad High Court Act, 2010 travels beyond the qualifications contemplated by the Constitution and is liable to be declared ultra vires. He further submits that Islamabad Capital Territory possesses an independent constitutional identity and cannot be equated with the Provinces for the purpose of appointments to the High Court. According to the learned counsel, the impugned provision deprives advocates enrolled with the Islamabad Bar Council of equal opportunity and thereby infringes Articles 4, 9 and 25 of the Constitution. Learned counsel further argues that legislative and executive discretion must always conform to constitutional limitations and cannot be exercised arbitrarily. In support of his submissions, learned counsel has placed reliance upon the judgment rendered by a Division Bench of this Court in *Mian Dawood v. Justice Tariq Mahmood Jahangiri and others* (Writ Petition No. 3670 of 2025, decided on 18.12.2025),

contending that the constitutional qualifications prescribed for appointment of Judges are mandatory and that appointments made contrary to constitutional requirements cannot be sustained in law.

4. Conversely, learned Additional Attorney General has opposed the petition and submits that the Constitution itself exhaustively prescribes the qualifications for appointment as a Judge of a High Court under Article 193 and nowhere requires that the appointee must possess domicile in the territorial jurisdiction of the concerned High Court. It is argued that the qualifications sought to be introduced by the petitioner find no support either in the Constitution or in any statutory provision. It is further contended that Section 3(1) of the Islamabad High Court Act, 2010 has been enacted by the competent legislature and has constitutional premises. The petitioner has failed to identify any constitutional provision with which the impugned section is inconsistent. Mere disagreement with legislative policy is not a valid ground for declaring a statute unconstitutional. Learned Additional Attorney General further submits that appointments to the Superior Judiciary are governed exclusively by Articles 175A and 193 of the Constitution through the constitutional mechanism comprising the Judicial Commission of Pakistan, followed by consent of the Prime Minister and the President of Pakistan. Neither the Constitution nor the Islamabad High Court Act recognizes domicile of Islamabad Capital Territory as an essential qualification for appointment as a Judge of this Court. With regard to the reliance placed upon *Mian Dawood v. Justice Tariq Mahmood Jahangiri and others* (W.P. No. 3670 of 2025), it is argued that the said judgment dealt with the

constitutional eligibility of a particular individual to hold judicial office and did not examine, much less decide, the constitutional validity of Section 3(1) of the Islamabad High Court Act, 2010. Consequently, the controversy involved in the present petition is entirely distinct, and the observations made therein are inapplicable to the issues requiring determination in the instant case. It is, therefore, prayed that the petition, being devoid of legal and constitutional substance, be dismissed.

5. I have heard the learned counsel appearing in person, and the learned Additional Attorney General for the Federation at considerable length and have examined the record with their able assistance. Vide order dated 07.05.2026, learned counsel for the petitioner was specifically put on notice to satisfy this Court regarding the maintainability of the instant petition. The petition, therefore, calls for examination of both the constitutional challenge to Section 3(1) of the Islamabad High Court Act, 2010 and the maintainability of the relief sought in the nature of quo warranto.

6. The first substantive question requiring determination is whether the expression "Provinces and other territories of Pakistan", occurring in Section 3(1) of the Islamabad High Court Act, 2010, is inconsistent with the constitutional scheme regulating appointments to the Islamabad High Court and is, therefore, liable to be declared ultra vires of the Constitution. Before answering these questions, it is essential to have a profound legal glance at Section 3(1) of the Islamabad High Court Act, 2010. For clarity and convenience, Section 3 (1) is reproduced as under:-

> *"**3. Islamabad High Court**.—(1) The Islamabad High Court shall consist of a Chief Justice and twelve other judges to be appointed from provinces and other territories of Pakistan, in accordance with the Constitution. **[The underlying for emphasis]***
> *(2) The Islamabad High Court shall start functioning from the appointed date.*
> *(3) The principal seat of Islamabad High Court shall be at Islamabad."*

7. Now reverting to the challenge mounted against Section 3(1) of the Islamabad High Court Act, 2010, it is apposite to recall the settled principles governing judicial review of legislation. The Hon'ble Supreme Court in *Syed Saad Ali and another v. Federation of Pakistan through Secretary Ministry and others* (2026 SCMR 22) reiterated that every legislative enactment carries a strong presumption of constitutionality and that a Court must lean in favour of sustaining, rather than invalidating, a law unless it is shown to be ex facie inconsistent with an express constitutional provision, beyond the legislative competence of Parliament, or violative of fundamental rights. The judicial function is not to examine the wisdom or desirability of legislative policy, but only its constitutional competence and compatibility. Thus, the burden rests upon the petitioner to establish a clear and direct conflict between Section 3(1) and the Constitution. In the absence of such irreconcilable inconsistency, the impugned provision cannot be declared ultra vires merely because the petitioner advances a different understanding of the constitutional scheme governing appointments to the Islamabad High Court. Reliance may also be placed upon *Lahore Development Authority v. Ms. Imrana Tiwana and others* (2015 SCMR 1739), *Province of East Pakistan v. Siraj ul Haq Patwari* (PLD 1966 SC 854), *Mehreen Zaibun*

Nisa v. Land Commissioner (PLD 1975 SC 397), *Kaneez Fatima v. Wali Muhammad* (PLD 1993 SC 901), *Multiline Associates v. Ardeshir Cowasjee* (1995 SCMR 362), *Ellahi Cotton Mills Limited v. Federation of Pakistan* (PLD 1997 SC 582), *Dr. Tariq Nawaz v. Government of Pakistan* (2000 SCMR 1956), *Mian Asif Aslam v. Mian Muhammad Asif* (PLD 2001 SC 499), *Pakistan Muslim League (Q) v. Chief Executive of Pakistan* (PLD 2002 SC 994), *Pakistan Lawyers Forum v. Federation of Pakistan* (PLD 2005 SC 719), *Messrs Master Foam (Pvt.) Ltd. v. Government of Pakistan* (2005 PTD 1537), *Watan Party v. Federation of Pakistan* (PLD 2006 SC 697), *Federation of Pakistan v. Haji Muhammad Sadiq* (PLD 2007 SC 133), and *Iqbal Zafar Jhagra v. Federation of Pakistan* (2013 SCMR 1337).

8. The same interpretative discipline governs the construction of the statutory provision presently under examination. The function of the Court is to ascertain and give effect to the legal meaning of the language chosen by the legislature, reading the enactment as a whole and in its proper context, rather than recasting the provision according to what the Court may consider preferable. Halsbury's Laws of England, 5th Edition, Volume 96, §§1078 and 1192, recognizes that authoritative interpretation of legislation is a judicial function and that an enactment must be construed as a whole, with meaning, as far as possible, being assigned to every word employed therein. The same principle has long been recognized by the Hon'ble Supreme Court. In Reference by the President of Pakistan under Article 162 (PLD 1957 SC 219), it was held, inter alia, that legislative intention is to be gathered from the words employed and from

consideration of the enactment as a whole, and that a construction which renders any provision meaningless, inoperative or nugatory is to be avoided. Likewise, in *Muhammad Naseem Ahmad and others v. Miss Azra Feroz Bakht and others* (PLD 1968 SC 37), it was emphasized that statutory words are not to be treated as surplusage or redundant. More recently, in *Messrs Kassim Textile Mills (Pvt.) Limited v. Commissioner Inland Revenue, Karachi* (2025 SCMR 1248), the Hon'ble Supreme Court reiterated that where statutory language is clear and unambiguous, it must be given its plain and ordinary meaning without adding, subtracting or substituting words under the guise of interpretation. N.S. Bindra, in Interpretation of Statutes, has expressed the same principle by observing that a statute should be construed, where reasonably possible, so that none of the words employed by the legislature is rendered redundant.

9. Another aspect of the instant petition requires an examination of Section 3(1) of the Islamabad High Court Act, 2010 as well as Article 175 and Article 193 of the Constitution of the Islamic Republic of Pakistan, 1973. These provisions operate in separate, though interconnected, fields and are required to be read harmoniously as parts of one constitutional and statutory scheme.

10. At this juncture, it is apposite to reiterate the settled principle that constitutional provisions are not to be read in isolation, but as integral parts of an organic and coherent whole. In *Al-Jehad Trust and others v. Federation of Pakistan and others* (PLD 1996 SC 324), the Hon'ble Supreme Court emphasized that the Constitution must be interpreted in a manner which gives meaningful effect to all its

provisions and harmonizes them so as to make the constitutional scheme workable, effective and consistent with the dominant intent of its framers. Where two provisions appear to operate in the same field, the Court is required, as far as possible, to adopt an interpretation which enables both to coexist rather than creating an unnecessary conflict between them. The Court must look to the Constitution as a whole, keep its basic features in view, and prefer an interpretation which advances its underlying purpose and spirit.

11. The principle of harmonious construction is further reinforced by the settled rule that the Constitution, being an organic and living instrument, cannot be interpreted in a narrow, technical or pedantic manner. Its provisions are required to receive a broad, progressive and purposive construction so as to remain responsive to the constitutional scheme as a whole and to the circumstances in which they operate. In *Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and others* (PLD 1997 SC 32), the Hon'ble Supreme Court emphasized that the Constitution must be read as a whole to ascertain the true intention of its framers and that an interpretation producing redundancy, inconsistency or absurdity is to be avoided. Likewise, in *Pir Sabir Shah v. Shad Muhammad Khan and another* (PLD 1995 SC 66), it was held that an apparent conflict between constitutional provisions ought not to be assumed and that they must, as far as possible, be construed so as to "live together, exist together and operate together." The same dynamic and progressive approach was reiterated in *Sardar Farooq Ahmed Khan Leghari and others v. Federation of Pakistan and others* (PLD 1999

SC 57), *Pakistan Tobacco Company Ltd. and others v. Government of N.W.F.P. and others* (PLD 2002 SC 460), *Munir Hussain Bhatti and others v. Federation of Pakistan and another* (PLD 2011 SC 407), and *Fazlul Quader Chowdhry and others v. Muhammad Abdul Haque* (PLD 1963 SC 486).

12. Article 175 is the foundational provision relating to the establishment and jurisdiction of the Courts. It expressly contemplates a Supreme Court of Pakistan, a High Court for each Province, and a High Court for the Islamabad Capital Territory, besides such other Courts as may be established by law. The provision, therefore, constitutionally recognizes the Islamabad High Court as a distinct High Court for the Islamabad Capital Territory. At the same time, Article 175 does not prescribe the qualifications of its Judges, nor does it confine the source of their appointment to persons domiciled in, or professionally associated with, Islamabad Capital Territory or Islamabad High Court Bar Association. Its purpose is institutional: it establishes and recognizes the Courts forming part of the constitutional judicial structure.

13. Article 193, on the other hand, deals specifically with the appointment and qualifications of Judges of a High Court. Clause (1) provides that the Chief Justice and other Judges of a High Court shall be appointed by the President in accordance with Article 175A. Clause (2) prescribes the essential qualifications, namely that the proposed appointee must be a citizen of Pakistan, must have attained the constitutionally prescribed age, and must possess the requisite period of experience either as an advocate of a High Court or as a

holder of judicial office in Pakistan. Significantly, Article 193 does not prescribe domicile, residence, provincial origin or enrolment with the Bar Council of the territorial jurisdiction of the concerned High Court as a qualification for appointment. For the sake of clarity and proper appreciation of the controversy, the relevant constitutional provision is reproduced herein below:

> ***"193. Appointment of High Court Judges.*** *(1) The Chief Justice and each of other Judges of a High Court shall be appointed by the President in accordance with Article 175A.*
> *(2) A person shall not be appointed as a Judge of a High Court unless he is a citizen of Pakistan, is not less than forty years of age, and*
> *(a) he has, for a period of not less than ten years, been an advocate of a High Court; or*
> *(b) he has, for a period of not less than ten years, held a judicial office in Pakistan.*
> ***Explanation.__*** *In computing the period during which a person has been an advocate of a High Court or has held judicial office, there shall be included any period during which he has held judicial office after he became an advocate or, as the case may be, the period during which he has been an advocate after having held judicial office."*

14. A plain reading of Section 3(1) of the Islamabad High Court Act, 2010 leaves little room for ambiguity. The legislature's intention is very much crystal clear in using the expression *"to be appointed from provinces and other territories of Pakistan"* in prescribing the composition of the Islamabad High Court. The use of the plural expression "provinces" coupled with the words "other territories of Pakistan" is neither accidental nor superfluous; rather, it is the clear legislative intent that appointments to the Islamabad High Court are not confined to advocates or judicial officers belonging to Islamabad Capital Territory alone. Had the intention of the legislature been to

restrict the source of appointment exclusively to Islamabad Capital Territory, nothing prevented it from using explicit language to that effect. Instead, Parliament consciously extended the field of eligibility by providing that the Chief Justice and other Judges shall be appointed from the Provinces as well as other territories of Pakistan, while simultaneously making such appointments subject to the constitutional mandate through the qualifying words "in accordance with the Constitution." These closing words assume substantial significance, for they make it copiously clear that although the source of appointment extends throughout Pakistan, every appointment must nevertheless satisfy the constitutional qualifications and procedure prescribed by the Constitution, particularly Articles 175A and 193. Thus, Section 3(1) neither increases nor curtails the constitutional qualifications; it merely identifies the territorial source from which constitutionally eligible persons may be considered for appointment to the Islamabad High Court.

15. The expression "from Provinces and other territories of Pakistan" identifies the territorial pool from which eligible candidates may be considered for appointment, as per term of section 3(1) of the Islamabad High Court Act, 2010. It does not create an additional constitutional qualification, nor does it dilute, modify or override the requirements prescribed by Article 193. The concluding words "in accordance with the Constitution" are of controlling significance. They subordinate every appointment under Section 3 to the constitutional procedure and qualifications prescribed under Articles 175A and 193. Thus, while Section 3 permits consideration of suitable persons from

the four Provinces and other territories of Pakistan, the person ultimately appointed must fulfill every constitutional requirement.

16. The legislature, while enacting Section 3(1) of the Islamabad High Court Act, 2010. The words "Provinces and other territories of Pakistan" cannot be treated as redundant. One of the cardinal principles of statutory interpretation is that every word used by the legislature is presumed to have been inserted deliberately and for a purpose. The Court must, therefore, endeavour to assign meaning to every expression employed in the statute and avoid an interpretation that renders any part thereof otiose or redundant. The use of the plural word "Provinces", followed by the expression "other territories of Pakistan", manifests a deliberate legislative intention to keep the field of consideration geographically broad and national in character. Had Parliament intended to confine appointments exclusively to persons domiciled in Islamabad Capital Territory or enrolled with the Islamabad Bar Council, it could have said so in clear terms. No such restriction appears either in Section 3 or Article 193.

17. Nor can the phrase "a High Court for the Islamabad Capital Territory" in Article 175 be construed as requiring that its Judges must necessarily belong to Islamabad Capital Territory. The territorial designation of a Court determines the area over which it exercises jurisdiction; it does not, by itself, determine the domicile or provincial origin of the persons eligible to be appointed as its Judges. The territorial jurisdiction of a Court and the territorial source of judicial appointments are legally distinct concepts. A Court may exercise jurisdiction over a specified territory while its Judges may be selected

from a wider national pool, provided they satisfy the constitutional qualifications.

18. The three provisions accordingly perform distinct but complementary functions. Article 175 establishes and recognizes the Islamabad High Court as a constitutional Court for Islamabad Capital Territory. Article 193 prescribes the qualifications and manner of appointment of its Judges. Section 3 of the Islamabad High Court Act, 2010 determines its composition and expressly permits appointments from the Provinces and other territories of Pakistan, subject at all times to the Constitution. The statutory provision supplements the constitutional framework; it neither contradicts nor displaces it. The Islamabad High Court Act, 2010 must also be construed in a manner that preserves its constitutionality. A legislative enactment carries a presumption of constitutionality, and the Court is required, where reasonably possible, to adopt an interpretation that brings the statute into harmony with the Constitution. In the present case, however, no strained interpretation is necessary because the text of Section 3 itself expressly requires appointments to be made "in accordance with the Constitution." This qualifying expression removes any conceivable doubt that the statutory provision cannot operate independently of Articles 175A and 193.

19. The reliance upon the expression "in accordance with the Constitution" also demonstrates that Section 3 does not confer an unrestricted power of appointment. It merely opens the territorial field of consideration. The constitutional authorities remain bound to determine the eligibility, fitness, and suitability of candidates through

the process prescribed by Article 175A, while ensuring compliance with Article 193. A candidate belonging to any Province or territory cannot claim appointment merely by reason of domicile; conversely, an otherwise constitutionally qualified candidate cannot be excluded solely because they belong to a Province other than Islamabad Capital Territory. Consequently, Article 175, Article 193 and Section 3 of the Islamabad High Court Act, 2010 are neither mutually destructive nor constitutionally irreconcilable. Article 175 establishes the Court, Article 193 prescribes who may constitutionally be appointed as its Judge, and Section 3 identifies the broad territorial source from which such constitutionally qualified persons may be selected. Each provision has an independent field of operation, and all three can be given full effect without rendering any word redundant or defeating the object of the other.

20. Applying these principles to the present controversy, Articles 175 and 193 of the Constitution are required to be read together, each operating within its own sphere, while Section 3(1) of the Islamabad High Court Act, 2010 is to be construed subject to, and in harmony with, the constitutional framework. Article 175 recognizes the Islamabad High Court as a constitutional Court for the Islamabad Capital Territory, Article 193 prescribes the qualifications and mode of appointment of its Judges, whereas Section 3(1) identifies the territorial source from which constitutionally eligible persons may be considered for appointment. When so construed, the provisions complement rather than contradict one another, and each can be given full effect without rendering the other redundant or inoperative.

21. Viewed through this settled interpretative lens, neither Article 175 nor Article 193 can be read in isolation so as to import a territorial or domicile based restriction which the Constitution itself does not prescribe; rather, both provisions must be allowed to operate harmoniously with Section 3(1) of the Islamabad High Court Act, 2010, without adding to the constitutional qualifications or diminishing the legislative expression employed by Parliament.

22. Tested against the aforesaid principles, the expression "Provinces and other territories of Pakistan" occurring in Section 3(1) cannot be treated as ornamental, surplusage or devoid of legal consequence. Parliament consciously employed a geographically comprehensive expression and simultaneously subjected appointments thereunder to the Constitution by using the concluding words "in accordance with the Constitution." Both parts of the provision must, therefore, be given effect. To construe Section 3(1) as restricting appointments exclusively to persons domiciled in, or professionally associated with, the Islamabad Capital Territory would not merely interpret the provision; it would require the Court to disregard the words actually enacted by Parliament and substitute a territorial restriction which neither Section 3(1) nor Article 193 contains. Such a construction would run contrary to the settled principles of statutory interpretation referred to above.

23. Applying the aforesaid principles to the present controversy, the petitioner's construction would, in substance, require this Court to read into Article 193 as well as Section 3(1) a condition of domicile, territorial affiliation or permanent professional association with

Islamabad which neither provision contains. Article 193 prescribes a uniform constitutional standard of eligibility for appointment as a Judge of a High Court and does not make residence, domicile or enrolment with a particular Bar Council a constitutional qualification. Likewise, Section 3(1), instead of restricting the field of appointment to Islamabad Capital Territory, expressly refers to the Provinces and other territories of Pakistan. Acceptance of the petitioner's contention would therefore not amount to interpretation of the existing constitutional and statutory text; it would amount to supplying a restriction which the framers of the Constitution and Parliament themselves did not incorporate.

24. The Hon'ble Supreme Court in *Justice Mohsin Akhtar Kayani, Judge and others v. The President of Pakistan, Pak Secretariat, Islamabad and others* (PLD 2025 SC 516), while examining Section 3 of the Islamabad High Court Act, recognized that the provision is germane to appointments to the Islamabad High Court and cannot be construed as overriding or controlling the constitutional mandate. The proper construction, therefore, is one which allows Section 3(1), Article 175A and Article 193 to operate together, rather than one which creates a territorial disqualification not contemplated by the Constitution.

25. For the foregoing reasons, it is held that Section 3(1) of the Islamabad High Court Act, 2010 does not travel beyond Articles 175 and 193 of the Constitution. Rather, it operates in aid of and subject to the constitutional scheme. The expression "from Provinces and other territories of Pakistan" lawfully permits appointments to the

Islamabad High Court from all four Provinces and other territories of Pakistan, whereas the words "in accordance with the Constitution" ensure that every such appointment remains subject to the procedure and qualifications prescribed by Articles 175A and 193. The provisions are, therefore, harmonious, complementary and free from any constitutional conflict. When so interpreted, no inconsistency or conflict arises between them.

26. Consequently, when Articles 175, 175A and 193 of the Constitution are read harmoniously with Section 3(1) of the Islamabad High Court Act, 2010, no constitutional inconsistency emerges. Article 175 recognizes the Islamabad High Court as the constitutional High Court for the Islamabad Capital Territory; Articles 175A and 193 regulate the mode and qualifications of appointment; and Section 3(1) permits consideration of constitutionally eligible persons from the Provinces and other territories of Pakistan. Each provision thus occupies its own field and can operate fully without encroaching upon or rendering the other redundant. The construction advanced by the petitioner, on the contrary, would introduce into the constitutional scheme a domicile based limitation which finds no textual foundation therein.

27. Having answered the statutory and constitutional challenge, the remaining question is whether this Court, in exercise of its constitutional jurisdiction under Article 199(1)(b)(ii) of the Constitution, ought to entertain proceedings in the nature of quo warranto for examining the constitutional title of sitting Judges of the Islamabad High Court. The constitutional position, however, assumes a distinct

character where the office in question is that of a Judge of a Superior Court. Article 175A establishes a specific constitutional mechanism for appointment to the Superior Judiciary, under which the Judicial Commission of Pakistan is entrusted with recommending candidates for appointment as Judges of the Supreme Court, High Courts and the Federal Shariat Court, followed by appointment in accordance with the Constitution. Once a person has been appointed through the constitutionally prescribed process and has entered upon office, he enjoys the security of tenure guaranteed by the Constitution. Questions concerning the misconduct or incapacity of such a Judge, and his consequent removal from office, are governed by the special constitutional mechanism embodied in Article 209 and fall within the domain of the Supreme Judicial Council. The maintainability of a petition under Article 199 seeking, directly or indirectly, to dislodge a sitting Judge from office must, therefore, be examined in the light of this distinct constitutional framework.

28. The Constitution of the Islamic Republic of Pakistan, 1973 implemented parliamentary democracy in the country. The constitutional scheme governs the removal of a Judge of a Superior Court. The Constitution itself makes a clear distinction between the extraordinary constitutional jurisdiction exercisable by a High Court under Article 199 and the exclusive constitutional mechanism prescribed for examining the capacity or conduct of a Judge of a Superior Court under Article 209. While Article 199 empowers a High Court to issue constitutional writs for the enforcement of fundamental rights and for keeping public authorities within the bounds of law,

Article 209 constitutes a complete constitutional code regulating the process through which allegations relating to the conduct, capacity or continuance in office of a Judge of the Superior Judiciary are to be examined. Article 209 has entrusted jurisdiction exclusively to the Supreme Judicial Council, reflecting the constitutional intent that matters concerning the removal of a Judge be dealt with only through the mechanism created by the Constitution itself.

29. In India, it is well settled that a writ of quo warranto does not lie to challenge the appointment or title of a sitting Judge of a High Court or the Supreme Court. The constitutional scheme for appointment and removal by impeachment is considered self-contained. High Courts have consistently dismissed such petitions. In the United Kingdom, following the Constitutional Reform Act, 2005, sitting Judges enjoy strong security of tenure. Judicial review of appointment decisions does not take the form of quo warranto proceedings against sitting Judges. United Kingdom: Security of tenure for superior court Judges is protected by the Act of Settlement 1701 and the Senior Courts Act 1981. Judges hold office during good behaviour and may be removed only upon an address presented to His Majesty by both Houses of Parliament. Following the Constitutional Reform Act 2005, appointments are made on the recommendation of the independent Judicial Appointments Commission. There is no established practice of using quo warranto or judicial review to challenge the title of sitting Judges. The emphasis remains on institutional independence and the finality of constitutional appointments. Canada: The Supreme Court of Canada has strongly affirmed the principle of judicial independence,

including security of tenure, in Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island, [1997] 3 S.C.R. 3. Collateral challenges to the title of sitting Judges through writ proceedings are not favoured, as they would undermine the constitutional protection afforded to the judiciary. Australia: Australian courts have consistently upheld a strict separation of powers and strong security of tenure for superior court Judges. Challenges to judicial appointments after assumption of office through collateral proceedings are not entertained, consistent with the constitutional design that protects judicial independence. These jurisdictions reflect a common principle: once a Judge of a superior court assumes office through the constitutionally prescribed process, the title to that office is not open to collateral attack through ordinary writ proceedings such as quo warranto. The proper mechanisms for addressing grievances are those provided by the Constitution itself. For all the above reasons, this Court is of the considered view that the present petition, to the extent it seeks a direction to Respondent Nos. 4 and 5 to show cause under what authority they hold the office of Judge of the Islamabad High Court, is not maintainable.

30. There is yet another aspect which materially bears upon the exercise of the extraordinary and discretionary jurisdiction of this Court, namely, the unexplained delay with which the petitioner has approached this Court. The doctrine of laches does not operate with the same rigidity as a statutory period of limitation; nevertheless, constitutional jurisdiction being discretionary and equitable in character, unexplained and unreasonable delay is a significant

consideration while determining whether relief ought to be granted. In *State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others* (2012 SCMR 280), the Hon'ble Supreme Court reiterated that delay defeats equity and that equitable relief ordinarily assists the vigilant rather than one who has remained indolent in asserting an alleged right. It was further emphasized, with reference to *Jawad Mir Muhammadi v. Haroon Mirza* (PLD 2007 SC 472), that although laches per se does not constitute an absolute bar to constitutional jurisdiction, the length of delay, the explanation offered therefor, and the consequences which have ensued during the intervening period are required to be given serious consideration. The same principle finds support in *Member (S&R)/Chief Settlement Commissioner v. Ashfaque Ali* (PLD 2003 SC 132) and *S.A. Jameel v. Secretary to the Government of the Punjab* (2005 SCMR 126), wherein it was held that a litigant guilty of gross negligence, inaction or unexplained laxity may legitimately be denied discretionary constitutional relief.

31. The two learned Judges, namely, Justice Arbab Muhammad Tahir and Justice Saman Rafat Imtiaz (Respondent Nos. 4 and 5) were appointed on 17 December 2021. The present petition has been filed in July 2026, after a lapse of approximately four years and seven months. In the present case, the delay is substantial and remains unexplained. During this period, the learned Judges have been performing judicial functions and passing orders that litigants and subordinate courts have acted upon. Entertaining a quo warranto petition after such a long delay would unsettle the functioning of the

Islamabad High Court, affect public confidence in the administration of justice, and undermine the finality of judicial proceedings. In these circumstances, the principle that quo warranto is a remedy for a continuing wrong must yield to considerations of judicial stability, institutional comity, and the doctrine of laches as applied to high constitutional offices. It is also well settled that the jurisdiction of this Court in the nature of quo warranto is extraordinary and discretionary and is not to be exercised as a matter of course merely upon pointing out every technical or procedural irregularity. The Court is required to examine the nature, gravity and consequence of the alleged defect and to determine whether interference is warranted in the larger interest of justice. Where the controversy has lost significance on account of laches, or the alleged defect is minor, curable or merely technical in nature, the Court may legitimately decline to exercise such jurisdiction, unless non-interference would result in grave injustice or would have the effect of perpetuating or endorsing an unlawful benefit. Reliance in this regard is placed upon *Asif Hassan and others v. Sabir Hussain and others* (2019 SCMR 1720, p.1724, para B), wherein the Hon'ble Supreme Court reiterated that quo warranto, being an extraordinary and discretionary remedy, need not be issued in every case, particularly where the matter involves laches, minor discrepancies or curable technicalities, unless refusal to interfere would result in grave injustice or sustain illegal gains.

32. Tested against these principles, the present petition suffers from substantial and unexplained delay. Respondent Nos. 4 and 5 were appointed as Judges of this Court on 17.12.2021, whereas the

present proceedings were instituted in July 2026, after the lapse of approximately four years and seven months. No satisfactory explanation has been furnished for remaining silent during this considerable period. More importantly, the intervening time has not remained legally neutral: the learned Judges have continuously discharged constitutional and judicial functions and have rendered numerous orders and judgments upon which litigants, subordinate Courts and public authorities have acted. The equitable doctrine of laches requires the Court to take into account not merely the passage of time but also the nature of the acts performed during that interval and the consequences which may follow from belated interference. As explained in *Pakistan Post Office v. Settlement Commissioner* (1987 SCMR 1119), unlike statutory limitation, laches operates upon considerations of justice, equity and the balance of legitimate rights. In the circumstances of the present case, entertaining a belated challenge to appointments which have remained operative for several years would have consequences extending far beyond the private claim of the petitioner and would directly engage considerations of judicial stability, certainty and institutional continuity. The unexplained delay, therefore, constitutes an additional and independent consideration for declining the discretionary relief sought through quo warranto.

33. For the foregoing reasons, this Court is satisfied that the petitioner has failed to establish any constitutional infirmity in Section 3(1) of the Islamabad High Court Act, 2010, or any enforceable right requiring appointments to the Islamabad High Court to be confined to

persons domiciled in, or professionally affiliated with, the Islamabad Capital Territory. The impugned provision, when read harmoniously with Articles 175, 175A and 193 of the Constitution, operates within the constitutional framework and lawfully permits consideration of eligible persons from the Provinces and other territories of Pakistan, subject always to the qualifications and procedure prescribed by the Constitution. The challenge to the appointments of respondent Nos. 4 and 5 is also liable to fail, inter alia, on account of the unexplained and inordinate delay in invoking the discretionary jurisdiction of this Court, coupled with the absence of any demonstrated foundational constitutional disqualification. The reliance placed by learned counsel for the petitioner upon *Mian Dawood v. Justice Tariq Mahmood Jahangiri and others* (Writ Petition No. 3670 of 2025, decided on 18.12.2025) does not advance the petitioner's case and is not applicable. The said judgment concerned the constitutional eligibility of a particular individual to hold judicial office and did not examine or determine the constitutional validity of Section 3(1) of the Islamabad High Court Act, 2010; it is, therefore, distinguishable and not applicable to the facts and controversy involved in the present petition. Consequently, no case for issuance of a writ in the nature of quo warranto, or for declaring Section 3(1) ultra vires the Constitution, is made out. The petition, being devoid of merit, is accordingly dismissed. There shall be no order as to costs.

(KHADIM HUSSAIN SOOMRO)
JUDGE

Announced in open Court on 17.09.2026.

JUDGE

Approved for Reporting

Zahid