IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

No. IHC/Judl.Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP — 3250 — 16.

Titled. Amjad Ali —v/s- Fed - Shariat Court, etc.

a) Judgment approved for reporting Yes/No

b) Judgment any comment upon the conduct of the Judicial officer for quality of the impugned judgment Is desired to be made. Yes/No

(In case the answer is affirmative separate confidential note may be sent to the Registrar drawing his attention to the particular aspect).

Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 3250 of 2016.

AMJAD ALI

Vs

FEDERAL SHARIAT COURT THROUGH ITS REGISTRAR, ETC.

PETITIONER BY:	Mr. Amjad Ali, petitioner in person.
RESPONDENTS BY:	Mr. Muhammad Akram Gondal and Mr Muhammad Mohsin Bhatti, Advocates.
DATE OF HEARING:	27.09.2017.

ATHAR MINALLAH, J.- This consolidated judgment shall dispose of the instant petition as well as W.P. No. 3249 of 2016. The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, challenging orders dated 07-09-2013 and 10-02-2014, passed by the Hon'ble Chief Justice and a Bench consisting of three Hon'ble Judges of the Federal Shariat Court (hereinafter referred to as the ***"Court"***) respectively.

2. The facts, in brief, are that Amjad Ali (hereinafter referred to as the ***"Petitioner"***) was employed and serving as a Stenographer at the Registry of the Court at Lahore. The Petitioner was granted a *No Objection Certificate* by the competent Authority to take admission in the L.L.B (three year programme) offered by the Punjab University Law College, Lahore. Pursuant to the *No objection Certificate,* the Petitioner was enrolled in the said programme. From time to time, the Petitioner was granted leave so as to

enable him to take his examinations. After completion of one year of study, the Petitioner, vide application dated 14-06-2012, requested for the grant of leave with full pay and his request was allowed by the competent authority. The Petitioner was subsequently transferred from the Lahore Registry of the Court to its principal seat at Islamabad vide order dated 02-02-2013. He was directed to report for duty within three days. The Petitioner, instead of joining his duty at Islamabad, submitted an application, dated 02-02-2013, wherein he requested that either his transfer order be cancelled or, alternatively, that he may be granted leave with full pay with effect from 04-02-2013 to 03-02-2015. Instead of waiting for a response, the Petitioner filed W.P.No.469/2013 before this Court on 04-02-2013. The petition was dismissed vide order dated 14-02-2013. The Petitioner filed an *Intra Court Appeal No.106/2013* and a learned Division Bench of this Court suspended the operation of the impugned order passed by the learned Single Judge in Chambers, including the transfer order dated 02-02-2013. The august Supreme Court, vide order dated 09-05-2013, set-aside the order, dated 18-02-2013, passed by the learned Division Bench of this Court and the latter was directed to dispose of the appeal expeditiously. The Petitioner joined his place of posting on 13-05-2013. The *Intra Court Appeal* was dismissed by the learned Division Bench vide order, dated 03-07-2013. The petition seeking leave to appeal, filed before the august Supreme Court, was dismissed vide order dated 03-09-2013. An inquiry was initiated and the Petitioner was served with two separate charge sheets along with statement of allegations, both dated 09-07-2013. The Petitioner challenged the disciplinary proceedings by invoking the jurisdiction of this Court through W.P.No.3052/2013, and the same was dismissed by a learned Single Judge of this Court vide order, dated 22-07-2013. The competent authority issued a final show cause notice, dated 01-08-2013, and after affording an opportunity of hearing, the major penalty of dismissal of service was imposed vide order dated 07-09-2013, pursuant to powers conferred under Rule 7(g) of the Federal Shariat Court (Terms and

Conditions of Service of Staff) Rules, 1982, read with the enabling provisions of the Government Servants (Efficiency and Discipline) Rules, 1973. The Petitioner filed a departmental appeal under Rule 11(2) of the Rules of 1982. The appeal was heard by a Bench of three Hon'ble Judges of the Court. The learned Bench dismissed the appeal vide order, dated 10-02-2014. However, the penalty of dismissal was converted into removal from the service of Pakistan without being disqualified for future employment. The Petitioner challenged the said order by filing a petition. The office of this Court raised an objection and the same was sustained vide order, dated 25-03-2014. The Petitioner filed an appeal before the august Supreme Court invoking Article 203-F(2B) of the Constitution. The apex Court granted leave vide order dated 24-10-2014. However, the Civil Shariat Appeals No.1 and 2 of 2014 were dismissed as not maintainable vide order dated 28-06-2016. The Petitioner has, therefore, invoked the jurisdiction of this Court under Article 199 of the Constitution.

3. At the very outset, we had sought assistance from the Petitioner and the respondents regarding the maintainability of the petition against an order passed by three Hon'ble Judges of the Court.

4. The Petitioner argued the question of maintainability at length. He mainly placed reliance on a recent judgment of the august Supreme Court titled "Ch. Muhammad Akram vs. Registrar, Islamabad High Court and others", ***PLD 2016 Supreme Court 961***, in support of his contention that the bar under Article 199 (5) of the Constitution is relatable to judicial orders or judgments and that it will not be an impediment in the case of administrative/consultative/executive orders passed by the Hon'ble Chief Justice or the learned Judges of the Court. The Petitioner has stressed that the earlier law enunciated by the august Supreme Court in the case titled "Muhammad Iqbal and others vs. Lahore High Court through Registrar and

others", ***2010 SCMR 632***, has been declared as per incuriam by the august Supreme Court in the case of Ch. Muhammad Akram, supra.

5. The learned counsel appearing for the Court argued that the petition was not maintainable in light of Article 203-G of the Constitution. He further argued on merits and contended that no case is made out for exercising jurisdiction under Article 199 of the Constitution. Without adverting to the merits of the case, we feel it necessary to first deal with the question of maintainability.

6. The Petitioner and the learned Additional Attorney General were heard on 06-03-2017 by a Division Bench of the Court on the question of maintainability. However, later a larger Bench was constituted due to the questions involved, particularly the maintainability contested on behalf of the Court.

7. The fundamental question for our consideration is the scope of the bar contained under Article 199 (5) of the Constitution and how it has been interpreted by the august Supreme Court in various judgments. It would, therefore, be relevant to reproduce Article 199 (5) of the Constitution for ease of reference.

> *"In this Articles, unless the context otherwise requires;*
>
> *'person' includes any body Politic or Corporate, any Authority of or under the control of the Federal Government or of a Provincial Government, and any Court or Tribunal, other than the Supreme Court, a High Court or a Court or Tribunal established under a Law relating to the Armed Forces of Pakistan;"*

8. It is obvious from a plain reading of Article 199 (5) that a Court is indeed a person for the purposes of Article 199 (1)(a)(i)(ii). However,

the august Supreme Court, a High Court or a Court or Tribunal established under a law relating to the Armed Forces of Pakistan have been excluded. A constitutional petition invoking jurisdiction under Article 199 is, therefore, barred against the said three categories of Courts or Tribunals. In order to appreciate and elaborate the scope and extent of this bar, it would be beneficial to survey the precedent law.

9. The judgment of the august Supreme Court in the case of Ch. Muhammad Akram, supra, is the most recent and has been rendered by three Hon'ble Judges of the apex Court. The said judgment had emanated from proceedings under Article 184(3) of the Constitution. The august Supreme Court, in this judgment, has declared the principles and law laid down by a full Court of the Lahore High Court in the judgment titled "Asif Saeed vs. Registrar, Lahore High Court and others", ***PLD 1999 Lahore 350***, and the subsequent judgment of the august Supreme Court titled "Muhammad Iqbal and others vs. Lahore High Court through Registrar and others", ***2010 SCMR 632***, as per incuriam. The august Supreme Court has drawn a distinction between judicial functions and functions which are administrative/consultative/executive in nature. The august Supreme Court has, therefore, held as follows:-

> *"We for the aforesaid reasons conclude that the provisions of Article 199(5) would bar a writ against a High Court if the issue is relatable to judicial order or judgment; whereas a writ may lie against an administrative/consultative/executive order passed by the Chief Justice or the Administration Committee, involving any violation of the Rules framed under Article 208, causing infringement of the fundamental rights of a citizen.*

10. In an earlier judgment rendered by a Bench of the august Supreme Court, consisting of four Hon'ble Judges, in the case titled "Abrar Hassan vs. Government of Pakistan and another", ***PLD 1976 Supreme Court 315***, the apex Court after examining the provisions of Article 199 (5) interpreted its scope. The four Hon'ble Judges were unanimous insofar as the scope and extent of the bar contained in Article 199 (5) was concerned. However, the division was in relation to the forum and nature of the proceedings. The august Supreme Court dealt at length with the principle of coordinate jurisdiction and comity amongst Judges of the superior courts. Chief Justice Muhammad Yaqub Ali, as he was then, described the policy and wisdom behind the bar relating to challenging actions or orders of the Judges as follows:-

> *"The policy of law that no writ will issue to a High Court and Supreme Court is based on sound principles. If one Judge of a High Court were to issue a writ to another Judge under Article 199, the Judge to whom the writ is issued, may in exercise of the same jurisdiction nullify the writ. This is the logical consequence of the fact that High Courts and their individual groups of Judges are invested with co-ordinate jurisdiction".*

11. Referring to the concept of comity among the judges of the superior courts and the reason for upholding the same, it has been eloquently explained as follows;

> *"Another reason why writs should not issue from one High Court to another High Court and from one Judge to another Judge of the same High Court is that such a course will destroy the traditional high degree of comity among the Judges of superior*

Courts which is essential for the smooth and harmonious working of the superior Courts."

It has further been observed as follows:-

"What then is the purpose of clause (5) of Articles 199. Obviously, not to debar a High Court from issuing a writ to itself. It is too absurd to contemplate that a writ could ever issue from the 'High Court of Lahore' to the 'High Court of Lahore'. A more rational view is that clause (5) is intended to debar Judges of the High Court from issuing writs to each other. There is a weighty reason in support of this view. If this bar is not there then the judgments delivered by individual groups of Judges of High Courts in different jurisdiction may in the final event, be challenged, by litigants, under Article 199 as without lawful authority on variety of grounds such as error apparent on the face of the judgment, order or decree, bias, mala fides *etc."*

12. However, it was held that the bar under Article 199 (5) would not be attracted in a case where the petitioner has challenged the appointment of a judge on the ground that the latter is not qualified to hold the office of Judge of a High Court or Supreme Court. A writ in the nature of quo warranto against a Judge was, therefore, declared as an exception to the bar contained in Article 199(5) of the Constitution. Nevertheless, in relation to the nature of the proceedings, it was observed and held that a writ of quo warranto would not be maintainable under Article 199 of the Constitution, rather the appointment could be challenged through collateral proceedings before the apex Court. The other exception to Article 199 (5) of the Constitution has been described as follows:-

"The interpretation I have placed on clause (5) of Article 199 does not, therefore, throw a cloak of absolute protection on Judges of superior Courts. In their private capacity, they are like all other citizens amenable to laws of the land and but for the bar contained in clause (5) which is based on sound policy of law, their right to office would be equally open to challenge by a writ of quo warranto."

13. The Hon'ble Justice Anwarul Haq, as he was then, concurred with Muhammad Yaqub Ali, C.J. The Hon'ble Justice Salahuddin Ahmed, as he was then, observed as follows:-

"Article 199(5) is no bar to the maintainability of such a petition against a Judge of a High Court in his individual capacity as distinct from his act in the capacity of a Court or as Member of the Court. It is not disputed that the office of the Chief Justice of a High Court is a public office."

"I am definitely of the opinion that such unconstitutional appointment can be challenged and remedied only by way of a Constitutional petition under Article 199(1)(b)(ii) of the Constitution and not in any collateral proceedings."

"It seems to me that the intention of the Constitution-makers is to exclude, from the writ jurisdiction of the High Court, all actions, acts and orders made by the High Court or the Supreme Court, or by any Judge thereof in the exercise of the functions and powers of his office, but the immunity would not extend to the actions of a Judge in his private or individual capacity, in which capacity he continues to be amendable to the laws of the land like any other citizen."

14. The observations of the Hon'ble Cornelius, C.J, as he was then, recorded in the case titled "Mian Jamal Shah vs. The Member Election

Commission, Government of Pakistan, Lahore, etc", ***PLD 1966 SC 1*** in the context of comity among judges of the superior courts and coordinate jurisdiction have been affirmed and reproduced verbatim and the same are as follows:-

> *"that it would indeed be ludicrous for the Judges of the High Court to be issuing writs to themselves, and that quite apart from the aspect of ludicrousness there are other and more weighty considerations involved, such as the necessity of maintaining a high degree of comity among the Judges of the superior Courts which could be urged in support of such a provisions."*

15. The august Supreme Court has, therefore, held that there were two exceptions to the bar contained in Article 199(5), firstly a writ in the nature of quo warranto and, secondly, acts done by a judge of the superior court in her or his personal capacity. However, the difference between the Hon'ble Judges was to the extent of the forum or nature of proceedings regarding the said two exceptions. Hon'ble Salahuddin Ahmed, J, as he was then, held that a writ of quo warranto against a judge of the superior court would be maintainable before a High Court under Article 199 of the Constitution. This view was affirmed by the fourth Hon'ble Judge namely Muhammad Gull, J, as he was then. It is, therefore, obvious that to the extent of extent of the bar under Article 199(5) and the two exceptions thereto, there was consensus.

16. The next relevant judgment of the august Supreme Court in the context of the scope of Article 199(5) of the Constitution was rendered by a Bench consisting of five Hon'ble Judges in the case of "Muhammad Ikram Chaudhry and others vs Federation of Pakistan and others", ***PLD 1998 Supreme Court 103.*** After examining the precedent law the august Supreme Court observed and held as follows:-

> *"In other words, no writ can be issued by a High Court or the Supreme Court against itself or against each*

other or its Judges in exercise of jurisdiction under Article 199 of the Constitution, subject to two exceptions, namely, (i) where a High Court Judge or a Supreme Court Judge acts as persona designata or as a Tribunal or (ii) where a quo warranto is prayed for and a case is made out."

It was further observed as follows:-

"There seems to be unanimity of view among the superior Courts on the question that a High Court or the Supreme Court cannot in exercise of its Constitutional jurisdiction under Article 199 of the Constitution interfere with an order passed by another Judge or another Bench of the same Court."

17. The question of the scope of the bar contained under Article 199(5) of the Constitution was examined by yet another Bench of the august Supreme Court consisting of ten Hon'ble Judges in the celebrated case titled "Malik Asad Ali and others vs. Federation of Pakistan through Secretary, Law, Justice and Parliament Affairs, Islamabad and others", ***PLD 1998 Supreme Court 161***. The apex Court re examined the principles and law enunciated and laid down by the Bench consisting of five Hon'ble Judges in the case of Muhammad Ikram Chaudhry, supra. However, to the extent of the nature of proceedings i.e. whether a quo warranto petition would be maintainable before a High Court under Article 199 of the Constitution or through collateral proceedings before the apex Court, the view of the Hon'ble Salahuddin Ahmed, J and Muhammad Gull, J was affirmed. The scope of maintainability of a petition under Article 199 of the Constitution against an act or order of a Judge was reiterated and affirmed to the effect that the challenge would be competent if it is in respect of acts in the nature of *persona designata* and by way of assailing an appointment through seeking a writ of quo warranto. Likewise, the Bench consisting of ten Judges of the august Supreme Court upheld the view that a petition seeking a writ of quo warranto, challenging the appointment of a Judge

of a High Court or a Supreme Court, would be maintainable under Article 199 of the Constitution before the High Court. The relevant portion from the judgment is reproduced as follows:-

> *"The difference between a Judge acting as a Court and a Judge acting in his personal and individual capacity is not only real but is necessary to preserve, otherwise a Judge will not be answerable for wrong done by him in his individual capacity. It may be pointed out that by accepting the office of a Judge, a person does not lose his individual identity as an ordinary citizen. Therefore, while action taken or orders passed by him in the former capacity as a Judge or the Court cannot be brought under challenge, under Article 199 of the Constitution, his action as an ordinary individual will be subject to ordinary law of the land including Article 199 of the Constitution."*
>
> *"A petitioner in a petition filed against a Judge of the superior Court seeking information in the nature of quo warranto, does not challenge any action or order of a Judge passed in his capacity as a Judge of the Court or a member of the Court. The qualification to hold the office of a Judge is personal to the individual and has nothing to do with his performance of duty as a Court or member of the Court. The qualifications for appointment of Judges of the superior Court are laid down meticulously in the Constitution. To possess the qualifications prescribed under the Constitution is a sine qua non for an individual to hold the office of a Judge of superior Court. Therefore, when the appointment of a Judge of superior Court is challenged on the ground that he did not possess the qualification prescribed by the Constitution, the relator is not asking the Court to strike*

down any of his actions which he has performed or is performing as a Judge of the superior Court but asks for examination of his personal qualification to be entitled to hold the office of the Judge of superior Court. Such an exercise, in our humble opinion, does not fall within the mischief of the provision of Article 199 (5) of the Constitution."

18. The Hon'ble full Court emphasized the significance and wisdom of maintaining a high degree of comity between the Judges of superior courts and in this context observed as follows:-

"Maintenance of high degree of comity between the judges of superior Courts is neither a rule of law nor a Constitutional requirement. It is only a highly desirable tradition which has existed for long and should continue to be followed by the Judges to maintain harmony and smooth working of the Courts, and also to preserve their institutional image in the eyes of the public. However, this high tradition of maintaining comity between the Judges of superior Courts cannot come in the way of discharge of more important Constitutional duty imposed upon the Judges of the superior Courts to protect and defend the Constitution under the oath of their office. Therefore, if the violation of a provision of the Constitution is brought to the notice of a Judge of the superior Court in a properly filed proceedings which involved the person of another Judge of the same Court, the relief, in the absence of a Constitutional bar, cannot be declined relying on the principle of high tradition of maintaining comity between the Judges of the superiors Courts."

19. It is obvious from the above discussed precedent law eloquently expounded by larger Benches of the august Supreme Court that

the bar contained under Article 199(5) and its wisdom are based on the premise of maintaining a high degree of comity amongst judges of the superior courts and the doctrine of co ordinate jurisdiction. This has been declared as being inevitable for the smooth and harmonious functioning of the judicial system. The larger Benches of the august Supreme Court in the judgments rendered in the cases of Abrar Hassan, supra, and Malik Asad Ali and others, supra, have explicitly referred to two distinct expressions in the context of the discharge of functions and powers by a judge of the superior court, i.e. as 'judge of the Court' and 'member of the Court'. The expression 'judge of the Court' has an obvious reference to the judicial functions and powers vested under the Constitution while 'member of the Court' to functions or powers required to be performed by a judge other than on the judicial side e.g as a member of the Administrative Committee or under the rules made under Article 208 of the Constitution. The judgments rendered by the august Supreme Court have held that the bar under Article 199(5) would be attracted in case of functions and powers performed either as a judge or member of the Court. The only exceptions explicitly mentioned by the larger Benches are; (i) a writ in the nature of quo warranto, (ii) acts or omissions done in private capacity or persona designata, and (iii) when a sitting judge is exercising powers under some other law as a Tribunal i.e not as a judge or member of the Court. A serving Judge of a High Court, exercising powers as a Member or Chairman of the Election Commission of Pakistan, does not perform, function or exercise powers as a judge or member of the Court and, therefore, the bar under Article 199 (5) of the Constitution will not be attracted. Reference in this regard may be made to "Aftab Shahban Mirani vs. President of Pakistan and others", ***1998 SCMR 1863*** and "Mian Jamal Shah vs. The Member Election Commission, Government of Pakistan, Lahore, etc", ***PLD 1966 SC 1***. The emphasis by the larger Benches of the august Supreme Court in the aforesaid cases leads us to the conclusion that the bar under Article 199(5) of the Constitution will be attracted in the case of an action or

order of a judge of the superior court whether done or passed as a 'judge of the Court' or as 'Member of the Court.

20. It would also be pertinent to refer to the meaning of the expression persona designata. The said expression is defined in the Black's Law Dictionary 6th Edition as follows:-

> *"A person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character."*

21. The apex Court in the cases of Abrar Hassan, supra and Malik Asad Ali, supra has expressly referred to an eventuality where a judge in his private capacity may detain a person. The Supreme Court of India, in the case of "Central Talkies Ltd., Kanpur, versus Dwarka Prasad", ***(AIR 1961 S.C. 606)*** has held that *persona designata* is a person who is identified or described as an individual, as opposed to a person belonging as a member of a class, or as filling a particular character. Likewise, in the case of "SBP & Co. versus Patel Engineering Ltd and another" ***(2005) 8 SCC 618*** the Supreme Court of India has held that the power conferred on the Chief Justice under Section 11 (6) of the Arbitration and Conciliation Act, 1996 is not in the nature of *persona designata* since after ceasing to be a Chief Justice, the latter cannot exercise powers thereunder. The expression *persona designata*, therefore, refers to the capacity of a person outside the realm of the functions and powers relating to his or her office. A judge, therefore, performing functions and exercising powers as a 'judge' or 'member' of the Court does not act as "persona designata". We are, therefore, of the view that the above discussed law expounded by the larger Benches of the august Supreme Court extends the bar contained under Article 199(5) of the Constitution to acts done and orders passed by a judge of the superior courts as a 'Member' of the Court. This would include administrative orders or decisions taken, inter alia, in exercise of the powers conferred under the rules framed under Article 208 of the Constitution.

22. The law in respect of the general rule regarding divergent views expressed in different judgments of the august Supreme Court is by now well settled. The general rule is that in such a situation usually the view expressed by a Bench of greater numerical strength is to be followed even if the view was expressed prior in time to a different view expressed by a Bench of smaller numerical strength at some subsequent stage. Reliance in this regard is placed on "Hassan and others vs. The State and others", ***PLD 2013 Supreme Court 793***, "Ch. Muhammad Saleem vs. Fazal Ahmad and 2 others", ***1997 SCMR 315*** "Sindh High Court Bar Association through its Secretary and another vs. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others" ***PLD 2009 Supreme Court 879***, and "All Pakistan Newspapers Society and others vs. Federation of Pakistan and others", ***PLD 2004 Supreme Court 600.***

23. Lastly, it may also be mentioned that when administrative orders of a court superior to a High Court are challenged under Article 199 of the Constitution, it creates an anomalous situation. In the instant petition orders passed by the Hon'ble Chief Justice and a Bench consisting of three Hon'ble Judges of the Court have been challenged. The scheme of the Constitution has placed the august Supreme Court and the Court at a higher position than a High Court. Article 189 makes the judgments of the august Supreme Court binding on a High Court. The precedent law makes even obiter dicta rendered by the apex Court as binding. The judgments of the Federal Shariat Court are binding on the High Court in terms of Article 203-GG of the Constitution. Ideally a High Court ought to exercise its powers under Article 199 of the Constitution independently. However, as humans judges cannot be expected not to be influenced by the scheme of co ordinate jurisdiction under the Constitution. The significance of the wisdom explained by the august Supreme Court in relation to maintaining a high degree of comity amongst judges in the context of co-ordinate jurisdiction for the

smooth and harmonious working of the superior courts is highlighted in the instant case. The fact that the Constitution has made the judicial decisions of the august Supreme Court and the Court binding on us raises a serious question whether as a High Court we would be able to exercise jurisdiction under Article 199 with an open and independent mind against orders passed by judges of the same court, while exercising powers under the rules framed under Article 208 of the Constitution. We are afraid that the answer to this question is in the negative. The extraordinary discretionary relief sought by an aggrieved person under Article 199 of the Constitution can definitely not be termed as efficacious in the circumstances.

24. As a sequel to the above discussion, we are of the opinion that the judgments rendered by the larger Benches of the august Supreme Court in the cases of Abrar Hassan, supra, Muhammad Ikram Chaudhry and others (1998) supra and Malik Asad Ali and the principles of law laid down therein are binding on us and, therefore, inevitably have to be followed. The judgment rendered by three Hon'ble Judges of the Supreme Court in the case of "Ch. Muhammad Akram vs. Registrar, Islamabad High Court and others", ***PLD 2016 Supreme Court 961***, was rendered in proceedings under Article 184(3) of the Constitution and, therefore, we feel that it is distinguishable. Nevertheless, regarding divergent opinion in the light of the earlier judgments rendered by larger Benches and as discussed above, the latter are binding and we are bound to follow.

25. For what has been discussed above, we are of the view that the instant petition is not maintainable and the impugned orders are immune from being considered or adjudicated in terms of Article 199 (5) of the Constitution in the light of the principles and law laid down by the august Supreme Court in the cases of Abrar Hassan supra, CH. Muhammad Akram and others (1998) supra and Malik Asad Ali and others, supra.

26. We, therefore, dismiss the instant petitions as not maintainable for the above reasons.

(ATHAR MINALLAH)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in the Open Court on 15.11.2017.

JUDGE

JUDGE

JUDGE

Approved for reporting.

*Asad K/**

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