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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.51104 of 2021

Mubashar Javed etc

V/S

Province of Punjab etc

J U D G M E N T

Date of hearing	17.12.2021
Petitioner(s) by	<p>M/s Muhammad Nawazish Ali Pirzada, ASC with Muhammad Abbas Azeem, Advocate for the Petitioners along with Petitioner No.1.</p> <p>Dr. Khalid Ranjha, Sr.ASC with Rana Khizer Hayat, Waseem Khalid Chatha, Malik Ahmad Faraz, Advocates for the Petitioner No.21.</p> <p>M/s Ashtar Ausaf Ali, Sr. ASC with Barrister Asad Rahim Khan and Nimra Arshad, Advocates for Petitioner No.23.</p> <p>M/s Malik Muhammad Awais Khalid, ASC and Sadiq Ameen Cheema, Advocates for the Petitioner in connected W.P.No.55485/2021.</p>
Respondent(s) by	<p>M/s Akhtar Javed and Rai Shahid Saleem Khan, Additional Advocates General, M/s Waqar Saeed Khan and Barrister Tayyab Jan, Assistant Advocates General with Noor ul Amin Mengal, Secretary LG&CDD, Ch. Abrar Ahmad, Director Legal and Muhammad Fahad, Law Officer, LG&CD Department.</p> <p>Mr. Imran Arif Ranjha, Advocate/Legal Advisor for Election Commission of Pakistan along with Hafiz Adeel Ashraf, Legal Assistant, ECP.</p>

JAWAD HASSAN, J. This judgment will decide the petition in hand as well as connected petition bearing W.P.No.55485 of 2021 with heuristic approach involving most important question of law with regard to term of office of the elected representatives of the local

government elected on 01.01.2017 under the Act of 2013 for a period of five years. While deciding the case, the Court has to look into the directions passed by the Hon'ble Supreme Court of Pakistan in paragraph No.26 of the judgment titled as "ASAD ALI KHAN and others Versus PROVINCE OF PUNJAB through Secretary Government of Punjab and other" (PLD 2021 Supreme Court 770) whereby vires of Section 3 of the Punjab Local Government Act, 2019 (the "*Act of 2019*") has been declared ultra vires to the Constitution of Islamic Republic of Pakistan, 1973 (the "*Constitution*").

2. The Petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution with the prayer that the term of office of a local government formed under Article 140A of the Constitution read with Section 30 of the Punjab Local Government Act, 2013 (the "*Act of 2013*") be declared illegal and unconstitutional.

A. BRIEF BACKGROUND

3. Facts as per petitions are that the Petitioners are members/representatives of the local governments elected during the elections conducted in year 2013. The term of the local governments, as per Section 30 of the *Act of 2013*, was five years from the date of holding its first meeting, which commenced on 01.01.2017 and was to expire on 31.12.2021. The *Act of 2013* was repealed through enactment of the *Act of 2019* by the Provincial Assembly vide Notification Dated 04.05.2019 and by virtue of Section 3 of *Act of 2019*, the local governments constituted under the *Act of 2013* were dissolved and the Petitioners were removed from their offices. The aforesaid Notification and vires of the *Act of 2019* were assailed by certain members of local governments across Punjab under Article 184(3) of the Constitution before the Hon'ble Supreme Court of Pakistan and in ASAD ALI KHAN case supra, Section 3 of the *Act of 2019* was declared ultra vires to the Constitution by the Hon'ble Supreme Court on 25.03.2021 and the local government system constituted under the *Act of 2013* was restored. The Petitioners have come to this Court with the prayer that they be allowed to continue term of their offices for five years and time

lost since dissolution of local governments till passing of judgment of Hon'ble Supreme Court may be added. Hence this petition.

B. PETITIONERS' ARGUMENTS.

On behalf of Petitioners No.1 to 20 and 22

4. Mr. Nawazish Ali Pirzada, ASC *inter alia* argues that the Petitioners are entitled to hold the offices for five years in terms of Section 30(1) of the *Act of 2013* as the Province of Punjab has no power to cancel local government system created under Article 140A of the Constitution through subsequent enactment, Section 3 of which has already been declared ultra vires to the Constitution by the Hon'ble Supreme Court of Pakistan in the case of ASAD ALI KHAN case supra.; that under the concept of corporate democracy, the Petitioners cannot be deprived of representing the citizenry who casted votes and elected the members/representatives of local governments under the *Act of 2013*; that as per ratio laid down by the Hon'ble Supreme Court of Pakistan in its judgment, referred to above, the Petitioners are entitled to complete their term of office for five years as per Section 30(1) of the *Act of 2013* and period of abeyance/dissolution of local government w.e.f. 04.05.2019 and from 25.03.2021 for almost 22 months should be counted/added as per saving clause of Section 312 of the *Act of 201*; that the word '*shall complete their term in accordance with law*' used by Hon'ble Supreme Court of Pakistan in ASAD ALI KHAN case supra which, for all intents and purposes, refers to Section 30 of the *Act of 2013* which provides the term of local government to be five years; that Section 30(1) of the *Act of 2013* starts from the words "Subject to this Act" whereas no further clarification is given therein about the scope of five years and as such denial of completing five years would amount to infringe their fundamental rights guaranteed under Articles 3, 9, 18 and 25 of the Constitution; that Section 30(1) of the *Act of 2013* contains no ambiguity and it shall be interpreted in its literal meaning as such it is not a date specific rather it is a five year period which commenced on 01.01.2017, which admittedly the Petitioners have not completed and the "doctrine of legitimate expectation' fully applies in their favour. He has relied on

“Dr. MOBASHIR HASSAN and others Versus FEDERATION OF PAKISTAN and others” (PLD 2010 Supreme Court 265), “SHAHID PERVAIZ Versus EJAZ AHMAD and others” (2017 SCMR 206), “DEWAN MOTORS (PVT.) LTD through Authorized Officer and others Versus FEDERATION OF PAKISTAN through Secretary Ministry of Finance and 3 others” (2021 PTD 232), “Mian MUHAMMAD ILYAS MEHRAJ and 17 others Versus APPELLATE BENCH No.III, SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN, ISLAMABAD and 6 others” (2009 C L D 883) and Paragraph No.25 of “ASAD ALI KHAN case supra.

On behalf of Petitioner No.21

5. Dr. Khalid Ranjha, Sr. ASC *inter alia* argues that in terms of Article 140-A of the Constitution, the local governments were established by the Province of Punjab under the *Act of 2013* and the Petitioner No.21 is the elected representative/Chairman of District Government Kasur; that the Government through Section 3 of the *Act of 201* had dissolved the local government system and vires thereof has already been declared by the Hon’ble Supreme Court of Pakistan as ultra vires to the Constitution and previous local governments were restored therefore, the Petitioner No.21 is entitled to retain his respective office for five years until the new office bearer is elected, he has referred to Article 44, 53 and 94 of the Constitution; that the word ‘establish’ used in Article 140A of the Constitution keeps perpetuity in the establishment of the local government through the chosen representatives of the people. He has referred to the Objective Resolution/Preamble to the Constitution, which, by virtue of Article 2A of the Constitution, is now a *substantive part* of the Constitution according to which the sovereignty belongs to Almighty Allah alone and authority is to be exercised by the people of Pakistan through their chosen representatives; that the Hon’ble Supreme Court of Pakistan has already struck down Section 3 of the *Act of 2019* vide its judgment dated 25.03.2021 and the Government is intending to undo the same by holding election after 31.12.2021.

On behalf of Petitioner No.23

6. M/s Ashtar Ausaf Ali, Sr.ASC along-with Barrister Asad Rahim Khan, Advocate *inter alia* argues that the Petitioner No.23 is an elected member of local government formed under the *Act of 2013* and is aggrieved of illegal and ultra vires dissolution which was done without following the proper procedure as provided under the *Act of 2019*. They further argued that the Petitioner No.23 has been denied the legitimate expectation to serve the public interest of his constituency which is not only against the doctrine of democracy but also infringed his fundamental right guaranteed under Article 17 of the Constitution. In order to fortify aforesaid contention, they have relied on a judgment passed by this Court in a case titled “Jamshed Iqbal Cheema Versus the Election Appellate Tribunal and others” W.P.No.70103 of 2021 (**2021 LHC 6800**) by emphasizing the Preamble of the Constitution with reference to State’s functions, power and authority to be exercised by chosen representatives of people. They add that the Hon’ble Supreme Court of Pakistan while declaring Section 3 of the *Act of 2019* as ultra vires to the Constitution in ASAD ALI KHAN case supra.; paragraph No.25, has observed that *“the local Governments as were existing in the Province of Punjab prior to promulgation of the said section stands restored and it shall complete its term in accordance with law”*. They further add that the whole case revolves around the word ‘term’ and ‘tenure’ of the elected representatives of the local government as defined under Section 2(v) of the *Act of 2013*. Relied on “ASAD ALI KHAN and others Versus PROVINCE OF PUNJAB through Secretary Government of Punjab and other” (PLD 2021 Supreme Court 770), “LAHORE DEVELOPMENT AUTHORITY through D.G. and others Versus Ms. IMRANA TIWANA and others” (2015 SCMR 1739), “ZULFIQAR and others Versus Shahadat Khan” (PLD 2007 Supreme Court 582), “JAWAD MIR MUHAMMADI and others Versus HAROON MIRZA and others” (PLD 2007 Supreme Court 472), “Raja SALEEM BABAR and 2 others Versus TEHSIL NAZIM/TEHSIL MUNICIPAL ADMINISTRATION, DISTRICT CHAKWAL and 3 others” (PLD 2005

Lahore 233), “Ch. PERVAIZ ELAHI Versus PROVINCE OF PUNJAB and another” (PLD 1993 Lahore 595), “Mian MUHAMMAD NAWAZ SHARIF Versus PRESIDENT OF PAKISTAN and other” (PLD 1993 SC 473), “COMMISSIONER INLAND REVENUE Versus SHAFI SPINNING MILLS LTD” (2015 PTD 2368), “DR. SHAMSHER ALI KHAN and 27 others Versus GOVERNMENT OF KHYBER PAKHTUNKHWA through Secretary Finance and 2 others” (2019 MLD 87).

On behalf of Petitioner in connected petition

7. Malik Muhammad Awais Khalid, Advocate endorses the arguments advanced by learned counsel for the Petitioners.

C. RESPONDENTS’ ARGUMENTS

8. Learned Law Officers objected to the maintainability of the petition with reference to report and parawise comments on behalf of the Respondents and stated that Petitioners have already availed the remedy under Article 184(3) of the Constitution hence writ petition under Article 199 of the Constitution is not maintainable. They further stated that the *Act of 2019* is a competent piece of legislation passed by the Provincial Assembly as has been held by the Hon’ble Supreme Court of Pakistan in paragraph No.17 of ASAD ALI KHAN case supra. They added that though the Hon’ble Supreme of Pakistan has restored the local governments existing before the promulgation of the *Act of 2019* and observed that it shall complete its term in accordance with law yet the term of office for five years used under Section 30(1) of the *Act of 2013* cannot be extended by this Court. They relied on “M/o IPC through Secretary and others Versus ARBAB ALTAF HUSSAIN and others” (2014 SCMR 1573) and “YOUSSOUF SHAHEEN Versus ELECTION COMMISSION OF PAKISTAN through Secretary, Islamabad and 8 others” (1994 SCMR 1500). They also draw the attention of the Court while highlighting that the Petitioners, despite approaching the Supreme Court of Pakistan for implementation of its judgment through review petition before the Full Bench and also to pursue their contempt petitions bearing Nos.16 and 17 of 2021 already filed by them, have opted to file various petitions before this Court, out

of which certain have been withdrawn by the Petitioners while others are still pending. They pointed out that the Respondents in compliance of the judgment of the Hon'ble Supreme Court dated 25.03.2021 have restored the previous local government system vide Notification dated 17.10.2021 and the members/representatives of that government have also assumed the charge.

9. Arguments heard. Record perused.

D. POINTS OF DETERMINATION

10. Out of divergent contentions of the parties following points of determination are framed:

- I. Whether instant petitions are hit by doctrine of Judicial Estoppel?*
- II. What is the difference between "term" and "tenure" of elected representatives under the Act?*
- III. Whether the term of office mentioned in Section 30(1) of the Act is date specific or time specific or whether such time is inclusive or exclusive?*

E. DETERMINATION BY THE COURT

- I. Whether instant petitions are hit by doctrine of Judicial Estoppel?*

11. It is noted that before institution of this petition, the Petitioners have filed W.P.No.23595 of 2021 for the implementation of order dated 25.03.2021 passed by the Hon'ble Supreme Court of Pakistan in ASAD ALI KHAN case supra however, the said writ petition was withdrawn by them vide order dated 08.04.2021. Subsequently, for the implementation of aforesaid judgment, the Petitioners filed yet another W.P.No.45176 of 2021 which is still pending. It is noted that after passing the judgment on 25.03.2021, the Petitioner No.2 and 7 had filed Criminal Original Petition Nos.16 and 17 of 2021 respectively before the Hon'ble Supreme Court of Pakistan for implementation of judgment passed in the case of ASAD ALI KHAN case supra and vide order dated 28.05.2021 notices were issued to the Respondents and

subsequently on 20.10.2021, the Hon'ble Supreme Court passed following order which reads as:

“A photocopy of Notification dated 17.10.2021, has been placed on record which reads as:

**“Government of Punjab
Local Government & Community Development Department
Dated Lahore, the October, 17th, 2021**

NOTIFICATIUN

No.SOR(LG)1-11/2019. Pursuant to short order dated 25.03.2021 of august Supreme Court of Pakistan and detailed judgment announced in the month of July, 2021, notification Nos' SOR(LG)1-11/2019, SOR(LG)38-34/2018 dated 04.05.2019, SOR(LG)1-1/2019 and notifications of constitution of local governments under Punjab Local Government Act, 2019 dated 07.11.2019 are hereby withdrawn, with immediate effect, subject to outcome of Review Petitions No.177 & 118 of 2021 filed by the Government of the Punjab, pending adjudication before the august Court.

*Secretary
LG&CD Department*

- 2. Learned ASC appearing for the Petitioners has placed on record a photocopy of the order dated 16.07.2021, passed by a learned Judge of the Lahore High Court, Lahore in Writ Petition No.45176 of 2021 titled as Mubashir Javed etc vs. Province of Punjab through Chief Secretary, Government of Punjab, Lahore etc. The order is based upon the parawise comments submitted by the Respondent No.1&2 before the High Court in the said writ petition and it is noted that Government of Punjab has taken a position that it is practically not possible to functionalize the local government constituted under the Punjab Local Government Act, 2013.*
- 3. We would like to probe into this matter and ensure that whatsoever is found responsible in non-compliance of this Court's order is brought to book.*
- 4. In the circumstances, let certified copies of the orders along-with comments filed by the Respondents No.1&2 of the above noted writ petition, be filed before this Court by the learned counsel for the Petitioners.*
- 5. To come up for hearing after two weeks. The compliance of order dated 15.10.2021 shall be made and the alleged Contemnors No.1&2 so also the present Chief Secretary, Government of Punjab shall be in attendance before the Court on the next date of hearing”*

12. From the above, it is quite obvious that the Hon'ble Supreme Court of Pakistan has already taken cognizance of the matter and passed judgment dated 25.03.2021, and contempt petitions, referred to above, are also pending therein. The Hon'ble Supreme Court of Pakistan in similar situation has made an observation in “WATER AND SANITATION AGENCY, LAHORE through M.D. Versus LOTTEE AKHTAR BEVERAGES (PVT.) LTD. LAHORE and others” (2019 SCMR 1146) that the High Court cannot assume jurisdiction in a matter already pending before the it. Relevant part thereof is reproduced as under:

“Instead of bringing their objections before the Implementation Bench, the respondents chose to file a Writ Petitions before the learned Lahore High Court to express their misgivings. By entertaining and adjudicating such a challenge

to the LDA notification, the learned High Court has surprisingly and to our disappointment assumed jurisdiction over a lis that is sub judice before this Court. Such course of action clearly offends the settled norms of judicial propriety and comity, which is disapproved”

Emphases added

13. From the above it is admitted position that contempt petitions for the implementation of the judgment dated 25.03.2021 is pending before the Hon’ble Supreme Court, referred to above, therefore, these petitions are not maintainable.

14. Another important aspect of the matter is to be seen that the Petitioners when invoked Article 184(3) of the Constitution before the Hon’ble Supreme Court of Pakistan, their contention was the expiry of ‘term of office’ in January, 2022 as noted in first paragraph of case of ASAD ALI KHAN case supra and again when the Petitioners came before this Court under Article 199 of the Constitution through W.P.No.45176 of 2021, on 16.07.2017 Mr. Nawazish Ali Pirzada, ASC stated that “*as the tenure of existing local government which has been restored by the august Supreme Court of Pakistan will end in December, 2021*” and now through the petition in hand, the Petitioners are asking to give them extension in their tenure by adding the time lost due to promulgation of the *Act of 201* and the time consumed after passing of the judgment dated 25.03.2021. When the Petitioners raised the same points before the Hon’ble Supreme Court and this Court, they cannot take U-Turn at this stage which is hit by judicial estoppel. The Hon’ble Supreme Court of Pakistan in “UNIVERSITY OF MALAKAND through Registrar and others Versus Dr. ALAM ZEB and others” (2021 SCMR 678) has held that:

“As a rule of evidence estoppel can be invoked by a party, however, the same cannot be accepted against the statutory obligation of a person even though one party might not have expressly claimed his right which was available to him under the law. This Court in the case of Zarai Taraqati Bank Limited v. Said Rehman and others (2013 SCMR 642) has candidly held that “there is no estoppel against law”. The

same view was expressed by Indian Supreme Court in the cases of Union Territory, Chandigarh Admn v. Managing Society, Goswami, GSDSC (AIR 1996 SC 1759) and P.R. Deshpande v. Maruti Balaram Haibatti (AIR 1998 SC 2979) by holding that principle of estoppel does not apply against statute and it has no application when statutory rights and liabilities are involved. As it is now well settled that no estoppel exists against law, therefore, keeping in view the facts and circumstances of the cases, we are compelled to observe that one wrong of the respondents of not claiming their right earlier cannot be acted upon as a precedent when it comes to give effect to the express words of a statute”

15. Moreover, this Court in “JDW SUGAR MILLS LTD. And others Versus PROVINCE OF PUNJAB and others” (PLD 2017 Lahore 68), has held that *“When a party takes an inconsistent position in the same case or in a prior case, the principle of judicial estoppel should be applied. Judicial estoppel is an equitable doctrine which precludes a party from taking inconsistent positions before the Court. It protects the integrity of the judicial system and not of the litigant. It seeks to ensure respect for judicial proceedings and avoid inconsistency and abuse of process. Under the doctrine of judicial estoppel a court can stop a party from taking up contradictory stances because it is clearly inconsistent with the previous position taken by that party before another Court. The application of judicial estoppel depends upon the facts and circumstances of each case. When a party puts forth a position, as a matter of fact in one case and is successful in that assertion, that party is estopped from asserting a different position on the same facts in the second case.”*

II. What is the difference between “term” and “tenure” of elected representatives under the Act?

16. It is imperative to reproduce the concluding paragraph of the judgment passed in ASAD ALI KHAN case supra which reads as under:

26. *The above are the reasons of our short order of even date, which reads as under: -*

"We have heard the learned ASC for the petitioners, the learned Additional Advocate General, Punjab so also the learned Attorney General for Pakistan on Court's notice and have also gone through the record of the case.

2. For reasons to be recorded separately, Constitution Petition No.48 of 2019 is allowed and Section 3 of the Punjab Local Government Act, 2019 is declared to be ultra vires the Constitution and the Local Governments as were existing in the Province of Punjab prior to promulgation of the said section stands restored and it shall complete its term in accordance with law.

3. As Constitution Petition No.7 of 2020 is also for the same relief as in the Constitution Petition No.48 of 2019, the same is also disposed of in terms as noted in para-2 above.

Emphases supplied

17. As the Hon'ble Supreme Court of Pakistan in the aforesaid judgment has declared the vires of Section 3 of the *Act of 2019* as ultra vires to the Constitution pursuant to dissolution of the local governments and while deciding the lis specifically observed that the local governments shall complete their term in accordance with law therefore, this Court confines itself only to give observation on vital question that boils down for determination is the explanation of word 'term' and 'tenure' and the law in the case in hand is the *Act of 2013* more particularly Section 30(1) of the *Act of 2013*. This Court, during the course of hearing the case, vide order dated 15.12.2021, observed that the whole case revolves around the word 'term' and 'tenure' of the elected representative of the local governments constituted under the *Act of 2013* therefore, Section 30(1) of the *Act of 2013* is being interpreted. Before explaining above-said section, it would be more advantageous to have an eye on other enactments on the subject where the term of office along with mode of commencing/assumption of office have been prescribed. Like, Section 26 of Punjab Local Government Ordinance, 1979, prescribed a precondition for the elected members/representatives to hold first meeting not later than thirty days from the day on which the names of the members are notified. Likewise, under Section 159 of the Punjab Local Government Ordinance, 2001, the term of office is prescribed for a period of four years commencing from the date of notification of assumption of office. Similarly, under Section 113 of the Punjab Local Government Act, 2019, the term of office shall remain in continuation for a period of four years from the date of first meeting in case it is dissolved under Section 233 of the said Act. Equally, the Section 65 of the Punjab

Local Government Ordinance, 2021 prescribed the term of office for a period of four years commencing on the date of holding first meeting. Now coming to Section 30(1) of the Act of the 2013 which reads as under:

30. Term of office.– (1) *Subject to the this Act, the term of office of a local government shall be five years commencing on the date on which it holds its first meeting.*

18. Plain reading of above section makes it crystal clear that it starts with the words “Subject to this Act” which means it is conditional or being dependent on other sections *Act of 2013*. For the purpose of completing five years of term of office by the elected local governments is subject to other sections of the *Act of 2013* like Section 126 deals with dissolution of local governments which reads as under:

126. Dissolution of local governments.– (1) *Notwithstanding anything to the contrary contained in section 30, where, before the expiry of the term of the local governments, the general elections for National or Provincial Assembly are announced, the Government may, by notification in the official Gazette, dissolve the local governments.*

(2) *On the dissolution of the local governments under subsection (1), all powers and functions of the local governments shall be exercised and performed by such persons or authorities as the Government may appoint in this behalf as Administrators and the funds and properties belonging to the local governments shall vest in Government till such time the elected local governments assume office.*

Underline is mine

19. In political theory, “term of office” and “tenure of office” are terms oftentimes contrasted with each other. Term of office refers to the period, either fixed by the Constitution or a Statute, within which a public official may hold office. Tenure of office, on the other hand, is the period within which a public official actually held office within a prescribed term. In other words, term of office is fixed, while tenure of office is variable. Term of office has been explained by the Hon’ble Supreme Court of Pakistan in “YOUSOUF SHAHEEN Versus ELECTION

COMMISSION OF PAKISTAN through Secretary, Islamabad and 8 others” (1994 SCMR 1500) wherein it was held as under

"82. Term of office.--(1) The term of office of a member of the Senate shall commence on the date of the first meeting of the Senate held after the names of the persons elected to the Senate are notified by the Election Commission:

Provided that the term of office of a member elected in the year 1973 and having a term of four years shall expire after completion of four years from the date of making the oath under Article 65.

(2) If the election of a member is declared void and another candidate is declared to have been duly elected in his place, the term of such candidate shall be the unexpired term of such member.

(3) If the election of all the members declared elected under section 18 or section 25 is declared void, the term of the members elected in their places shall be the unexpired term of the members whose election is declared void."

From reading of the proviso to Article 59 (3) of the Constitution with sections 77 and 82 of the Act, it is quite clear that if the election of a member is declared void and another person is declared elected in his place, the term of such elected member shall be the unexpired term of the member whose election is declared void. The learned counsel for the petitioner is unable to demonstrate that the above-referred provisions of the Act are in any way in conflict with the provisions of Article 59 of the Constitution. The petitioner having been declared elected to Senate after unseating Haji Ibrahim Hingorjo who was earlier elected, his terms could not extend beyond the unexpired period of the seat against which Haji Ibrahim was elected.

Underline is mine

20. Moreover, in "M/o IPC through Secretary and others Versus ARBAB ALTAF HUSSAIN and others" (2014 SCMR 1573), the Hon'ble Supreme Court of Pakistan has observed that "it was never an honest effort to seek the enforcement of any of his right, which even

otherwise as mentioned earlier had extinguished with the term of his office as a Member of the Board of Governors coming to an end on 12-5-2014. It may be emphasized that as he was not a member of the superseded Board of Governors after 12-5-2014, therefore, he lost his locus standi to maintain his petition; which can also be termed to have become infructuous when it came up for hearing and decided by the Court on 15-5-2014". Further, the 'tenure post' has been vividly explained by learned three-member Bench of this Court in "Prof. Dr. ASAD ASLAM KHAN and others Versus GOVERNMENT OF PUNJAB through Secretary Specialized Health Care and Medical Education Department, Civil Secretariat, Lahore and 11 others" (2021 PLC (C.S.) 304) wherein it was observed as under:

"Our examination of the different provisions of the KEMU Act or the UOA Act and the principles of the interpretation suggests that the post of Pro-Vice Chancellor is a tenure post. The words "tenure post" is capable of different interpretations depending on the language of statutes. In civil service the tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure but no right is conferred to hold the post for the entire period. The tenure could be curtailed on attaining the age of superannuation by the incumbent of the post. The same condition applies to the cases in hands. The tenure prescribed in the statutes, under consideration, is three years and it is intended to allow the Professor, holding the post of Pro-Vice Chancellor, to share his intellectual opinions, even if he is in opposition to opinions of people in other positions of high power. In fact, tenure in the affairs of University encourages commitment, discipline, collegiality and compassion to the institution. Applying the maxim de una aliqua ejus particula proposita judicare vel respondere (it is unjust to decide or respond as to any particular part of a law without examining the whole of the law), the conjoint reading of law suggests that since Section 15 of the KEMU Act (Section 15-A of the UOA Act) does not contain any non-obstante

clause, it cannot be said to override the provisions contained in Section 36 of the KEMU Act (Section 41 of the UOA Act) and the consequence would be that the appointment to the post of Pro-Vice Chancellor though shall be made on a three years tenure but it could be curtailed on the completion of sixtieth year of age of the incumbent”.

21. In the case reported as “State Ex Rel. Morgan v. Knight, 245 P. 267 (Mont. 1926)” Supreme Court of Montana has defined the ‘term of office’ with the following observation.

“The phrase “two years” mentioned in the statute means a term of office of two years’ duration. “The expression, term of office, uniformly designates a fixed and definite period of time. “Term of office” is a phrase used to describe the period of time during which one regularly chosen by election or appointment and inducted into office is entitled to hold the same, perform its functions, and enjoy its privileges and emoluments. The time when a term of office commence is usually fixed by law.

Underline for emphases

22. It is also to be noted that ‘tenure’ has also been articulated by the Indian Supreme Court in “P. Venugopal V. Union of India, (2008 5 SCC 1), in the following manner:

“Tenure’ means a term during which the office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said post begins when he joins and when it comes to an end on the completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate. He only comes out of office on completion of his tenure.”

III. Whether the term of office mentioned in Section 30(1) of the Act is date specific or time specific or whether such time is inclusive or exclusive?

23. Now the questions arise whether the term of office mentioned in Section 30(1) of the Act of 2013 is date specific or time specific or whether such time is inclusive or exclusive. As is evident from the prayer of the Petitioners that they only intend to include the period

which was consumed during dissolution of the *Act of 2013* till passing of judgment of Hon'ble Supreme Court of Pakistan dated 25.03.2021 which comes to almost twenty-two (22) months. A combined reading of Section 30(1) and Section 126 of the *Act of 2013* referred above makes it quite clear that if any local government is elected for a period of five years, the said period would be governed by Section 30(1) of the *Act of 2013* and it would start on the date when first meeting of the elected local government was held and that too is subject to other provisions of the *Act of 2013* which empowers the Government to dissolve the local government under Section 126 of the *Act of 2013*. It is an admitted position between the parties that the first meeting of the elected local governments under the *Act of 2013* was held on 02.01.2017 in terms of Notification issued on 01.01.2017 and the term of holding office for five years started from that date which would expire after completing five years. The Hon'ble Supreme Court in the case of ASAD ALI KHAN case supra. has observed that "*under the Act of 2013, elections of the local governments were held in the province of Punjab in phases in the years -2015-2016, as a result of which local governments in the province of Punjab were elected and by section 30 of the Act of 2013, a local government was to remain in office for a period of five years from the date it holds its first meeting. There is no dispute that the first meeting of the local governments in Punjab was held in January, 2017 and thus, the local governments were to remain in office until January, 2022*". Admittedly, the local government constituted under the *Act of 2013* were dissolved on 04.05.2019 due to promulgation of *Act of 201* through Section 3 and the same were restored in terms of judgment passed by the Hon'ble Supreme Court of Pakistan on 25.03.2021 pursuant to which, the previous local governments were restored in terms of Notification issued on 17.10.2021 by the LG & CD Department and they started performing their functions.

24. In the light of aforementioned circumstances and case law referred above, it is obvious that the word 'term' mentioned in Section 30(1) of the *Act of 2013* is fixed and definite in its nature. For getting

benefits of aforesaid term, it has to be read with other provisions of the *Act of 2013* and the time for holding an office for a period of five years is not extendable by any means which would commence on a date on which the members/representative of local government hold its first meeting which in the case of the Petitioners was held on 01.01.2017 and the same would expire on 31.12.2021.

25. In view of above discussion, these petitions are **dismissed**.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE

*Usman**