

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, ACJ.
Ghulam Mustafa Mughal, J.

1. Civil Appeal No.113 of 2020
(PLA filed on 14.11.2019)

Sardar Javid Sharif, Advocate High Court of
Azad Jammu & Kashmir, Ex-President District
Bar Association, Rawalakot.

....APPELLANT

VERSUS

1. Government of the State of Azad Jammu & Kashmir through its Chief Secretary having office at New Secretarial, Muzaffarabad.
2. AJ&K Council through its Secretary having office at AJ&K Council Secretariat Sector F-5/2, Islamabad.
3. Secretary AJ&K Council Secretariat, having office at AJ&K Kashmir Council Secretarial. Sector F-5/2, Islamabad.
4. Joint Secretary AJ&K Council Secretariat, having office at AJ&K Council Secretarial. Sector F-5/2, Islamabad.

5. Minister for Kashmir Affairs & Gilgit-Baltistan, Islamabad.
6. President of Azad Jammu & Kashmir through Secretary to President, having office at President Secretarial, Muzaffarabad.
7. Department of Law, Justice, Parliamentary Affairs and Human Rights through its Secretary having office at Lower Chatter Muzaffarabad.
8. Secretary Law, Justice, Parliamentary Affairs and Human Rights, having office at Lower Chatter. Muzaffarabad.
9. Mr. Raza Ali Khan, presently holding the post of Judge High Court (under the Impugned Notification), High Court Muzaffarabad.
10. Mr. Muhammad Ejaz Khan, presently holding the post of Judge High Court (under the impugned Notification), High Court, Muzaffarabad.
11. Mr. Chaudhry Khalid Yousaf, presently holding the post of Judge High Court (under the impugned notification), High Court, Muzaffarabad.
12. Mr. Raja Sajjad Ahmed Khan, presently holding the post of Judge High Court (under

the Impugned Notification), High Court, Muzaffarabad.

13. Mr. Chaudhry Muhammad Munir, presently holding the post of Judge High Court (under the Impugned Notification). High Court, Muzaffarabad.
14. Chairman AJ&K Council through Secretary AJ&K Council Secretarial, having office at Azad Jammu & Kashmir Council Secretarial, Sector F5/2, Islamabad.

.... RESPONDENTS

15. Barrister Adnan Nawaz Khan, Advocate Supreme Court of AJ&K.
16. Shamshad Hussain Khan, Advocate Supreme Court of AJ&K.
17. Raja Izzat Baig, Advocate High Court of AJ&K.
18. Sardar Saif Ullah Hajazi Advocate High Court District Bar Association Rawalakot.
19. Sardar Khalid Mahmood Advocate High Court District Bar Association Rawalakot.
20. Malik Muhammad Asghar Advocate High Court District Bar Kotli.
21. Raja Tariq Mehmood Advocate High Court District Bar Kotli.
22. Ashfaq Anjum Advocate High Court District Bar Kotli.

23. Sardar Muhammad Ibrahim Advocate High Court District Bar Kotli.
24. Raja Sakandar Iqbal Advocate High Court Tehsil Bar Hajira.
25. Alehmood-ul-Hussan Advocate High Court District Bar Kotli.
26. Wajid Ali Advocate High Court Tehsil Bar Hajira,
27. Khalid Qaiser Advocate High Court Tehsil Bar Hajira.
28. Muhammad Amin Advocate High Court Tehsil Bar Hajira.
29. Javaid Ayub Advocate High Court Tehsil Bar Hajira.
30. Sardar Raees Inqlabi Advocate High Court Tehsil Bar Hajira.
31. Arslan Nisar Advocate High Court District Bar Sudhnooti.
32. Sajjad Zia Advocate High Court District Bar Sudhnooti.
33. Ahmed Fraz Advocate High Court. President Tehsil Bar Association Thorar, District Poonch.
34. Ch. Muhammad Riaz Alam Advocate Supreme Court Mirpur AJ&K (Former President District Bar Association & Member AJ&K Bar Council).

35. Ch. Shakeel Zaman Advocate Supreme Court Mirpur AJ&K (Member AJ&K Bar Council).
36. Mirza Muhammad Amin Baig, Advocate High Court, AJ&K Mirpur Former Senior Vice President, District Bar Association Mirpur).
34. Tehseen Ahmed Advocate Supreme Court of AJ&K Mirpur (Former General Secretary, District Bar Association Mirpur).
38. Kabeer Ahmed Hashim Advocate Supreme Court (Joint Secretary AJ&K Supreme Court Bar Association).
39. Muhammad Muddasar Iqbal Advocate Mirpur (Former General Secretary, District Bar Association Mirpur).
40. Khawaja Muhammad Ilyas Advocate High Court AJ&K Mirpur.
41. Shamraiz Asif Advocate High Court Mirpur.
42. Fayyaz Ahmed Janjua Advocate Supreme Court of AJ&K Member Central Bar Association Old Secretariat Muzaffarabad.
43. Aamir Ali Awan. Advocate Supreme Court of AJ&K Member Central Bar Association Old Secretariat Muzaffarabad.

44. Shahid Ajmal Advocate Supreme Court.
Member Sehnsa Bar Association Kotli Azad
Kashmir.
45. Registrar Supreme Court of AJ&K.
Muzaffarabad.
46. Registrar High Court of AJ&K,
Muzaffarabad.
47. Principal Secretary to President of AJ&K
Muzaffarabad.
48. Accountant General of AJ&K. Sathra Hills
Muzaffarabad.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the
High Court dated 17.09.2019 in writ
petitions No.1092, 1130, 1194, 1235,
1255 and 1296 of 2018)

FOR THE APPELLANT: Barrister Humayun
Nawaz Khan,
Advocate.

FOR THE RESPONDENTS: Raja M. Hanif Khan,
and Mr. Bashir
Ahmed Mughal,
Advocates.

2. Civil Appeal No.114 of 2020
(PLA filed on 14.11.2019)

1. Aamir Ali Awan, Advocate, Supreme Court of AJ&K, Muzaffarabad.
2. Shahid Ajmal, Advocate, Supreme Court, Member Sehensa Bar Association, Kotli.

....APPELLANTS

VERSUS

1. Azad Govt, of the State of Jammu & Kashmir Muzaffarabad through its Chief Secretary, having office at New Secretariat Muzaffarabad.
2. Chairman AJ&K Council / Prime Minister of Islamic Republic of Pakistan having his office at Council Secretariat Islamabad.
3. President of the State of Azad Jammu & Kashmir having his office at Presidential Secretariat Muzaffarabad.
4. Minister for Kashmir Affairs and Northern Areas, Islamabad.
5. AJ&K Council through its Secretary having its office at Council Secretariat Islamabad.
6. Secretary AJ&K Council having its office at Council Secretariat Islamabad.
7. Joint Secretary AJ&K Council having its office at Council Secretariat Islamabad.

8. Department of Law, Justice, Human Rights and Parliamentary Affairs through Secretary Law Azad Govt. of the State of Jammu and Kashmir having his office at New Secretariat Muzaffarabad.
9. Secretary to the President of the State of AJ&K having his office at President Secretariat Muzaffarahad.
10. Mr. Raza Ali Khan, Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).
11. Mr. Muhammad Ejaz Khan, Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).
12. Mr. Ch. Khalid Yousaf Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).
13. Mr. Raja Sajjad Ahmed Khan, Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).
14. Mr. Ch. Muhammad Munir, Presently holding the post of Judge High Court (under the impugned notification).

15. Registrar Supreme Court of AJ&K Muzaffarabad.
- 16 Registrar High Court of AJ&K Muzaffarabad.
.... RESPONDENTS
17. Barrister Adnan Nawaz Khan, Advocate, Supreme Court of AJ&K.
18. Shamshad Hussain Khan, Advocate, Supreme Court of AJ&K.
19. Sardar Javed Sharif Advocate, High Court of AJ&K.
20. Raja Izzat Baig, Advocate, High Court of AJ&K.
21. Sardar SaifUllah Hajazi, Advocate, High Court Dist. Bar Association Rawalakot.
22. Sardar Khalid Mehmood, Advocate, High Court Dist. Bar Association Rawalakot.
23. Malik Muhammad Asghar, Advocate, High Court District Bar Kolli.
24. Raja Tariq Mehmood, Advocate, High Court Dist. Bar Kotli.
25. Ashfaq Anjum, Advocate, High Court Dist. Bar Kotli.
26. Mehmood ul Hussan, Advocate, High Court Dist. Bar Kotli.
27. Sardar Muhammad Ibrahim Khan, Advocate, High Court Dist. Bar Kotli.

28. Raja Sakandar Iqbal, Advocate, High Court Tehsil Bar Hajira.
29. Wajid Ali, Advocate, High Court Tehsil Bar Hajira.
30. Khalid Qaiser, Advocate, High Court Tehsil Bar Hajira.
31. Muhammad Amin, Advocate, High Court Tehsil Bar Hajira.
32. Javed Ayub, Advocate, High Court Tehsil Bar Hajira.
33. Sardar Raees Inqlabi, Advocate, High Court Tehsil Bar Hajira.
34. Arslan Nisar, Advocate, High Court Dist. Bar Sudhnoti.
35. Sajjad Zia, Advocate, High Court Dist. Bar Sudhnoti.
36. Ahmed Fraz, Advocate, High Court, President Tehsil Bar Association, Thorar.
37. Ch. Muhammad Riaz Alam, Advocate, Supreme Court, Mirpur AJ&K (Former President Dist. Bar Association & Member AJ&K Bar Council)
38. Ch. Shakeel Zaman, Advocate, Supreme Court, Mirpur AJ&K (Member Bar Council)
39. Mirza Muhammad Amin Baig, Advocate, High Court AJ&K Mirpur. (Former Senior

- Vice President, Dist. Bar Association Mirpur)
40. Ch. Tehseen Ahmed, Advocate, Supreme Court of AJ&K Mirpur (Former General Secretary, Dist. Bar Association Mirpur)
 41. Kabeer Ahmed Hashim, Advocate, Supreme Court of AJ&K Mirpur (Joint Secretary AJ&K Supreme Court Bar Association)
 42. Muhammad Muddasar Iqbal, Advocate, Mirpur (Former General Secretary Dist. Bar Association Mirpur)
 43. Kh. Muhammad Ilyas Advocate, High Court AJ&K Mirpur
 44. Shamraiz Asif, Advocate, High Court Mirpur.
 45. Fayyaz Ahmed Janjua, Advocate, Supreme Court of AJ&K Member Central Bar Association Old Secretariat Muzaffarabad.

.... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court dated 17.09.2019 in writ petitions No.1092, 1130, 1194, 1235, 1255 and 1296 of 2018]

FOR THE APPELLANTS: Syed Shahid Bahar,
Advocate.

FOR THE RESPONDENTS: Raja M. Hanif Khan,
and Mr. Bashir
Ahmed Mughal,
Advocates.

3. Civil Appeal No.111 of 2020
(PLA filed on 12.11.2019)

1. Sardar Saifullah Hajazi, Advocate, High Court Dist. Bar Association Rawalakot.
2. Sardar Khalid Mehmood, Advocate, High Court Dist. Bar Association Rawalakot.
3. Malik Muhammad Asghar, Advocate, High Court Dist. Bar Kolli.
4. Raja Tariq Mehmood, Advocate, High Court Dist. Bar Kotli.
5. Ashfaq Anjum, Advocate, High Court Dist. Bar Kotli.
6. Mehmood ul Hussan, Advocate, High Court Dist. Bar Kotli.
7. Sardar Muhammad Ibrahim Khan, Advocate, High Court Dist. Bar Kotli.
8. Wajid Ali, Advocate, High Court Tehsil Bar Hajira.
9. Muhammad Amin, Advocate, High Court Tehsil Bar Hajira.

10. Javed Ayub, Advocate, High Court Tehsil Bar Hajira.
11. Arslan Nisar, Advocate, High Court Dist. Bar Sudhnoti.
12. Sajjad Zia, Advocate, High Court Dist. Bar Sudhnoti.
13. Ahmed Fraz, Advocate, High Court, President Tehsil Bar Association, Thorar.

.... APPELLANTS

VERSUS

1. Government of Azad Jammu and Kashmir through its Chief Secretary, having office at New Secretariat Muzaffarabad.
2. Chairman AJ&K Council / Prime Minister of Islamic Republic of Pakistan having his office at Azad Jammu and Kashmir Council Secretariat, Sector F-5/2, Islamabad.
3. Azad Jammu and Kashmir Council, through its Secretary having office at Azad Jammu and Kashmir Council Secretariat, Sector F-5/2, Islamabad.
4. Secretary Azad Jammu and Kashmir Council Secretariat, having office at Azad Jammu and Kashmir Council Secretariat, Sector F-5/2, Islamabad.

5. Secretary Azad Jammu and Kashmir Council Secretariat, having office at Azad Jammu and Kashmir Council Secretariat, Sector F-5/2, Islamabad.
6. Minister for Kashmir Affairs & Gilgit Baltistan, Red Zone, Islamabad.
7. President of the State of Azad Jammu & Kashmir having his office at Presidential Secretariat Muzaffarabad.
8. Department of Law, Justice, Human Rights and Parliamentary Affairs through Secretary Law Azad Govt. of the State of Jammu and Kashmir having his office at New Secretariat Muzaffarabad.
9. Secretary Law, Justice, Parliamentary Affairs and Human Rights, having office at Lower Chatter, Muzaffarabad.
10. Mr. Muhammad Ejaz Khan, Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).
11. Mr. Ch. Khalid Yousaf Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).
12. Mr. Raja Sajjad Ahmed Khan, Advocate Supreme Court of AJ&K Presently holding

the post of Judge High Court (under the impugned notification).

13. Mr. Raza Ali Khan, Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).

.... RESPONDENTS

(On appeal from the judgment of the High Court dated 17.09.2019 in writ petitions No.1092, 1130, 1194, 1235, 1255 and 1296 of 2018)

FOR THE APPELLANTS: Sardar Shamshad Hussain Khan, Advocate.

FOR THE RESPONDENTS: Raja M. Hanif Khan, Sardar Tahir Anwar Khan and Mr. Bashir Ahmed Mughal, Advocates.

4. Civil Appeal No.112 of 2020
(PLA filed on 15.11.2019)

1. Ch. Shakeel Zaman, Advocate, Supreme Court, Mirpur AJ&K (Member Bar Council)
2. Mirza Muhammad Amin Baig, Advocate, High Court AJ&K Mirpur. (Former Senior

Vice President, Dist. Bar Association Mirpur)

3. Ch. Tehseen Ahmed, Advocate, Supreme Court of AJ&K Mirpur (Former General Secretary, Dist. Bar Association Mirpur)
4. Kabeer Ahmed Hashim, Advocate, Supreme Court of AJ&K Mirpur (Joint Secretary AJ&K Supreme Court Bar Association)
5. Muhammad Muddasar Iqbal, Advocate, Mirpur (Former General Secretary Dist. Bar Association Mirpur)
6. Kh. Muhammad Ilyas Advocate, High Court AJ&K Mirpur
7. Shamraiz Asif, Advocate, High Court Mirpur.

.... APPELLANTS

VERSUS

1. Government of Azad Jammu and Kashmir through its Chief Secretary, having office at New Secretariat Muzaffarabad.
2. Chairman AJ&K Council / Prime Minister of Islamic Republic of Pakistan having his office at Azad Jammu and Kashmir Council Secretariat, Sector F-5/2, Islamabad.

3. Azad Jammu and Kashmir Council, through its Secretary having office at Azad Jammu and Kashmir Council Secretariat, Sector F-5/2, Islamabad.
4. Secretary Azad Jammu and Kashmir Council Secretariat, having office at Azad Jammu and Kashmir Council Secretariat, Sector F-5/2, Islamabad.
5. Joint Secretary AJ&K Council, having office at AJ&K Council Secretariat Sector F-5/2, Islamabad, Pakistan.
6. Minister for Kashmir Affairs & Gilgit Baltistan, Red Zone, Islamabad.
7. President of the State of Azad Jammu & Kashmir having his office at Presidential Secretariat Muzaffarabad.
8. Principal Secretary to President of AJ&K, Muzaffarabad.
9. Department of Law, Justice, Human Rights and Parliamentary Affairs through Secretary Law Azad Govt. of the State of Jammu and Kashmir having his office at New Secretariat Muzaffarabad.
10. Secretary Law, Justice, Parliamentary Affairs and Human Rights, having office at Lower Chatter, Muzaffarabad.

11. Registrar Supreme Court of AJ&K, Muzaffarabad.
12. Registrar, High Court of AJ&K, Muzaffarabad.
13. Mr. Raza Ali Khan, Presently holding the post of Judge High Court (under the impugned notification, High Court, Muzaffarabad.
14. Mr. Muhammad Ejaz Khan, Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).
15. Mr. Ch. Khalid Yousaf Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).
16. Mr. Raja Sajjad Ahmed Khan, Advocate Supreme Court of AJ&K Presently holding the post of Judge High Court (under the impugned notification).

.... RESPONDENTS

17. Mr. Chaudhary Muhammad Munir, presently holding the post of Judge High Court (under the impugned notification), High Court, Muzaffarabad.

.... PROFORMA-RESPONDENTS

(On appeal from the judgment of the High Court dated 17.09.2019 in writ petitions No.1092, 1130, 1194, 1235, 1255 and 1296 of 2018)

FOR THE APPELLANTS: Nemo

FOR THE RESPONDENTS: Raja M. Hanif Khan,
and Mr. Bashir
Ahmed Mughal,
Advocates.

5. Civil Appeal No.115 of 2020
(PLA filed on 15.11.2019)

1. Barrister Adnan Nawaz Khan, Advocate Supreme Court of Azad Jammu & Kashmir
2. Shamshad Hussain Khan, Advocate Supreme Court of Azad Jammu & Kashmir
3. Raja Izzat Baig, Advocate High Court of Azad Jammu & Kashmir

.... APPELLANTS

VERSUS

1. Govt. of the State of Azad Jammu & Kashmir through its Chief Secretary, having office at Lower Chatter, Muzaffarabad.
2. Chairman AJ&K Council through Secretary AJ&K Council Secretariat, having office at

Azad Jammu & Kashmir Council Secretariat, Sector F-5/2, Islamabad.

3. AJ&K Council through its Secretary having office at AJ&K Council Secretariat Sector F-5/2, Islamabad.
4. Secretary AJ&K Council Secretariat, having office at AJ&K Kashmir Council Secretariat, Sector F-5/2, Islamabad.
5. Joint Secretary AJ&K Council Secretariat, having office at AJ&K Council Secretariat, Sector F-5/2, Islamabad.
6. Minister for Kashmir Affairs & Gilgit-Baltistan, Red Zone, Islamabad.
7. President of Azad Jammu & Kashmir through Secretary to President, having office at President Secretariat, Muzaffarabad.
8. Department of Law, Justice Parliamentary Affairs and Human Rights, having office at Lower Chatter Muzaffarabad.
9. Secretary Law, Justice, Parliamentary Affairs and Human Rights, having office at Lower Chatter, Muzaffarabad.
10. Mr. Raza Ali Khan, presently holding the post of Judge High Court (under the Impugned Notification), High Court Muzaffarabad.

11. Mr. Muhammad Ejaz Khan, presently holding the post of Judge High Court (under the impugned Notification), High Court, Muzaffarabad.
12. Mr. Chaudhry Khalid Yousaf, presently holding the post of Judge High Court (under the impugned notification), High Court, Muzaffarabad.
13. Mr. Raja Sajjad Ahmed Khan, presently holding the post of Judge High Court (under the Impugned Notification), High Court, Muzaffarabad
14. Mr. Chaudhary Muhammad Munir, presently holding the post of Judge High Court (under the Impugned Notification), High Court, Muzaffarabad.

.... RESPONDENTS

15. Aamir Ali Awan Advocate Supreme Court of AJ&K, Muzaffarabad.
16. Sardar Saif Ullah Hajazi Advocate High Court District Bar Association Rawalakot.
17. Sardar Khalid Mahmood Advocate High Court District Bar Association Rawalakot.
18. Malik Muhammad Asghar Advocate High Court District Bar Kotli.
19. Raja Tariq Mehmood Advocate High Court District Bar Kotli.

20. Ashfaq Anjum Advocate High Court District Bar Kotli.
21. Mehmood-ul-Hussan Advocate High Court District Bar Kotli.
22. Sardar Muhammad Ibrahim Khan Advocate High Court District Bar Kotli.
23. Raja Sakandar Iqbal Advocate High Court Tehsil Bar Hajira.
24. Wajid Ali Advocate High Court Tehsil Bar Hajira.
25. Khalid Qaiser Advocate High Court Tehsil Bar Hajira.
26. Muhammad Amin Advocate High Court Tehsil Bar Hajira.
27. Javaid Ayub Advocate High Court Tehsil Bar Hajira.
28. Sardar Raees Inqlabi Advocate High Court Tehsil Bar Hajira.
29. Arslan Nisar Advocate High Court District Bar Sudhnooti.
30. Sajjad Zia Advocate High Court District Bar Sudhnooti.
31. Ahmed Fraz Advocate High Court, President Tehsil Bar Association Thorar, District Poonch.

32. Ch. Muhammad Mumtaz Advocate Supreme Court Mirpur AJ&K (Former Vice President AJ&K Bar Council).
33. Ch. Muhammad Riaz Alam Advocate Supreme Court Mirpur AJ&K (Former President District Bar Association & Member AJ&K Bar Council).
34. Ch. Shakeel Zaman Advocate Supreme Court Mirpur AJ&K (Member AJ&K Bar Council).
35. Mirza Muhammad Amin Baig, Advocate High Court, AJ&K Mirpur (Former Senior Vice President, District Bar Association Mirpur).
36. Ch. Tehseen Ahmed Advocate Supreme Court of AJ&K Mirpur (Former General Secretary, District Bar Association Mirpur).
37. Kabeer Ahmed Hashim Advocate Supreme Court (Joint Secretary AJ&K Supreme Court Bar Association).
38. Muhammad Muddasar Iqbal Advocate Mirpur (Former General Secretary, District Bar Association Mirpur).
39. Khawaja Muhammad Ilyas Advocate High Court AJ&K Mirpur.
40. Shamraiz Asif Advocate High Court Mirpur.

41. Fayyaz Ahmed Janjua Advocate Supreme Court of AJ&K Member Central Bar Association Old Secretariat Muzaffarabad.
42. Shahid Ajmal Advocate Supreme Court, Member Sehnsa Bar Association Kotli Azad Kashmir.
43. Sardar Javaid Sharif, Advocate High Court of AJ&K.
44. Principal Secretary to President of AJ&K Muzaffarabad.
45. Registrar Supreme Court of AJ&K Muzaffarabad.
46. Registrar High Court of AJ&K Muzaffarabad.
47. Accountant General of AJ&K Sathra Hills Muzaffarabad.
48. AJ&K Bar Council, through its Vice Chairman, having his office at Old Kacheri Muzaffarabad.
49. Supreme Court Bar, through its President, having his office at Supreme Court building Muzaffarabad.
50. High Court Bar, through its President, having his office at Block-A old Secretariat Muzaffarabad.
51. Central Bar Association, through its President, Central Bar Association Muzaffarabad AJ&K.

52. Mirpur Bar Association, through its President, Mirpur Bar Association AJ&K.
53. Rawalakot Bar Association, through its President, District Complex Rawalakot AJ&K.
54. Kotli Bar Association, through its President, District Court Complex Kotli AJ&K.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 17.09.2019 in writ petitions No.1092, 1130, 1194, 1235, 1255 and 1296 of 2018)

FOR THE APPELLANTS: Barrister Adnan Nawaz, Advocate.

FOR THE RESPONDENTS: Raja M. Hanif Khan, Raja Ibrar Hussain and Mr. Bashir Ahmed Mughal, Advocates.

6. Civil Appeal No.116 of 2020
(PLA filed on 15.11.2019)

Fayyaz Ahmed Janjua, Advocate Supreme Court of AJ&K Member Central Bar Association, Old Secretariat, Muzaffarabad.

.... APPELLANT

VERSUS

1. Azad Govt. of the State of Jammu and Kashmir through its Chief Secretary having his office at New Secretariat, Muzaffarabad.
2. Chairman AJ&K Council through its Secretary Azad Jammu and Kashmir Council, Council Secretariat, F-5/2, Islamabad, Pakistan.
3. Azad Jammu and Kashmir Council through its Secretary Council Secretariat F-5/2, Islamabad.
4. Secretary Azad Jammu and Kashmir Council, Council Secretariat, F-5/2, Islamabad, Pakistan.
5. Joint Secretary, Azad Jammu and Kashmir Council, Council Secretariat, F-5/2, Islamabad, Pakistan.
6. Minister of Kashmir Affairs and Gilgit Baltistan, Red Zone, Islamabad.
7. President of AJ&K through Secretary to President having his office at President Secretariat, Muzaffarabad.
8. Department of Law, Justice, Parliamentary Affairs and Human Rights through its

Secretary having his office at Lower Chatter, Muzaffarabad.

9. Secretary Law, Justice, Parliamentary Affairs of Azad Jammu and Kashmir having his office at New Secretariat Complex, Muzaffarabad.
10. Registrar, High Court/Shariat Appellate Bench of AJ&K having his office at High Court Building, Muzaffarabad.
11. Registrar, Supreme Court/Shariat Appellate Bench of AJ&K Supreme Court having his office at Supreme Court Building, Muzaffarabad.
12. Raza Ali Khan, Judge of the High Court but illegally appointed under Notification No.LD(AD)711-30/2018 dated 21.05.2018.
13. Muhammad Ejaz Khan, Judge of the High Court but illegally appointed under Notification No.LD(AD)711-30/2018 dated 21.05.2018.
14. Chaudhry Khalid Yousaf, Judge of the High Court but illegally appointed under Notification No.LD(AD)711-30/2018 dated 21.05.2018.12
15. Raja Sajjad Ahmed Khan, Judge of the High Court but illegally appointed under

Notification No.LD(AD)711-30/2018 dated 21.05.2018.

16. Chaudhry Muhammad Munir, Judge of the High Court but illegally appointed under Notification No.LD(AD)711-30/2018 dated 21.05.2018.
17. Accountant General of AJ&K Sathra Hills, Muzaffarabad.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 17.09.2019 in writ petitions No.1092, 1130, 1194, 1235, 1255 and 1296 of 2018)

FOR THE APPELLANT: In person.

FOR THE RESPONDENTS: Raja M. Hanif Khan,
and Mr. Bashir
Ahmed Mughal,
Advocates.

7. Civil Appeal No.484 of 2019
(PLA filed on 19.09.2019)

Mr. Justice Chaudhary Muhammad Munir, Judge
Azad Jammu and Kashmir High Court,
Muzaffarabad.

.... APPELLANT

VERSUS

1. Barrister Adnan Nawaz Khan, Advocate Supreme Court of Azad Jammu & Kashmir at Rawalakot.
2. Shamshad Hussain Khan, Advocate Supreme Court of Azad Jammu and Kashmir, at Rawalakot.
3. Sardar Javed Sharif, Advocate High Court of Azad Jammu and Kashmir, at Rawalakot.'
4. Raja Izzat Baig, Advocate High Court of Azad Jammu & Kashmir, at Rawalakot. {Respondents 1 to 4 are Petitioners in Writ Petition No. 1092/18 in the High Court)
5. Aamir Ali Awan, Advocate Supreme Court of Azad Jammu and Kashmir Muzaffarabad. (Respondent No.5 is the Petitioner in Writ Petition No. 1130/18 in the High Court)
6. Sardar Saif Ullah Hajazi Advocate High Court at District Bar Association Rawalakot.
7. Sardar Khalid Mehmood Advocate High Court, District Bar Association Rawalakot.
8. Malik Muhammad Asghar Advocate High Court District Bar Kotli.
9. Raja Tariq Mehmood Advocate High Court District Bar Kotli.

10. Ashfaq Anjum Advocate High Court, District Bar Kotli.
11. Mehmood-ul-Hassan Advocate High Court, District Bar Kotli.
12. Sardar Muhammad Ibrahim Khan, Advocate High Court, District Bar Kotli.
13. Raja Sakandar Iqbal Advocate High Court, Tehsil Bar Hajira.
14. Wajid Ali, Advocate High Court, Tehsil Bar Hajira.
15. Khalil Qaiser Advocate High Court, Tehsil Bar Hajira.
16. Muhammad Amin Advocate High Court Tehsil Bar Hajira.
17. Javed Ayub Advocate High Court Tehsil Bar Hajira.
18. Sardar Raees Inqlabi Advocate High Court, Tehsil Bar Hajira.
19. Arslan Nisar Advocate High Court, District Bar Sudhnoti.
20. Sajjad Zia Advocate High Court, District Bar Sudhnoti.
21. Ahmed Fraz Advocate High Court, President Tehsil Bar Association Thorar, District Poonch. Respondents No. 6 to 21 are Petitioners in Writ Petition No. 1194/18 in High Court).

22. Ch. Muhammad Mumtaz Advocate Supreme Court, AJ&K, Mirpur former Vice Chairman of AJ&K Bar Council.
23. Ch. Muhammad Riaz Alam Advocate Supreme Court Mirpur, former 7 President District Bar Association & Member AJ&K Bar Council.
24. Ch. Shakeel Zaman Advocate Supreme Court AJ&K, Mirpur, Member AJ&K Bar Council.
25. Mirza Muhammad Amin Baig, Advocate High Court Mirpur (former Senior Vice President District Bar Association Mirpur).
26. Ch. Tehseen Ahmed Advocate Supreme Court of AJ&K Mirpur, former General Secretary District Bar Association Mirpur.
27. Kabeer Ahmed Hashim Advocate Supreme Court Mirpur, Joint Secretary AJ&K Supreme Court Bar Association.
28. Muhammad Muddasar Iqbal Advocate Mirpur, former General Secretary District Bar Association.
29. Khawaja Muhammad Ilyas Advocate High Court AJ&K Mirpur.
30. 30 Shamraiz Asif Advocate High Court Mirpur. (Respondents No. 22 to 30 are

Petitioners in Writ Petition No. 1235/18 in the High Court).

31. Fayyaz Ahmed Janjua, Advocate Supreme Court of Azad Jammu and Kashmir, Member Central Bar Association Old Secretariat Muzaffarabad. (Respondent No. 31 is Petitioner in Writ Petition No. 1255/18 in High Court).
32. Shahid Ajmal Advocate Supreme Court, Member Sahensa Bar Association Kotli Azad Kashmir. (Respondent No. 32 is Petitioner in Writ Petition No. 1296-A/18 in High Court)

.... RESPONDENTS

33. Chairman Azad Jammu and Kashmir Council through Secretary Azad Jammu and Kashmir Council, having office at AJ&K Council Secretariat Sector F-5/2 Islamabad.
34. Azad Jammu and Kashmir Council through its Secretary having office at AJ&K Council Secretariat Sector F-5/2 Islamabad.
35. Secretary Azad Jammu and Kashmir Council Secretariat, having office at AJ&K Council Secretariat Sector F-5/2 Islamabad.

36. Joint Secretary Azad Jammu and Kashmir Council Secretariat, having office at AJ&K Council Secretariat Sector F-5/2 Islamabad.
37. Minister for Kashmir Affairs & Gilgit-Baltistan, Red Zone Islamabad. (Proforma Respondents 33 to 37 are Respondents in Writ Petition No. 1092/18, 1130/18, 1194/18, 1235/18, 1355/18, 1296/18 in High Court)
38. Registrar Supreme Court of Azad Jammu and Kashmir Muzaffarabad.
39. Registrar High Court of Azad Jammu and Kashmir Muzaffarabad. (Proforma Respondents No. 38 and 39 are Respondents in Writ Petition No. 1235/18 and 1255/18 in High Court)
40. Accountant General Azad Jammu and Kashmir Muzaffarabad.
41. AJ&K Bar Council, through its Vice Chairman having his office at Old Kacheri Muzaffarabad.
42. Supreme Court Bar, through its President Supreme Court Bar having his office at Supreme Court Building Muzaffarabad.

43. High Court Bar, through its President having his office at Block-A, Old Secretariat Muzaffarabad.
44. Central Bar Association, through its President Central Bar Association Muzaffarabad.
45. Mirpur Bar Association, through its President Mirpur Bar AJ&K.
46. Rawalakot Bar Association, through its President having its office at District Complex Rawalakot.
47. Kotli Bar Association, through its President having his office at District Court Complex Kotli AJ&K. (Proforma Respondents No. 40 to 47 are Respondent and Proforma Respondents in Writ Petition No. 1255/18 in High Court).
48. Azad Government of the State of Jammu and Kashmir through Secretary Law, Justice, Parliamentary Affairs and Human Rights Department, Block No. 10, New Civil Secretariat Muzaffarabad.
49. President of Azad Government of the State of Jammu and Kashmir through Secretary to the President having office at President Secretariat, Jalalabad Muzaffarabad.

50. Secretary to the President having office at President Secretariat Jalalabad Muzaffarabad.
51. Department of Law, Justice, Parliamentary Affairs and Human Rights, Muzaffarabad through its Secretary.
52. Secretary Law, Justice, Parliamentary Affairs and Human Rights, Department, Block No. 10 New Civil Secretariat Muzaffarabad.
53. Mr. Justice Muhammad Ejaz Khan, Judge Azad Jammu and Kashmir High Court, Muzaffarabad.
54. Mr. Justice Chaudhary Khalid Yousaf, Judge Azad Jammu and Kashmir High Court, Muzaffarabad.
55. Mr. Justice Raza Ali Khan, Judge Azad Jammu and Kashmir High Court, Muzaffarabad.
56. Mr. Justice Raja Sajjad Ahmed Khan, Judge Azad Jammu and Kashmir High Court, Muzaffarabad.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated 17.09.2019 in writ petitions No.1092, 1130, 1194, 1235, 1255 and 1296 of 2018)

FOR THE APPELLANT: Raja M. Hanif Khan
and Ch. Shoukat
Aziz, Advocates.

FOR THE RESPONDENTS: Fayyaz Ahmed
Janjua, Barrister
Adnan Nawaz Khan,
Syed Shahid Bahar
and Sardar
Shamshad Hussain,
Advocates.

Dates of hearing: 30.06.2020, 01.07.2020

JUDGMENT: -

Raja Saeed Akram Khan, ACJ—In

essence, the issue for the determination in these appeals (with the leave of the Court) is the appointments of five Judges in the High Court of Azad Jammu and Kashmir, allegedly made in violation of Constitutional provisions as well as dictum of law laid down by the superior Courts in numerous pronouncements.

2. Before considering and addressing the valuable contentions of the learned counsel for the parties, it would be appropriate to bring on

record the essential and relevant events leading to the filing of these appeals by leave of the Court. Five positions of Judges fell vacant in the Azad Jammu and Kashmir High Court; whereupon, the process for appointment against the same was initiated and consequently, Mr. Raza Ali Khan, Mr. Muhammad Ejaz Khan, Mr. Khalid Yousaf Chaudhary, Raja Sajjad Ahmed Khan (private respondents) and Ch. Muhammad Munir (appellant in appeal No.494/2019) were appointed vide notification No.LD/AD/711-30/2018, dated 21.05.2018. The object of the appellants, who are practicing lawyers of Azad Jammu and Kashmir Supreme Court and High Court, as claimed by them, is supremacy of the Constitution and independence of judiciary. It is alleged that under Article 43(2-A) of the Azad Jammu and Kashmir Interim Constitution, 1974 (*hereinafter to be referred as the Constitution*),

a Judge of the High Court shall be appointed by the President on the advice of the Council after consultation with the Chief Justice of Azad Jammu and Kashmir; and except where the appointment is that of Chief Justice, with the Chief Justice of the High Court. It is the stance of the appellants that the disputed appointments have been made without proper consultation with the Constitutional consultees. According to the principle of law laid down by the superior Courts in a number of cases, a consultation should be effective, meaningful, purposive and consensus-oriented leaving no room for complaint of arbitrariness or unfair play, however, the alleged consultation in this case lacks all these ingredients. Furthermore, there is no consensus at all found between the judicial consultees. The appellants challenged the aforesaid appointments before the High Court by filing separate writ petitions on

numerous grounds including those enumerated hereinabove. The appointment of the appellant, Ch. Muhammad Munir, was also challenged on another ground that he was not eligible to be appointed because he was lacking the requisite eligibility of three years' service as District & Sessions Judge. The writ petitions were contested by the other side on the ground that the appointments have been made in accordance with the Constitutional provisions as well as the principle of law laid down by the superior Courts. In defence, various other grounds were also raised by the respondents (which will be incorporated in the later part of this judgment). The learned Division bench of the High Court, after necessary proceedings, unanimously through the impugned judgment dated 17.09.2019, dismissed the writ petitions to the extent of the appointments of Mr. Raza Ali Khan, Mr. Muhammad Ejaz Khan, Mr. Khalid

Yousaf Chaudhary and Raja Sajjad Ahmed Khan, however, accepted the same to the extent of Ch. Muhammad Munir, while setting aside his appointment as Judge of the High Court. One of the learned members of the bench, i.e. Mr. Justice Muhammad Sheraz Kiani also recorded his separate findings through an additional note. These appeals have been filed by the appellants (lawyers) as well as Ch. Muhammad Munir, J. (whose appointment has been set-aside by the High Court) by leave of the Court to challenge the validity and correctness of the impugned judgment.

3. Barrister Hamayun Nawaz Khan, Advocate, the learned counsel for the appellant, *Javed Sharif*, argued that the impugned judgment is self-contradictory, contrary to law and the facts of the case. (He thrashed out in detail the background of the consultative process made in the instant case, however, we

only incorporate here the submissions relevant to the controversy involved in the matter in hand). He submitted that in the instant case, the then Hon'ble Chief Justice of the High Court, in response to a letter issued by the office of the worthy President dated 11.11.2017, sent a panel consisting of fifteen (15) eligible Advocates for appointment as Judges of the High Court. The Hon'ble Chief Justice of Azad Jammu and Kashmir (the then), in response to a letter addressed by the President Secretariat dated 12.12.2017, vide its letter dated 23rd December, 2017, added nine (9) more nominees in the list sent by the Chief Justice of the High Court and also highlighted the prerequisites of consultative process. In this regard, the learned counsel drew the attention of the Court towards the relevant letter and submitted that this letter itself shows that till 23rd December, 2017, no consultation was ever

made between both the Hon'ble Chief Justices. The learned counsel maintained that in the light of the lists sent by both the offices, a summary was prepared and sent to the Azad Jammu and Kashmir Council (Council) by the President Secretariat while recommending for the names of only five (5) nominees for appointment as Judges of the High Court, whereupon, the Council vide its letter dated 10.01.2018, summoned the relevant record regarding the consultative process and after examining the same vide its letter dated 16th April, 2018, rejected the summary on the ground that proper consultation, as defined in the case reported as *Muhammad Younas Tahir and another v. Shoukat Aziz, Advocate, Muzaffarabad and others* [2012 SCR 213], has not been made. He stressed that the record/correspondence sent by the President Secretariat to the Council is conclusive proof of

the fact that except this correspondence nothing is available to show that meaningful, purposive and consensus-oriented consultation was ever made. At this juncture, the learned Advocate also pointed out that the summary was moved to the Council on 04.01.2018 and the same was rejected on 16.04.2018, therefore, during the intervening period, no consultative process could be initiated as no alive issue was pending rather the concerned offices after sending the summary by the President Secretariat to the Council, had become functus officio. He submitted that on 25th April, 2018, another summary was moved by the President Secretariat which shows that no further consultation process was conducted as it has been mentioned in the summary that previous consultative process is valid and the same has been reconfirmed by both the Hon'ble Chief Justices. The learned counsel emphasized

that the record clearly speaks that previously even not a single joint meeting of the Hon'ble consultees was ever held or the consultation process was made as is required under law. Moreover, in the alleged summary, it has been mentioned that the names of the following persons, in order of priority, are being forwarded as a fresh panel (consisting of fifteen (15) nominees), which amounts to abridge the independence of judiciary as the worthy President could not pick the names of some nominees and himself set the order of priority. He forcefully contended that later on, in order to fill up the lacunas, a concocted document was prepared by the President Secretariat to show that the consultation had duly been made. While attacking on the said document, he submitted that thirty two (32) entries have been shown in the document, out of which eleven (11) entries relate to the period when

one of the Hon'ble members of this bench, i.e. Justice *Ghulam Mustafa Mughal*, was holding the office as Chief Justice of the High Court; some of the entries have been shown for the period when the summary was pending in the Council and no issue was left alive for consultation. In respect of telephonic calls shown in the list, he contended that the column of destination of the Hon'ble Chief Justice of the High Court (the then) has been kept blanked and in one of the entries, the destination of the Hon'ble Chief Justice of the High Court, has been shown at Islamabad, whereas, at the relevant date, in the time shown in the entry, he was holding the office/Court at Muzaffarabad and in this regard relevant record is annexed with the file. The learned counsel also accentuated that an application was moved by the respondents in the High Court for bringing on record the aforesaid document; however,

the learned High Court rejected the said application but amazingly while handing down the impugned judgment, the Division Bench mainly relied upon the said concocted document. He also added that the calls summary of the personal mobile number of the worthy President has been attested by the Section Officer of the President Secretariat, whereas, he being custodian of the official record can only attest the data of official number and not the personal number but this illegal act escaped the notice of the High Court. He added that the learned High Court in the impugned judgment at one hand has reproduced the note recorded by the Hon'ble Chief Justice of the High Court (the then), wherein it has categorically been mentioned that the candidates/Advocates falling at serial Nos.1 to 3 have neither been enlisted in his panel nor he was consulted with for their

appointments, but on the other hand observed that nothing in black and white is available on record to show that the consultation with the Chief Justice of the High Court has not been made. The learned counsel also drew the attention of the Court towards different paragraphs of the impugned judgment while stressing that the learned High Court has recorded the findings that proper procedure in the instant matter, regarding consultation, as required under law, has not been adopted; moreover, the Rule of Primacy is not attracted in the instant case, but the respondents have not challenged these findings recorded by the High Court, meaning thereby that they have admitted the same as correct and the same have attained finality. He further stated that the respondents tried to build up their case before this Court on the principle of Rule of Primacy, however, it is not case of the worthy President

as is clear from the contents of summary sent to the Council by the President Secretariat. He added that the Rule of Primacy is applied on difference of opinion between the Hon'ble Chief Justices, if after making all the efforts a consensus is not developed, whereas, the summary forwarded by the President Secretariat itself shows that the same was sent after making proper consultation. The learned counsel also drew the attention of the Court towards the notification through which the appointments of the Judges were made and submitted that in the notification the word "consultation" is missing which clearly indicates that the same has been issued without making any consultation. He pointed out that in the written statements filed before the High Court, the respondents have taken a categorical stance that their case is at par with the case of the then Chief Justice of the High Court, i.e.,

Mr. M. Tabassam Aftab Alvi; as in *Raja Waseem Younas's* case the elevation of Mr. M. Tabassam Aftab Alvi as Judge of the High Court, has been declared by this Court as invalid, therefore, in view of the stance of the respondents their appointments also become invalid. He added that the respondents have raised the objections on the maintainability of the writ petitions filed by the appellants, whereas, in the order dated 06.07.2019, through which the writ petitions were admitted for regular hearing by the High Court all these points were resolved and against the said order, a petition for leave to appeal was filed before this Court which was also dismissed, hence, now the respondents cannot be allowed to raise such objections once again. He referred to the cases reported as *Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahab-ul-Khairi and others v. Federation of Pakistan and others* [PLD 1996 SC 324],

Muhammad Younas Tahir and another v. Shaukat Aziz, Advocate, Muzaffarabad and others [2012 SCR 213], *Bashir Ahmed Mughal v. Azad Government & 6 others* [2014 SCR 1258] and *Azad Government of the State of Jammu and Kashmir through Chief Secretary and 4 others v. Sardar Javed Naz, Advocate Supreme Court (AJ&K) and 2 others* [PLD 2016 SC (AJ&K) 1].

4. Sardar Shamshad Hussain Khan, Advocate, the learned counsel for the appellants, *Saifullah Hijazi and others*, submitted that it is settled principle of law that if a word is being used in the pronouncements of the superior judiciary consistently with one meaning then the dictionary meanings cannot be consulted with; whereas, in the instant case, the learned High Court has given the preference to the dictionary meanings while ignoring the settled doctrine which is not permissible under

law. In this regard, he placed reliance on a case reported as *Mst. Zainab Bibi and others v. Mst. Bilqis Bibi and others* [PLD 1981 SC 56]. He contended that from the pleadings of the respondents it becomes an admitted fact that face to face meeting of the Hon'ble consultees had not been conducted in the matter in hand, whereas, in the concocted document placed on record by the respondents at belated stage, discussed by the other learned counsel, a joint meeting of the consultees has been shown to be held on 23.12.2017. He maintained that a fresh document can only be brought on record by moving an application under Order XIII, rule 1 and 2, CPC, whereas, no such application was moved before the High Court and the concocted documents have been made part of the record without seeking the objections from the other side and providing a fair opportunity of hearing. Furthermore, this document was not even

admissible in evidence under the provisions of Qanun-e-Shahadat, 1984, but the learned High Court failed to appreciate this important legal aspect. The learned counsel submitted that in the pleadings of the respondents, the worthy President has been shown as consultee and the worthy President has also acted as such, whereas, the Constitutional provision as well as the law laid down by the superior Courts is very much clear that the consultees in respect of appointment of Judges are only the Hon'ble Chief Justice of Azad Jammu and Kashmir and Chief Justice of the High Court. The learned counsel also emphasized that the worthy President after rejection of first summary by the Council, instead of initiating the fresh process, in the light of the letter through which the summary was rejected, again forwarded the penal sent previously while observing that he got reconfirmed the names included in the

previous summary from the Hon'ble Chief Justices, whereas, in view of the contents of the said letter there was no occasion for reconfirmation. The learned counsel drew the attention of the Court towards the different paragraphs of the impugned judgment and stated that the respondents should have challenged the adverse findings recorded by the High Court against them but they failed to do so, and now they cannot raise any objection in this regard. He submitted that it is also well settled principle of law that the contents of a document cannot be disbelieved on oral assertion, therefore, the learned High Court was not justified to give preference to a so-called telephonic conversation over the note written by the then Hon'ble Chief Justice of the High Court. He lastly submitted that the appellant, Ch. Muhammad Munir due to lack of qualifying service as District and Sessions

Judge, was not eligible for appointment as Judge of the High Court, therefore, to his extent the findings recorded in the impugned judgment are in accordance with law. He referred to and relied upon the cases reported as *Muhammad Yaqoob Khan v. Secretary Forest/Tourism AJ&K and 7 others* [1999 SCR 404], *Syed Nazakat Hussain Shah v. Zeeshan Azam and 10 others* [2019 SCR 301], *Subesh Sharma v. Union of India* [AIR 1991 SC 631], *Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahab-ul-Khairi and others v. Federation of Pakistan and others* [PLD 1996 SC 324], *Muhammad Younas Tahir and another v. Shaukat Aziz Advocate Muzaffarabad and others* [2012 SCR 213], *Muhammad Yousaf Haroon v. Competent Authority and 4 others* [2014 SCR 1180], *Rai Singh and others v. Allah Din and others* [PLD 1950 Lah. 111], *Khuda Bakhsh and others v. Amir and another* [1980

SCMR 760], *Mst. Zainab Bibi and others v. Mst. Bilqis Bibi and others* [PLD 1981 SC 56] and *Syed Akhtar Hussain Zaidi v. Muhammad Yaqinuddin* [1988 SCMR 753].

5. Syed Shahid Bahar, Advocate, the learned counsel for the appellants, *Aamir Ali Awan and another*, argued that core points involved in the matter are; whether both the Hon'ble consultees, i.e. Chief Justice of Azad Jammu and Kashmir and the Chief Justice of the High Court, were consulted, and whether the consultation process was conducted in accordance with the provisions of the Constitution and the dictum laid down by the Superior Courts or not? In continuation of the argument, he submitted that the learned High Court has not considered and resolved the points (*supra*) rather while bypassing the Constitutional provision as well as the dictum laid down by the apex Court, has passed the

impugned judgment mere on assumptions which is not maintainable at any cost. He referred to the different paragraphs of the impugned judgment and submitted that the whole judgment is self-contradictory; thus, interference by this Court is warranted under law. He referred to the cases reported as *Special reference No.1 of 1998* [AIR 1999 1] and *Munir Hussain Bhatti, Advocate v. Federation of Pakistan and another* [PLD 2011 SC 407].

6. Barrister Adnan Nawaz Khan, Advocate, mostly adopted the arguments advanced by the other counsel for the appellants and laid stress on the point that in the note recorded by the Hon'ble Chief Justice of the High Court (the then), it has clearly been mentioned that the names of respondents No.10 to 12 were not included in the panel sent by him nor he was consulted with on their

names, moreover, nothing is available on record to show that any consultation was ever made with the Hon'ble Chief Justice of Azad Jammu and Kashmir (the then), on the names of respondents No.13 and 14. Thus, in such state of affairs, all the appointments are ultra vires the Constitution and void *ab initio*. He submitted that astonishingly just one day before the final arguments, an application was moved before the High Court for deleting the names of Registrar High Court and Supreme Court from the record and in the same application the permission was sought for bringing on record certain documents. This application was even neither discussed during the course of arguments by the learned counsel for the respondents nor the learned High Court sought objections on the same from the other side, therefore, the application was not in the knowledge of the appellants. The learned High

Court while handing down the impugned judgment rejected the application but considered the documents which the respondents wanted to bring on record through said application which is against the settled norms of justice. In the impugned judgment much reliance has been placed on the concocted documents, brought on record secretly while violating the procedure prescribed by law. He further added that the learned High Court in the impugned judgment has itself formulated a question that how it can be ascertained that the worthy President through telephonic call as shown in the document, consulted with the then Hon'ble Chief Justice of the High Court, but on the other hand, sole on the assumption treated the telephonic calls shown in the concocted document as valid oral consultation. He forcefully contended that a high standard has

been set by this Court in *M. Tabassam Aftab Alvi's* case [2020 SCR 1] in respect of consultation process, whereas, the situation in the instant case is quite different as the consultative process as a whole is defective. The learned High Court on assumption passed the impugned judgment while ignoring the guidelines given by the apex Court in *Younas Tahir's* case (supra). He also added that the Hon'ble Chief Justice of Azad Jammu and Kashmir (the then), in his letter dated 23.12.2017, categorically mentioned that some of the persons recommended by the then Hon'ble Chief Justice of the High Court are suitable but some of them are lacking the required standard; except this letter nothing is available on record to clarify the position; whether the persons appointed fulfilled the required criteria or not. He pointed out that one of the learned members of the bench, who

passed the impugned judgment, has observed that there are no adverse remarks of the Hon'ble Chief Justice of the High Court (the then), against the persons appointed without his consultation, which is very amazing as how remarks could be passed by him when on their names no consultation was ever made with him. He lastly submitted that the learned High Court in the impugned judgment has placed reliance on *M.D. Tahir's* case, whereas, the facts and circumstances of that case were quite different, hence, the said case law has wrongly been applied. He placed reliance on the cases reported as *Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahab-ul-Khairi and others v. Federation of Pakistan and others* [PLD 1996 SC 324], *Muhammad Younas Tahir and another v. Shaukat Aziz, Advocate, Muzaffarabad and others* [2012 SCR 213], and

M. Tabassum Aftab Alvi v. Raja Waseem Younas & 6 others [2020 SCR 1].

7. Mr. Fayyaz Ahmed Janjua, Advocate, while adopting the arguments advanced by the learned counsel for the appellants attacked on the calls data placed before the High Court by the respondents and submitted that the same is not the data produced by the concerned mobile company rather it is a self-generated computerized document which cannot be relied on.

Mr. Khalid Rasheed Chaudhary, Advocate, the learned counsel for the appellants, *Ch. Shakeel Zaman & others*, has moved an application, stating therein, that he adopts the arguments advanced by Barrister Hamayun Nawaz Khan, Advocate.

8. On the other hand, Raja Muhammad Hanif Khan, Advocate, the learned counsel for the respondents partly defended the impugned

judgment. He submitted that the learned High Court has rightly declared the appointments of four (4) Judges as valid, however, wrongly declared the appointment of the appellant, *Ch. Muhammad Munir*, as invalid. He contended that the other side mainly targeted the documents brought on record by the respondents, i.e. itemized calls data and schedule of meetings while submitting that these documents were not in their knowledge, but this version is totally incorrect. He contended that in the written statement filed on behalf of worthy President, the detail of the meetings has been mentioned and it has also been mentioned that why the occasion arose to make the consultation through telephonic call and all the documents were annexed with the written statement; therefore, the version of the appellants that the same have been brought on record secretly is against the record. He further

submitted that before hearing the final arguments, the respondents filed an application for deleting the names of Registrar Supreme Court and Registrar High Court. He drew the attention of the Court towards an interim order passed by the High Court on 03.09.2019 and submitted that on 02.09.2019, the application was filed and on the very next day, the learned High Court heard the arguments on the same. The interim order clearly speaks that the appellants' counsel were present at the time of hearing and they opposed the application, thus, it cannot be said that the said application was not in the knowledge of the appellants and opportunity of hearing was not provided to them. The learned counsel pointed out that the written statement filed by the Registrar High Court is not the written reply of the writ petitions filed by the appellants rather the same in fact was the reply of parawise comments filed

by the respondents and the respondents had no other way to rebut the contents of that written statement, therefore, by filing application they applied for deleting the names of the Registrars and rebut the version taken in the written statement. He further added that the documents brought on record by the respondents are attested by the Section Officer who was duly authorized to attest the same and the objection raised by the appellants in this regard is baseless. On a Court's query that the respondents have taken the stance in their written statements that their case is at par with Mr. M. Tabbasum Aftab Alvi's case (supra) and now how can they change their stance; he submitted that when the written statements were filed, the respondents were under the impression that in the case of Mr. M. Tabbasum Aftab Alvi, proper consultation was made; however, actual position came to their

knowledge on the disposal of the writ petition that consultation in the said case was not properly made, therefore, the said portions of the written statements may be skipped. He forcefully contended that the appellants have taken the stance that no documentary evidence to prove that the worthy President ever invited both the Hon'ble consultees for meeting, has been brought on record, whereas, the fact of the matter is that it remained a practice that the dignitaries are invited through telephonic call, hence, this argument is not of worth consideration. He stressed that the material available on record is sufficient to form the opinion that proper consultation had been made in the instant case and the appellants failed to point out any lacuna in the same, therefore, the learned High Court rightly dismissed the writ petitions. He also emphasized that extensive efforts were made by the worthy President for

joint meeting of the consultees but the then Hon'ble Chief Justice of the High Court was not willing to sit in the joint meeting, therefore, no other option was left with the worthy President except to consult with him through telephonic call. The superior Courts have declared the verbal consultation as valid; therefore, no objection can be raised in this regard. He forcefully argued that the appellants have placed reliance mainly on a note allegedly written by the Hon'ble Chief Justice of the High Court (the then). This note was not part of the consultation process rather the learned High Court for the first time discussed the same in the impugned judgment; therefore, no chance to rebut the said note was available to the respondents. Even otherwise, had any such note existed at the relevant time then the Registrar High Court would have filed the same along with the written statement or the

appellants might have also produced the same in evidence but they did not place on record any such note, therefore, the genuineness of the said note is suspicious which cannot be relied upon safely. He further added that Ch. Muhammad Munir was appointed as District and Sessions Judge on acting charge basis vide notification dated 04.07.2012. On 05.10.2016, he was appointed as Election Tribunal, whereas, under law only such person who is qualified and eligible for appointment as Judge of the High Court can be appointed as Election Tribunal on the recommendations of the Chief Justice of the High Court. Secondly, the Hon'ble Chief Justice of the High Court while keeping in mind that the appellant was performing the functions as District and Sessions Judge on acting charge basis since 04.07.2012 and his acting charge promotion was regularized vide notification dated 09.01.2016, recommended him for

appointment as Judge of the High Court, therefore, no one can raise objection on the eligibility of the appellant. In support of this contention the learned counsel referred to the findings recorded in paragraph No.58 of the case reported as *Al-Jehad Trust through Raeesul Mujahideen Habib-ul-Wahab-ul-Khairi and others v. Federation of Pakistan and others* [PLD 1996 SC 324]. He contended that the appellant was practically exercising the powers and functions of District and Sessions Judge w.e.f. 04.07.2012, therefore, he duly fell within the definition of District Judge as defined in section 3(15) of General Clauses Act and was fully eligible for appointment as Judge of the High Court. He referred to and relied upon the cases reported as *Muhammad Akbar v. Mst. Faziah Begum* [PLD 1982 SC (AJ&K) 62], *Sheikh Ashiq Hussain v. Central Government of Pakistan through Chief Settlement*

Commissioner Lahore and others [1991 SCMR 1658], *Syed Manzoor Hussain Gillani v. Sain Mullah, Advocate and 2 others* [PLD 1993 SC (AJ&K) 12], *Raja Muhammad Ashraf Khan Kayani v. Azad Govt. and 4 others* [1997 SCR 389], *Muhammad Rashid Khan v. Noor Muhammad Khan and 2 others* [2001 SCR 319], *Dr. Mir Alam Jan v. Dr. Muhammad Shahzad and others* [2008 SCMR 960], *Muhammad Riaz Khan v. Inspector General of Police and 19 others* [2010 SCR 131], *Muhammad Riaz v. Province of Punjab and others* [2014 CLC 817], *Maroof Baig v. Azad Government and 8 others* [2016 SCR 1359], *Dr. Azim-ur-Rehman Khan Meo v. Government of Sindh and another* [2004 SCMR 1299], *Al Jihad Trust through Raeesul Muijahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others* [PLD 1996 SC 324] and *Constitution petitions under Article 184(3) of the Constitution of*

Islamic Republic of Pakistan, 1973 [PLD 2015 SC 401].

9. Sardar Tahir Anwar Khan and Raja Ibrar Hussain Khan, Advocates, while appearing on behalf of the respondents strongly contended that in the summary moved by the worthy President to the Council, it has clearly been mentioned that proper consultation with the Hon'ble Chief Justices have been made, thus, the statement made in the summary, in view of the uppermost position of the office of the worthy President, cannot be disbelieved. They very forcefully contended that even the worthy President was not bound to bring on record any evidence in support of the statement made in the summary as the stance taken in the summary itself is sufficient proof that proper consultation was made. They further stated that no one from the Hon'ble consultees ever raised any objection that consultation has not been

made; therefore, no one can raise any objection regarding the consultation. They lastly added that the superior Courts have approved the mode of verbal consultation in the case reported as [NLR 1992 Cr.C 728], therefore, the objection raised by the appellants in this regard has no substance.

10. Ch. Shoukat Aziz, Advocate, the learned counsel for the appellant, Ch. Muhammad Munir, while adopting the arguments advanced by Raja Muhammad Hanif Khan, Advocate, further added that the appellant was appointed as Civil Judge on 30.03.2001, on the recommendations of Public Service Commission and was promoted as Additional District and Sessions Judge on 02.03.2007. On 04.07.2012, he was promoted on acting charge basis as District and Sessions Judge; therefore, under the provisions of Sub-Article 43 (2-A) clause (3)(b) of the

Constitution, he was fully eligible for appointment as Judge of the High Court as his length of service as District and Sessions Judge was not less than three (3) years. He further added that under the provisions of section 6(6) of the Azad Jammu and Kashmir Civil Servants Act, 1976, any civil servant who was appointed on acting charge or officiating basis should be confirmed from the date of occurrence of a permanent vacancy. As the appellant held the permanent vacant post of District and Sessions Judge Neelum on 09.07.2012, hence, his appointment/confirmation as District and Sessions Judge shall take effect from the said date.

11. Mr. Bashir Ahmed Mughal, Advocate, while appearing on behalf of Council adopted the arguments advanced by the other counsel for the respondents as well as counsel for the appellant, Ch. Muhammad Munir.

12. We have given our anxious consideration to the arguments advanced on either side and have also perused the record and considered the case law referred to by the learned counsel for the parties. From both sides lengthy arguments have been advanced, however, if the same are summarized then following points emerge for resolution: -

- i. Whether the consultative process made in the case in hand is in consonance with the provisions of Article 43(2-A) of the Constitution and the dictum laid down by the superior Courts;
- ii. Whether the Rule of Primacy is attracted in the instant case or not;
- iii. Whether the learned High Court impliedly convinced that the consultative process in the instant case has been made in deviation of the relevant law on the subject;
- iv. Whether the impugned judgment is self-contradictory and based on assumptions; and,

v. Whether the appellant, Ch. Muhammad Munir was eligible to be appointed as Judge of the High Court.

The controversy involved in the lis relates to the appointment of five (5) Judges in the High Court. As the appointment of a Judge in the High Court is a Constitutional appointment and a mode thereof is provided in the Constitution itself, therefore, we deem it appropriate to refer the relevant Constitutional provision, i.e. Article 43(2-A) of the Constitution at first. (It may be clarified here that the disputed appointments in the High Court were made under section 43(2-A) of the Interim Constitution Act, 1974 and later on through 13th amendment many amendments were introduced in the Act, however, section 43(2-A) of the Interim Constitution Act remained intact except for the word 'Section' the word 'Article' was substituted). The relevant Constitutional provision reads as follows: -

“43(2-A) A Judge of the High Court shall be appointed by the President on the advice of the Council and after consultation-

- (a) with the Chief Justice of Azad Jammu and Kashmir; and
- (b) except where the appointment is that of Chief Justice, with the Chief Justice of the High Court.”

The phraseology of the Constitutional provision is clear that the worthy President is the appointing authority and the appointment of a Judge in the High Court shall be made on the advice of the Council and after consultation with the Chief Justice of Azad Jammu and Kashmir and Chief Justice of the High Court. The words ‘after consultation’ cited in the Constitutional provision are very significant, provide a specific process of consultation for appointment of a Judge in the High Court. As the object and interpretation of word ‘consultation’ have already been elaborated by the superior Courts

in a number of cases comprehensively and further deliberation is no more required; hence, we refer here few reports, relevant to the point. In a renowned judgment of the apex Court of Pakistan on the point reported as *Al Jihad Trust through Raeesul Muijahideen Habib-ul-Wahabb-ul-Khairi and others v. Federation of Pakistan and others* [PLD 1996 SC 324]; the words 'after consultation' has been interpreted in the following manners: -

"8. Now I take up our conclusions Nos.(i) and (ii) in short order, which are interlinked and where in nutshell it is held that the words 'after consultation' occurring in Articles 177 and 193 of the Constitution, connote that the consultation, should be effective, meaningful, purposive, consensus-oriented, leaving no room for complaint of arbitrariness or unfair play. The opinion of the chief Justice of Pakistan and the Chief Justice of High Court regarding

fitness and suitability of the candidate for judgeship is entitled to be accepted in the absence of very sound reasons to be recorded by the appointing authority, and if the President/Executive appoints a candidate found to be unfit by the Chief Justice of Pakistan and Chief Justice of High Court concerned, it will not be a proper exercise of power under the relevant Articles of the Constitution.

The words 'after consultation' mentioned in Articles 177 and 193 of the Constitution envisage participatory consultative process between consultees and the appointing authority. The Chief Justice of Pakistan, as also the Chief Justice of High Court concerned have the best expert knowledge about suitability of a person to be appointed as Judge of the High Court. The other consultee, namely, the Governor of the Province may provide adequate information about character of the candidate. All the

consultees contemplated in the abovementioned provision of the Constitution have vital role to play in the matter. The opinion of the Chief Justice of Pakistan, however, would deserve significant importance to select best persons for securing the independence of judiciary. The opinion of the Chief Justice of High Court and the Chief Justice of Pakistan having direct knowledge about the suitability of the candidate can therefore be no ignored for any extraneous reason, and in case of disagreement, the appointing authority is required to record sound reasons which will be justiciable. It, therefore, follows that if a person is declared unfit by the Chief Justice of the High Court, as also the Chief Justice of Pakistan, for appointment as Judge, he cannot be validly appointed, and if appointed it will not be a proper exercise of the jurisdiction vested in the appointing authority.

The perusal of Article 193 of the Constitution shows that the appointment of a Judge of High Court is made by the President after consultation with the Chief Justice of Pakistan, the Governor concerned and the Chief Justice of the High court (except where the appointment is that of a Chief Justice). The President has to consult three persons when making appointing of a Judge. The appointment of a Judge is a constitutional appointment and a mode thereof is provided in the Constitution itself. The consultation required by the President from the consultees cannot be deemed to be a formality. Learned counsel for the parties, as also the learned counsel who assisted the Court as amicus curiae were unanimous in submitting that the consultory process envisaged in the above-noted provision is mandatory and valid appointment of a Judge or his confirmation cannot be made

without resorting to consultory process. The Chief Justice of the High Court and the Chief Justice of Pakistan if give a positive opinion about the suitability of a candidate, but the Governor on the basis of information received about his antecedents gives negative opinion, the President is empowered to decline the appointment of the candidate. On the other hand, if the Chief Justice of the High Court and the Chief Justice of Pakistan give a negative opinion about a candidate on the basis of their expert opinion that candidate cannot be appointed and in this way the opinion of the Chief Justice cannot be ignored and due weight is to be given to his opinion. The extended meaning given to the word 'consultation' is mainly for the reason that it secures the independence of Judiciary. The due deference is to be attached to the opinion of the Chief Justice of Pakistan and the Chief Justice of the High Court due to their exalted

position as envisaged in Islam, so that the appointments of the Judges are made in a transparent manner on the basis of the merits alone. In *Government of Sindh v. Sharaf Faridi* PLD 1994 SC 105 this court while dealing with the subject of independence of Judiciary held---

'that every Judge is free to decide matters before him in accordance with his assessment of the facts and his understanding of the law without improper influences, inducements or pressures, direct or indirect, from any quarter or for any reason; and

The Judiciary is independent of the Executive and legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature.'

This object can only be achieved if Judges of integrity having sound knowledge in law are appointed on the basis of the expert opinion given by the Chief Justice of the High Court

concerned and the Chief Justice of Pakistan. The word 'consultation' used in the relevant Article of the Constitution relating to Judiciary must be read in its context and being a mandatory requirement has to be effective, meaningful, purposive and consensus-oriented, to have best persons appointed as Judges of the superior Courts and to secure the independence of Judiciary."

The same interpretation has been adopted by this Court in the case reported as *Muhammad Younas Tahir and another v. Shoukat Aziz Advocate Muzaffarabad and others* [2012 SCR 213]. In the said report, this Court after discussing almost all the relevant law on the subject has also interpreted the mode of consultation etc., inclusively. For better appreciation the relevant findings are reproduced hereinunder: -

"23. The word 'consultation' used in section 42(4) and section 43(2-A)

of the Act, 1974 is used in similar sense as used in Articles 177 and 193 the Constitution of 1973. The Supreme Court of Pakistan has held that the consultation should be effective, meaningful, purposive, consensus oriented, leaving no room for complaint or arbitrariness or unfair play. The opinion of the Chief Justice of Pakistan and the Chief Justice of a High Court as to the fitness and suitability of a candidate for Judgeship is to be accepted in absence of sound reasons to be recorded by the President/Executive. While applying the above criteria, we will decide the matter in hand.”

24 to 32.....

33. The phraseology employed in section 43(2-A) of the Act, 1994 when analyzed in the light of referred authorities, denotes that before issuing the appointment order, the President has to consult the two Chief Justices and seek advice from the Council. Now the question arises,

whether consultation with both the Chief Justices is required to be made at the same time or it is the sweet-will of the President to consult one Chief Justice at one time and after a lapse of considerable time, consult the other Chief Justice. In our view, there is no ambiguity in the provisions of constitution which can rightly be interpreted that the scheme of Constitution is to consult both the Chief Justice at the same time otherwise the consultation will be meaningless. Admittedly in this case the consultation with both the Chief Justices was not simultaneous but at different times involving a period of more than one year, it cannot be said a valid consultation, especially after the elevation of the Chief Justice of the High Court as Judge of the Supreme Court, no consultation was made with the Chief Justice of the High Court. The appointment of a Judge of Judge in the High Court has to be made when there is a vacancy and both the Chief

Justices, i.e. the Chief Justice of the High Court and the Chief Justice of Azad Jammu and Kashmir have to be consulted at the same time. The process of appointment of Judges has to be initiated by the President because he has to consult the relevant consultees who are the Chief Justices. The argument that the consultation with one person in different capacities can be made on two different times is against the prudence and canons of interpretation. The relevant time for consulting the two Chief Justices is when there is a vacancy and the President initiates the process for the appointment of a Judge. In the present case the President initiated the process for appointment of Judge in the month of September, 2005 and both the Chief Justices sent the panels in the month of November/December, 2005. The Council was to issue the advice on the basis of consultation made by the President with both the Chief

Justices in November/December, 2005 and the recommendations made thereof by two Chief Justices in the written form to the President at the same time was a valid consultation. The recommendations of Chief Justice of the high Court on a particular date and recommendations of the Chief Justice of Azad Jammu and Kashmir after one year, cannot be termed as a valid consultation. The time for consultation is material in the process. The panel sent by one Chief Justice of the High Court one year back cannot be treated a valid consultation particularly when the Chief Justice of Azad Jammu and Kashmir had not recommended the persons recommended by the Chief Justice of the High Court at the relevant time."

After survey of the case law referred to hereinabove, sense becomes clear that consultation with the Chief Justice of Azad Jammu and Kashmir and Chief Justice of the

High Court is mandatory Constitutional requirement which must be effective, meaningful, purposive, consensus-oriented, leaving no room for complaint of arbitrariness or unfair play. The President shall initiate the process of consultation and the appointment of a Judge in the High Court shall be made after consultation, as prescribed by law, with both the Chief Justices at the same time, otherwise the process of consultation will be meaningless. The plain reading of the case law (supra), also shows that the worthy President has to play the role of a bridge among the consultees to achieve the goal of consensus.

Before parting with this paragraph, we would like to observe here that in the impugned judgment the learned High Court consulted the dictionary meanings to interpret the word 'consultation', whereas, this word has already been interpreted in a series of judgments by the

superior Courts and in view of the doctrine of *stare decisis* if the judicial authorities have consistently given a particular meaning to a word for a long period the same should be adopted. So, we agree with the submission made by *Sardar Shamshad Hussain Khan, Advocate*, that the learned High Court while interpreting the word 'consultation' ignored the settled principle of law laid down by the superior Courts. In this regard, he rightly referred to and relied upon the case reported as *Mst. Zainab Bibi and others v. Mst. Bilqis Bibi and others* [PLD 1981 SC 56], wherein while dealing with the proposition it has been held that: -

“On the other hand. Mr. Ihsanul Haq submitted that we should not overrule the law laid down by a long line of eminent Judges over a period of more than a century. This very point was examined by this Court in *Mian Muhammad v. Ghulam Mustafa* PLD 1973 SC 394, where the

question was of the meaning of the word '*serai*'. The respondent on the interpretation placed on this word by High Courts, and his submission was that the interpretation thus placed on the word for a long period should not be disturbed by this Court. In accepting this plea Anwarul Haq, J. (as he then was, now the Chief Justice) observed at page 494 :-

'before we conclude, we may mention a point raised by the learned counsel for the respondent that, in the absence of any compelling reason to the contrary, we ought to maintain the interpretation which has been consistently given by judicial authorities to the term '*serai*', as any variation at this stage would have the effect of unsettling valuable property rights which have accrued to various parties under the law of pre-emption in respect of buildings which fall within or outside the popular meaning of the term '*serai*'.

We consider that there is substance in this submission, as the doctrine of *stare decisis* does apply to a matter of this kind, when judicial authorities, at least from 1895 onwards, have consistently given a particular meaning to the term '*serai*,

We respectfully agree with these observations and we would not overrule a view which goes back more than a hundred years to *Zuburdust Khan's case.*"

13. In the light of the relevant law on the subject, discussed hereinabove, although we have to resolve the points agitated before us and formulated in the preceding paragraph, however, before attending to the same we would like to consider an argument advanced with vehemence by Sardar Tahir Anwar Khan and Raja Ibrar Hussain, Advocates, the learned counsel for the respondents that in the matter in hand as the worthy President has mentioned

in the summary sent to the Council, that proper consultation has been made, therefore, in view of the uppermost position of the office of the worthy President neither any objection can be raised regarding the consultative process nor the matter can be scrutinized. The argument appears to be based on a glaring misconception as no one is above law and all the offices, from the bottom to the top, are bound to perform their functions in accordance with law. This is the matter of appointment of the Judges in the High Court which bears the close nexus with the independence of judiciary; therefore, the same cannot be taken lightly. As the appellants have challenged the appointments of the respondents on the ground that consultation has not been conducted in the manners prescribed by law, therefore, the Court is fully empowered to scrutinize the consultative process to ascertain; whether the same has

been made in view of the spirit of the Constitutional provision as well as the guidelines given by this Court in the case law referred to hereinabove or not. It may be observed here that irrespective of the fact that the authority is worthy President or any other, the law laid down by this Court is binding and Constitution confers an obligation upon all the executive and the judicial authorities throughout in the State to act in the aid of this Court. Mere mentioning in the summary by the worthy President that consultation has properly been made, doesn't mean that the Courts cannot look into the legality or correctness of the process. In the case reported as *Azad Government and others v. Sardar Javed Naz and others* [2016 SCR 1], this Court while dealing with the proposition as raised by the learned counsel for the respondents, herein, held that:-

“12. As after detailed discussion, we have observed in the preceding paragraphs, that the directions issued by this Court in *Bashir Ahmed Mughal's* case (supra), have not been complied with in letter and spirit, therefore, the findings recorded by the High Court that through the impugned legislation it appears that the legislature tried to frustrate the judgment of the apex Court, are not without substance. It may be observed here that under the Constitutional provision, the judgment of this Court is binding upon each and every organ of the State and no deviation can be made from it irrespective of the fact that the Authority is President or the Prime Minister of the State. The pronouncement of the Supreme Court on a point of law is the law declared, and unless it is altered or overruled by the Supreme Court itself, there is no option left with all the executive and judicial authorities including the President and the Prime

Minister except to implement the same. It may also be observed here that it cannot be allowed to erode or nullify the judgment of this Court through executive or administrative instrument. In this regard, the Constitutional provision, i.e., section 42-A, of the Act, 1974 is comprehensive in nature and self-supplementary which need not to be supported by any authority.”

One of the learned counsel for the respondents, Sardar Tahir Anwar Khan, Advocate, argued that as in the summary it has been mentioned that proper consultation has been made, therefore, the office of worthy President was not even under obligation to bring on record any document to substantiate this version. We regret such a version, if the same is approved it may amount to compromise the independence of judiciary as in view of the settled principle of law, the consultation must be effective, meaningful, purposive, consensus

oriented, simultaneous, leaving no room for complaint of arbitrariness or unfair play; and if questions are raised/lacunae are pointed out in the consultative process, it is the responsibility of the concerned office/authority to substantiate that how the requirement of law has been fulfilled. We may also observe here that although it has been mentioned in the summary that consultation has been made, but if the objections are raised in respect of the consultative process then it is the job of the Court to determine; whether; the consultation was effective, meaningful, purposive, consensus oriented, simultaneous, leaving no room for complaint or not, and it cannot be said that the process conducted by the worthy President cannot be scrutinized. The learned Advocate in support of his contention referred to the case reported as [NLR 1992 Cr.C 728], however, no such report has been found at the

page referred to by him. Even otherwise, after the year 1992, the law has much been developed on the point of consultation to elude any sort of arbitrariness and unfair play; for instance, we may refer here *Muhammad Younas Tahir's* case (supra).

14. Now we take up the most crucial point involved in the matter in hand, i.e. whether the consultative process conducted in the case in hand is in consonance with the provisions of Article 43(2-A) of the Constitution and the guidelines/dictum laid down by the superior Courts? The record shows that initially three (3) positions became vacant in the High Court and a consultative process for appointments against the same was initiated by the worthy President in the year 2016, however, due to the retirement of one of the consultees, i.e. Chief Justice of Azad Jammu and Kashmir and elevation of the other consultee, i.e. Chief

Justice of the High Court, as Judge Supreme Court, the same could not be finalized. On 05.04.2017, the worthy President reinitiated the process and wrote a letter to the Chief Justice of the High Court (the then) for sending the panel of eligible persons for appointment as Judges in the High Court against three (3) vacant positions. The learned Chief Justice of the High Court (the then) on 31.08.2017, forwarded a panel consisting of the names of ten (10) Advocates. The worthy President forwarded the said panel to the Hon'ble Chief Justice of Azad Jammu and Kashmir (the then) on 06.09.2017. In the meantime, the number of vacant positions increased as two more positions had become available, whereupon, the worthy President sent another letter to the then learned Chief Justice of the High Court on 11.11.2017, that a list consisting of three (3) nominees against each position is required as

the panel earlier sent by him is insufficient. The learned Chief Justice of the High Court (the then) in response to the said letter forwarded five (5) more names vide its letter dated 08.12.2017. On 12.12.2017, the list of the panel sent by the learned Chief Justice of the High Court (the then) was again forwarded to the Hon'ble Chief Justice of Azad Jammu and Kashmir (the then) by the worthy President. The Hon'ble Chief Justice of Azad Jammu and Kashmir (the then) through its letter dated 23.12.2017, included nine (9) more names in the list engendered by the learned Chief Justice of the High Court (the then). The letter of the Hon'ble Chief Justice of Azad Jammu and Kashmir is very much important as not only the names of few persons were added through this letter in the list sent by the worthy President but without pointing out the persons an objection has also been raised on the suitability

of some of the persons nominated by the Chief Justice of the High Court. For better appreciation the relevant portion of the letter is reproduced here which reads as under: -

“Although in the list furnished by the learned Chief Justice High Court some nominees are suitable but many are lacking the required standard.”

Another vital aspect of this letter is that the guidelines for proper consultation provided by law have also been highlighted and it has been observed that mere furnishing of list does not amount to consultation. For better understanding the relevant portions of the letter are reproduced hereinunder: -

“.... According to the spirit of the Constitution and the enunciated principle of law consultation with plurality instead of individual’s opinion is required.

....

It is further submitted that according to the enunciated principle of law, consultation means effective, meaningful, consensus oriented and simultaneous which require joint meeting and deliberation of the concerned. Hence mere furnishing of list does not amount to consultation.”

After obtaining the lists of the nominees from the concerned consultees; whether, any deliberation has been made on the names of the nominees; in this regard the record is quite silent. A deep deliberation was required in view of the relevant law on the subject as had been pointed out in the letter of the Hon'ble Chief Justice of Azad Jammu and Kashmir (the then) and the necessity of the deliberation had further been augmented in view of the objection raised by one of the consultees on the suitability of some nominees. In view of the record, on 04.01.2018, without deliberation on the names

of the nominees, as is required by law, the worthy President prepared a summary and forwarded the list of five (5) nominees to the Council for seeking advice. On 10.01.2018, the Federal Minister for Kashmir Affairs & Gilgit Baltistan through a letter intimated the worthy President that the Prime Minister of Pakistan/Chairman Council has sought the original correspondence of the consultative process; therefore, the same may be provided to the Council to be placed before the Chairman Council. The record speaks that the office of the worthy President in response to the said letter sent the lists furnished by both the Hon'ble consultees along with the correspondence, discussed hereinabove in detail. Except this correspondence nothing was sent for consideration to the Chairman Council which itself clarifies that this correspondence was the sole piece in respect of the consultative

process for appointment of the Judges in the High Court. Even during the course of arguments, a query was also made to the learned counsel for the respondents, Raja Muhammad Hanif Khan, Advocate, who very frankly conceded that except this correspondence, no other document in respect of consultative process, is available on record. On 16.04.2018, the Council Secretariat informed the worthy President through a letter that the summary sent by him has been rejected by the Chairman Council on the ground that the same is not found in accordance with the judgment of this Court delivered in *Muhammad Younas Tahir's case* (supra). It will be advantageous to reproduce here the relevant portion of the said letter sent by the Council which reads as under: -

“(ii) In accordance with the judgment of the Supreme Court of Azad Jammu and Kashmir in the case

of Muhammad Younis Tahir (PLD 2012 SC AJ&K 42) the Chief Justice of the High Court must also be consulted; whereas,

(iii) Such consultations by the President with the Chief Justices of the Supreme Court and High Court of Azad Jammu and Kashmir will be consistent with the principle elaborated in above mentioned judgment only if they are 'effective, meaningful, purposive, consensus-oriented, leave no room for complaint or arbitrariness or unfair play.' However,

(iv) In the instant case all five persons recommended by the President of Azad Jammu and Kashmir for appointment as judges of the High Court of Azad Jammu and Kashmir are informed to be the nominees of the Chief Justice of the Supreme Court of Azad Jammu and Kashmir, with none of them having been recommended by the Chief

Justice of the High Court of Azad Jammu and Kashmir.

2. The Chairman AJ&K Council/Prime Minister of Pakistan has been pleased to approve the proposal to advise you to furnish a fresh panel consisting of at least fifteen (15) eligible candidates for appointment of five (05) Judges of High Court of AJ&K, after effective, meaningful, purposive and consensus oriented consultation, leaving no room for complaint."

In the letter (supra), fresh panel was sought from the office of worthy President after making effective, meaningful, purposive and consensus-oriented consultation, leaving no room for complaint; however, no such material is available on record to demonstrate that the advise of the Council as well as the requirement of law was complied with. It postulates from the record that on 25.04.2018, the worthy President again sent the summary to the

Council seeking advice while observing that the consultation previously made is valid one and the same has been re-confirmed by the Hon'ble consultees. The relevant paragraph of the subsequent summary reads as under: -

"4. It is further stated that consultation with the Chief Justice of the Supreme Court of Azad Jammu and Kashmir and the Chief Justice of the High Court of Azad Jammu and Kashmir conducted under sub-section 2-A of section 43 of Azad Jammu and Kashmir Interim Constitution Act 1974 remain valid and this has been re-confirmed by the two honourable Chief Justices."

In the subsequent summary, the names of fifteen (15) candidates have been incorporated and the names of some nominees which were included in the previous summary were deleted. If the previous consultation was valid and reconfirmed then why the names included in the previous summary were deleted. In this regard,

nothing is available on record to clarify the position, moreover, another novel aspect of this summary is that while sending the panel it has been mentioned that following persons, in order of priority, are eligible to be appointed as Judge of the High Court. However, the Hon'ble Chairman Council while believing that proper consultation has been made, approved the names of the persons recommended, in view of the order of priority set by the worthy President himself and ultimately the notification for appointment in question was issued on 21.05.2018.

When the consultation process, discussed hereinabove, is adjudged on the touchstone of the relevant law, it appears that in the instant matter many rooms for complaint of arbitrariness or unfair play are found as nothing is available on record to show that any effort was ever made to ensure the strict compliance

of the constitutional provisions as well as the principle of law laid down by the superior Courts. In *Muhammad Younas Tahir's* case (supra), this Court has held that according to the scheme of law, the consultation with both the Chief Justices should be made at the one and the same time, otherwise the same will be meaningless and the Hon'ble Chief Justice of Azad Jammu and Kashmir (the then) in the matter in hand while sending the list of the nominees also specifically mentioned the word 'simultaneous' and further emphasized that joint meeting for deliberation is required. In the case in hand, the worthy President lastly on 11.11.2017, sought the list of nominees from the learned Chief Justice of the High Court (the then) and thereafter on 12.12.2017, sent a letter to the Hon'ble Chief Justice of Azad Jammu and Kashmir (the then) for consultation. This Court in *Muhammad Younas Tahir's* case

(supra) has already disapproved the said practice as has been adopted in the instant case. It appears from the record that the appointing authority despite the fact that the Hon'ble Chief Justice of Azad Jammu and Kashmir in his letter highlighted the requirement of law and the Council while rejecting the summary specifically mentioned that the consultation should be made in the light of the guidelines given in *Muhammad Younas Tahir's* case (supra), has not taken any step and ignored the observations of the relevant quarters. In our considered view, after rejection of the summary, the worthy President should have taken the solid steps to remove the opacities pointed out in the letter sent by the Council, but unfortunately no such step has been taken as is reflecting from the record. One of the learned counsel for the respondents, Raja Muhammad Hanif Khan, Advocate, during the

course of arguments took the different pleas, as on a Court's query, he initially stated that the Rule of Primacy has been applied in the case, but later on, turned around and submitted that the Rule of Primacy has not been applied in the matter rather the appointments have been made after proper consultation; thereafter at last he again stated that the worthy President made the extensive efforts for joint meeting but the learned Chief Justice of the High Court (the then) was not willing to sit in the meeting. In support of any of the pleas, no evidence has been placed on record. From the correspondence regarding the consultative process available on record, the requirement of law is not fulfilled. In the case reported as *Mr. Tabassum Aftab Alvi v. Raja Waseem Younis & 6 others* [2020 SCR 1], the name of the learned Judge was recommended by the Chief Justice of Azad Jammu and Kashmir and not by the Chief

Justice of the High Court; worthy President sent a letter to the learned Chief Justice of the High Court (the then) in this regard and in response thereof, the learned Chief Justice of the High Court (the then) wrote a letter stating therein, that Mr. M. Tabassum Aftab Alvi, Advocate qualifies for appointment as a Judge of the High Court and there is nothing against him in the official record, but when the appointment of the learned Judge was challenged and matter came up before this Court and it was held that the letter of the learned Chief Justice of the High Court does not fulfill the requirement of effective, meaningful, purposive and consensus-oriented consultation. This Court also observed that except obtaining the aforesaid letter the worthy President has not attempted to hold any meeting or adopted any other mode for having an effective, meaningful purposive and consensus-oriented consultation.

In the present case, the situation is worse than the *Aftab Alvi's* case (supra), as in the instant case even no script of such kind is found and except the correspondence, discussed in the preceding paragraph, nothing has been brought on record to show that the worthy President had ever made any effort for having the consultation as required by law. The relevant findings recorded in the referred report read as under: -

“This script merely speaks that the appellant, herein, like others, is qualified i.e. has got required length of practice, not crossed the age etc., but it does not disclose whether the appellant, herein, is comparatively suitable or preferable or has such comparative qualities to be preferred among others. It is also borne out from the record and the pleadings of the parties that except this script the President has not attempted to hold any meeting or adopted any other

mode for having an effective, meaningful, purposive and consensus-oriented consultation.”

It may be observed here that no specific mode has been provided in the Constitution to make the consultation, however, the Court shall have to scrutinize in each case whether the requisite consultation has taken place or not, keeping in view the substance of the events to reach the conclusion that the consultation is meaningful, purposive and consensus-oriented. The High Court of Madras in a case reported as *R. Pushpam and another v. The State of Madras, represented by the Secretary, Local Administration Department, Fort St. George, Madras, and another* [AIR 1953 Madras 392], while interpreting the mode of consultation held that: -

The word “consult” is so familiar that it often includes the grasp of easy and exact definition. In the Law

Lexicon by P. Ramanatha Aiyar it is stated as follows:

'Consultations always require two persons at least; deliberations may be carried on either with a man's self or with numbers; an individual may consult with one or many; assemblies commonly deliberate; advice and information are given and received in consultations; doubts, difficulties, and objections are stated and removed in deliberations. Those who have to co-operate must frequently consult together; those who have serious measures to decide upon must coolly deliberate.'

The word "consult" was subject of a judicial scrutiny in — 'Fletcher v. Minister of Town Planning', 1947-2-AU E. R. 496. The question arose in connection with an application taken out for quashing the order made by the Minister for Town and County Planning. The Minister designated an

area of land as the site of a proposed new Town. It was contended that the requirements of the New Towns Act, 1946, had not been complied with in relation to the making of the order, in that there was no "consultation" within the meaning of S. 1 (1) of the Act between the Minister and the Local authorities before the making of the order designating the area of land in question as site of the proposed new town. On the facts the learned Judge held that there was the requisite consultation; but in dealing with the question at page 500, the learned Judge observed:

'The word 'consultation' is one that is in general use and that is well understood. No useful purpose would, in my view, be served by formulating words of definition. Nor would it be appropriate to seek to lay down the manner in which the consultation must take place. The Act does not prescribe any particular form of consultation. If

a complaint is made of failure to consult, it will be for the Court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held. Consultation may often be a somewhat continuous process and the happenings at one meeting may form the background of a later one.'

It is clear from the aforesaid observations that the Court will have to scrutinize in each case whether the requisite consultation has taken place, having regard to the substance of the events. The word "consult" implies a conference, of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, a satisfactory solution. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is

important. It is necessary that the consultation, shall be directed to the essential points and to the core of the subject involved in the discussions. The consultation must enable the consultor to consider the pros and cons of the question before coming to a decision.”

The same view was reiterated by the Lahore High Court in the case reported as *Electric Equipment Manufacturing Co. Ltd., Sheikhupura v. Government of the Punjab and another* [1979 PLC 416].

The respondents have brought on record a photocopy of a paper in which some dates have been mentioned to substantiate that on the said dates, the meetings as well as telephonic conversation in connection with the consultation were held. This paper is not supported by any documentation, i.e. minutes of meeting or follow-up letters etc. and even the same does not speak that any joint meeting was

ever held; therefore, this document does not fulfill the requirement of law. Even otherwise, mostly the entries recorded in this document are irrelevant as entry No.1 to 11 are relevant to the period prior to the appointments of the consultees concerned to the present matter, some entries relate to the period prior to the rejection of the summary by the Chairman Council and some relate to the period when the summary was pending before the Council and the issue of consultation was no more alive. A summary of call history of the personal mobile number of the worthy President has also been brought on record to substantiate that the worthy President on many occasions consult with the learned Chief Justice of the High Court (the then) through telephonic calls, however, it is not sufficient to prove that the calls were made in connection with the consultation or any other purpose or the consultation as prescribed

by law, was made through telephonic calls. It may be observed here that the approval of these uncertain documents in such a sensitive issue, which relates to the independence of judiciary, may amount to open a way for complaints as well as unfair play in future which is against the spirit of Constitution and the settled principle of law. The learned High Court has also formulated a question in paragraph No.31 of the impugned judgment regarding the telephonic conversation to the effect that "what had been both the dignitaries talking about", but without any rational explanation surprisingly presumed that the matter of appointment of Judges was pending between the two offices, therefore, we are convinced that reasonable passing of information between the concerned authorities has been done. The findings of the High Court are itself a question mark on the mode allegedly adopted for

consultation in the present case. The relevant findings of the High Court, for better appreciation, are reproduced hereunder: -

“It shows that Muhammad Masood Khan (Hon’ble President) is registered with Cell Phone Company U-Fone with number 03336-5042686. As many as 5 calls have been made from this number to Cell Phone number 0301-5502672 on 24.04.2018 and this Cell Phone number is undoubtedly under the use of Hon’ble Chief Justice High Court of AJ&K. Although, Chief Justice High Court of AJ&K is not a party in the supra-titled writ petitions and his version in shape of written statement is not on record, however, the question is that what had been both the dignitaries talking about during their conversation on 24.04.2018, particularly, when the matter of appointment of Judges in the High Court was at issue between the two exalted offices. I am convinced with the conclusion

displayed in M.D Tahir's case (1989 CLC 1369), wherein it has been held that as long as, there is reasonable passing of information, on the matter in issue between the authorities concerned, the requirement of law is satisfied. It is not at all necessary that a consensus between the Judicial consultees must be reached; rather, if a consultation as indicated above, is effected, it satisfies the requirement of law...."

(underlining is ours)

The findings (supra), indicate that the learned Judges in the High Court themselves were not satisfied; whether the telephonic conversation was made in connection with the consultation or for any other purpose. In the impugned judgment, the learned Judge has also observed that the procedure adopted in the case in hand for consultation is not in accordance with the guidelines given in *Muhammad Younas Tahir's* case (supra), but despite that allowed such

process to remain in field. We make it clear that if the High Court had reached the conclusion that the dictum laid down by this Court has not been followed in the consultative process in letter and spirit then it was the constitutional obligation of the High Court to abolish such process; but the learned High Court tried to give the legal cover to such an invalid process which is very undesirable. The findings of the High Court, for proper appreciation, are reproduced hereinunder: -

“It is further observed that verbal consultation on telephone by the President with Chief Justice of AJ&K/HC is not a proper procedure to be followed. Instead of telephonic calls, the President had a better alternate option of consultations with Chief Justice High Court of AJ&K by sending a summary in black and white by elaborating merits and demerits and after obtaining opinion of Hon’ble Chief Justice High Court,

the President was supposed to forward the panel to the Chairman AJ&K Council for seeking advice. It is, therefore, directed that a consultation in writing with both the Judicial consultees shall be followed in future as has been prescribed in Al-Jehad Trust's case and Muhammad Younas Tahir's case..."

(underlining is ours)

It may be observed here that the consequences of such findings may be very hazardous, however, while showing the restraint, we do not pass any harsh order and expect that the learned High Court shall take care in future while dealing with the matter of constitutional obligations. The learned High Court in the impugned judgment has also discussed and reproduced a note written by the learned Chief Justice of the High Court (the then) that no consultation on the names of three (3) newly appointed Judges was ever made with him. This

document was not produced by any of the parties rather the learned High Court itself obtained the same from the official record, as is apparent from the findings recorded in the impugned judgment, similarly, the Registrar High Court, who was party in the line of respondents, filed a written statement which is part of the record, in which the same wording has been used as has been used in the note of the learned Chief Justice (the then). Although, we do not place any reliance on the alleged note or the written statement filed by the Registrar, however, we deem it proper to observe here that due to nonconducting the consultation according to law laid down in *Muhammad Younas Tahir's* case (supra), a door for suchlike complaints has been opened. If the consultative process was conducted in a transparent manner, according to the principle of law enunciated in the referred report, then no room

for such complaints would have become available to any of the person/authority. We condemn such defective consultative process and no legal cover can be given to the same. The learned counsel for the respondents have moved an application for summoning the record of the note of the Chief Justice of the High Court and the other side has moved an application for recording the statement of the Chief Justice of the High Court (the then), however, in view of the peculiar facts of the case, we do not intend to make such exercise as the record of the consultative process is available to resolve the controversy involved in the matter. Therefore, these applications stand disposed of accordingly.

We, with heavy heart observe here that due to repeated deviations, made by the appointing authority from the settled law, the institution of Judiciary as well as public at large

is being suffered since long, hence, such practice must be avoided otherwise the law will take its own course. We again clarify here that under the constitutional provisions, the principle of law enunciated by this Court is binding upon each and every organ of the State and no deviation can be made from it irrespective of the fact that the Authority is President or the Prime Minister of the State or any other State subject and no option is left with any of the authorities except to implement the same.

In the light of the discussion (*supra*), we have arrived at the conclusion that the consultation in the present matter has not been made in accordance with the spirit of the provisions of Article 43(2-A) of the Constitution and the dictum laid down by the superior Courts. In the findings recorded in the preceding paragraph, it has also been observed

that the impugned judgment is self-contradictory, against law and based on assumptions; thus, no deliberation on the ancillary issues is required.

15. Although, when we have formed a definite opinion, hereinabove, that in the instant case the consultation has not been made in accordance with law and deliberation on the other points agitated by the counsel for the parties shall not serve any useful purpose, however, as one of the learned counsel for the respondents, Raja Muhammad Hanif Khan, Advocate, on a Court's query initially claimed the Rule of Primacy and later on turned around, therefore, to avoid any sort of ambiguity, we would like to consider the point; whether the Rule of Primacy is attracted in the instant case or not? The record shows that the learned High Court in the impugned judgment has also attended to this point and observed in

paragraph No.42 of the impugned judgment that Rule of Primacy is not attracted in the present case. The respondents have not challenged these findings of the High Court, meaning thereby that the same have attained finality. Even otherwise, under law to achieve the goal of mandatory, effective, meaningful, purposive and consensus-oriented consultation, the first priority is to develop the consensus between the consultees by mutual discussion of the merits and demerits of the concerned candidates, however, after making all the possible efforts for developing the consensus between the consultees if the opinion of the Chief Justice of Azad Jammu and Kashmir is not supported by the Chief Justice of the High Court, then the opinion of Chief Justice of Azad Jammu and Kashmir shall be given primacy. In the instant case, nothing is available on record to show that for achieving the object of the

consultation, as prescribed by law, any effort was ever made as has been discussed in the preceding paragraph. On the point of Rule of Primacy, comprehensive discussion has been made in the case reported as *Sindh High Court Bar Association through its Secretary and another v. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others* [PLD 2009 SC 879] wherein it has been held that: -

“197. On a perusal of the above case-law, some proposition emerge very clearly: The Chief Justice of Pakistan is the *pater familias*, i.e. the head of the judiciary, therefore, his view definitely deserve due deference;; the recommendation of the chief Justice of Pakistan in non-justiciable for the reasons discussed in the Supreme Court Bar Association’s case reproduced above; and last, but not the least, non-justiciability of the opinion of the Chief Justice of Pakistan is inextricably linked with the

independence of judiciary. Correct, that the consultation envisaged by Articles 177 and 193 of the Constitution, as interpreted in Al-Jehad Trust case, has to be effective, meaningful, purposive, consensus-oriented, leaving no room for complaint of arbitrariness or unfair play; it was a participatory consultative process between the consultees and also with the executive; and the views of the two judicial consultees would be binding on the executive in absence of strong reasons to be recorded in writing, which would be justiciable; however, to make the opinion of the Chief Justice of Pakistan justiciable on the ground that it is not fully supported by the opinion of the Chief Justice of the concerned High Court is a proposition, which cannot be countenanced on account of its being violative of the principle of independence of judiciary. At the same time, it is necessary that to achieve the primacy objective of mandatory, effective, meaningful, purposive and consensus-oriented consultation, by all means the first priority has to be directed to evolving consensus

between the consultees by mutual discussion of the merits and demerits of the concerned candidates. However, if the opinion of the Chief Justice of Pakistan is not fully supported by the Chief Justice of the concerned High Court, it is the final opinion of the Chief Justice of Pakistan, formed after taking into consideration the opinion of the Chief Justice of High Court and the report of the Governor of the Province about the antecedents of the person, concerned, which shall be given primacy. The law laid down in *Al-jehad Trust* case that 'the chief Justice of Pakistan, being the *pater familias*, his views definitely deserve due deference' admits of no other interpretation."

In a recent judgment of this Court rendered in *Aftab Aliv's* case (*supra*) while dealing with the proposition it has been held that:

"36. The other formulated point is the application of rule of Primacy by the President. No doubt, according to the constitutional provisions the Chief Justice is the *paterfamilia* of the judiciary and his opinion has to

be given due weightage, preference and deference. In case of difference between the consultees, the appointing authority after due comparison and appreciation, by applying the Rule of Primacy, may seek advice of the Council for appointment of Judge High Court. The eventuality of Rule of Primacy arises when during the process of consultation after reasonable passing of information between the consultees the consensus could not be developed.”

The expression given in both the summaries, sent by the worthy President to the Council, is sufficient to hold that the eventuality requiring for application of the Rule of Primacy, discussed in the case law referred to hereinabove, is not available in the instant case. In the first summary, the worthy President mentioned that the consultation has been duly made with the Chief Justice of Azad Jammu and Kashmir and Chief Justice of the High Court. This summary

was rejected by the Council and coupled with the other grounds, it was pointed out that in the summary all the persons recommended by the President are the nominees of the Chief Justice of Azad Jammu and Kashmir with none of them having been recommended by the Chief Justice of the High Court. In view of the clear findings of the Council, if the eventuality required for applying the Rule of Primacy existed, the worthy President should have clarified the position, but the President in the subsequent summary has not pointed out any such eventuality rather he has mentioned that the "consultation with the Chief Justice of Azad Jammu and Kashmir and Chief Justice of the High Court conducted under section 43(2-A) of the Interim Constitution Act, 1974, remain valid and has been re-confirmed by the two Hon'ble Chief Justices". In the subsequent summary sent to the Council by the worthy President

while mentioning the names of the candidates, an order of priority (consisting of the names of five (5) persons) was set by the President himself in which two (2) names from the list furnished by the Chief Justice of the High Court were included which was later on approved by the Council; meaning thereby that the Rule of Primacy has not been applied as under law in case of difference of opinion between the consultees, the primacy shall be given to the opinion of the Chief Justice of Azad Jammu and Kashmir and it is not the discretion of the Executive to pick the names of the candidates at his own choice. In view of the contents of the summary, it becomes crystal clear that the Rule of Primacy was neither attracted nor applied, therefore, further deliberation on the point is no more required.

16. As we have held in paragraph No.13 of the judgment that the consultation for

appointment of all the five (5) Judges, respondents, herein, has not been made in the light of the spirit of the constitutional provisions as well as in accordance with the settled law, hence, there is no need to discuss the point; whether the appellant Ch. Muhammad Munir was eligible for appointment as Judge of the High Court at the relevant time or not, as it will be mere an academic discussion.

The compendium of the above discussion is that the appeals filed by the appellants in appeals No.111 to 116 of 2020, are hereby allowed. The appointments of the respondent-Judges, made vide notification No.LD/AD/711-30/2018, dated 21.05.2018, are declared *ultra vires* the Constitution and without lawful authority, hence, the same are set aside. Consequently, the offices of the private respondents are declared vacant, however, the validity is given to all the acts

done by them as Judges on the basis of principle of *de-facto* doctrine including the drawing of the financial benefits etc. The appellant, Ch. Muhammad Munir, before his elevation as Judge of the High Court was serving as District and Sessions Judge, therefore, he is reverted back to the said position. The appointing authority shall initiate the fresh process for appointment against the vacant positions strictly in the light of the guidelines given in *Muhammad Younas Tahir's* case (supra).

No order as to costs.

ACTING CHIEF JUSTICE

JUDGE

Muzaffarabad,
17.07.2020

Sardar Javed Sharif	v.	Azad Govt. & others
Aamir Ali Awan & another	v.	Azad Govt. & others
Barrister Adnan Nawaz	v.	Azad Govt. & others
Fayyaz Ahmed Janjua	v.	Azad Govt. & others
Ch. Shakeel Zaman	v.	Azad Govt. & others
Saifullah Hijazi & others	v.	Azad Govt. & others
Ch. Muhammad Munir	v.	Azad Govt. & others

PRESENT:

Barrister Hamayun Nawaz Khan, Syed Shahid Bahar and Mr. Fayaz Ahmed Janjua, Advocates, for the appellants.
Raja Muhammad Hanif Khan, Ch. Shoukat Aziz and Bashir Ahmed Mughal, Advocates, for the respondents and the appellant Ch. Muhammad Munir.

ORDER:-

The judgment has been announced in the open Court in presence of the counsel for the parties.

ACTING CHIEF JUSTICE
Muzaffarabad,
17.07.2020

JUDGE

