

2010 C L C 1692

[Election Tribunal, Punjab]

Before Nasir Saeed Sheikh, J

Ch. BILAL IJAZ---Petitioner

Versus

MUDASSAR QAYYUM NAHRA and 4 others ---Respondents

Election Petition No.204 of 2008, decided on 21st June, 2010.

(a) Constitution of Pakistan 1973---

---Art. 62 (f)---Words "sagacious", "righteous", "non profligate", "honest" and "ameen"---
Object and scope---As such the words demonstrate a keen desire of the Constitution that
persons desiring to engage themselves in the process of law-making for the country must
themselves be possessed with high qualities of personal character and moral values---
Legislator who indulges into unfair means in earning or procuring his educational documents
cannot be termed to be possessing the required standards of high personal characteristics
mentioned in Art. 62 (f) of the Constitution---Members of National or Provincial Assemblies
on their successful election have been further obliged to take oath as incorporated in Third
Schedule of the Constitution with necessary condition of undertaking the performance of
duties and functions honestly in accordance with the Constitution.

(b) Constitution of Pakistan (1973)---

---Arts. 62(f) [as amended by Constitution (Eighteenth Amendment) Act (X of 2010)] & 199---
Constitutional petition---Election dispute---Bogus educational degree---Retrospective effect
of Constitutional amendment---Scope---Disciplinary Committee of university, action by---
Effect---Election of respondent candidate was assailed on the ground that his degree of B.A.
was found to be bogus and Disciplinary Committee had found him guilty---Plea raised by
respondent candidate was that after amendment in Art. 62 C of the Constitution, there was no
requirement for a candidate to have graduation degree---Validity---Person who had indulged
into using unfair means in procuring his educational qualifications and was also found guilty
by Disciplinary Committee, which was the only authority competent to inquire into the
matter of such allegations against candidates appearing in examination of concerned
universities, did not deserve to claim to be honest, righteous or ameen person so that he be
assigned the high responsibilities performing national functions of running the affairs of
country---Amendment in the Constitution was effected through Constitution (Eighteenth
Amendment) Act, 2010 dated 19-4-2010---Election petition was instituted on 12-4-2008 and
election of respondent candidate, was held in February, 2008, therefore, election petition had
to be decided in accordance with the law which existed at the commencement of the Lis---

Legislature had not given retrospective effect to Constitution (Eighteenth Amendment) Act, 2010, therefore, amendment effected in Art. 62 CD of the Constitution could not be made applicable---Election Tribunal declared respondent candidate as a person who was neither righteous nor honest and ameen, therefore, election to the seat of respondent candidate was set aside---Election Tribunal declined to declare petitioner as returned candidate as majority of electorates of the constituency in question did not cast their votes in his favour---Election Tribunal directed Election Commission to immediately arrange for holding of by-elections for the constituency in accordance with law---Petition was disposed of accordingly.

M.R. Kamran Sheikh and Ali Akbar Rana for Petitioner.

Ch. Khurshid Ahmad, Azam Nazeer Tarrar and Sh. Shahid Waheed for Respondent No.1.

Date of hearing: 11th June, 2010.

JUDGMENT

NASIR SAEED SHEIKH, J.---Elections for the National Assembly Seats were held during the year 2008 and respondent No.1 has been declared as a returned and successful candidate from the seat of National Assembly NA-100-Gujranwala-VI vide notification dated 1-3-2008 by the Election Commission of Pakistan. The instant election petition has been instituted by a rival candidate against the respondent Mudassar Qayyum Nagra, the returned candidate, on the grounds inter alia that the respondent No.1 during the previous general elections of 2002 claimed himself to be holder of a B.A degree and was elected as an MPA. A Writ Petition No.21578 of 2002 was instituted against him by alleging that the respondent No.1 obtained bogus detailed marks in respect of his graduation from the Punjab University. The said writ petition was contested by the respondent No.1 who was respondent No.4 in the said writ petition. As a result of the pendency of the said writ petition, the Punjab University constituted a Scrutiny Disciplinary Committee to look into the allegations levelled against the respondent No.1 with respect to his B.A. degree. The said writ petition remained pending for a long time and was ultimately disposed of on 15-9-2008 on account of the fact that the tenure of respondent No.4 of the said writ petition for Provincial Assembly had completed in the meanwhile, therefore, the writ petition became infructuous. The said writ petition therefore was not decided on merits.

2. The respondent No.1 again contested the elections for the year 2008 and that the B.A. result card of the respondent No.1 was found to be bogus by the Scrutiny Disciplinary Committee of the Punjab University which found the respondent No.1 guilty of involved in unfair means in B.A. Examination of Punjab University and was declared fail and further disqualified to appear in B.A. Examination of Punjab University for three years vide documents Exh. P2 dated 1-2-2005 and Exh.P3 dated 8-2-2005. The respondent No.1 then obtained a second degree of his graduation from the Islamia University, Bahawalpur in the year 2006. In the above background therefore, it was contended in the instant Election Petition that he was not eligible and qualified to contest the elections for the year 2008 as he lacks the necessary characteristics enumerated in Article 62 clause (f) of the Constitution of

Islamic Republic of Pakistan, 1973 of being a righteous, honest or an upright person, therefore, his election from NA-100-Gujranwala-VI be declared null and void.

3. Only the respondent No.1 contested the present election petition. The respondent No.1 denied all the allegations levelled against him and requested the election petition to be dismissed. The remaining respondents Nos. 2 to 5 have been proceeded ex parte vide order dated 11-11-2008 as they did not opt to contest the election petition.

4. Evidence of the respective parties was produced. The election petitioner produced four witnesses and exhibited following documents : -

- (i) Exh.P1 is the attendance-sheet wherein the respondent No.1 was shown to be a candidate having Roll No. 70614 from Gujranwala District and was first marked absent on the days when papers for the subjects of Punjabi and History were held and after cutting off his absence he was shown to have secured 61 and 71 marks in the subjects of Punjabi and 56 and 42 marks in the History papers respectively.
- (ii) Exh.P2 is the report dated 1st of February, 2005 by the Secretary Disciplinary Committee wherein after the necessary inquiry the Disciplinary Committee of the Punjab University found the respondent No.1 involved in unfair means in obtaining the B.A. (pass) result card and was disqualified for a period of three years under Regulations Nos.13 and 14 of the Calendar of Punjab University.
- (iii) Exh.P.3 is the official intimation dated 8-2-2005 whereby an intimation of disqualification for using unfair means by the respondent No.1 in the first annual examination of 1993 under Roll No. 70614 of the B.A:/B.Sc. was communicated to him and he was further declared disqualified for the period of three years.
- (iv) Exh. P4 is the form submitted to the University of Bahawalpur for appearing in the annual examination 2006.
- (v) Exh.P5 is the copy of NIC card of the respondent No.1
- (vi) Exh. P6 is the result card of the respondent No.1 of his F.A. examination held in the year 1990 by the Board of Intermediate and Secondary Education.
- (vii) Exh.P7 is the result-sheet of candidates who appeared in the B.A. examination in Bahawalpur University wherein the respondent No.1 was declared pass in the B.A examination for the University under Roll No. 5714 held in the year 2006.
- (viii) Exh.P8 is the letter of Controller of Examination confirming the B.A. result of the respondent No.1 from Islamia University of Bahawalpur for the year 2006.
- (ix) Exh.P9 is the letter of the Commissioner Inland Revenue, Gujranwala showing that respondent No.1 is not registered with the income tax record of Gujranwala.

(x) Exh.P10 is the certificate of NADRA Computer Section with reference to NIC card of respondent: No.1

(xi) Exh.P11 is the certified copy of order-sheet of Writ Petition No.21578 of 2002.

The learned counsel for respondent No.1 made a statement before this Tribunal on 10-5-2010 to the following effect:

"Statement of Ch. Khurshid Ahmad, Advocate for the respondent No.1 without oath.

No evidence is required to be produced on behalf of respondent No.1

R.O. & A.C.

(Sd.)
(Election Tribunal)"

6. During the hearing of the instant Election Petition on 7-5-2010, the learned counsel for the election petitioner tendered in evidence the certified copies of the written statement with affidavit dated 9-6-2004 submitted by the present respondent No.1 who was respondent No.4 in the Writ Petition No. 21578 of 2002. An objection was raised by the respondent No.1 to the production of the said written statement and the affidavit and this Tribunal had passed` an order that this objection shall be decided at the time of final arguments.

7. The institution of the Writ Petition No.21578 of 2002 and submission of written statement along with his affidavit by the respondent No.1 in the said writ petition was specifically asserted in paragraph No.7 of the present Election Petition. It was also asserted in para. 7 of the instant Election Petition that in the written statement submitted by respondent No.1 in the earlier writ petition which was supported by an affidavit, it was stated by the present respondent that he had passed the B.A. annual examination in 1993 from the Punjab University with Roll No. 70614. The respondent No. 1 in his written reply dated 26-2-2009 submitted to the instant election petition did not deny specifically the facts of para. 7 of the instant Election petition with respect to the contents of written statement and the affidavit submitted in Writ Petition No. 21578 of 2002 and in fact stated that:--

"That the contents of Para. 7 are not admitted as correct to the extent of degree of B.A. established as his candidate for P.P.No.102, the degree was correct and the term of year 2002 to 2007 is over and needs no reply. But for the General Elections 2008 from N.A. 100 Gujranwala the respondent No.1 submitted the result of Bahawalpur University which is totally correct and there is no fault at the part of the Answering respondent No.1 because while filing the admission attached the result card of Intermediate Lahore Board and Islamia University raised no objection against the respondent No.1 and had appeared in the examination held B.A. 2nd Annual 2006 bearing Roll No.5714 with Registration No.0601B-6-3977 issued by the Assistant Controller Examination, Islamia University, of Bahawalpur, and secured 497 marks out of 800. Copy of result card Annexed. The Writ Petition No.21578 of 2002 has become now infructuous".

In the last sentence of his reply to para 7, the respondent No.1 stated that Writ Petition No.21578 of 2002 has become infructuous. Thus the written statement and the affidavit submitted by respondent No.1 in the earlier Writ Petition No.21578 of 2002 were not specifically denied by respondent No.1 in his reply and are admitted documents. Therefore, the objection raised by the learned counsel for the respondent No.1 to the production of the said written statement and the affidavit is rejected. The documents are marked as Exhibits 12 and 13 respectively.

8. The arguments of the learned counsel for the election petitioner and of the respondent No.1 have been heard.

9. The learned counsel for both the parties have restricted their case and arguments on the genuineness or otherwise of the B.A. Result Card of the respondent No.1 from the University of Punjab and the effect of his subsequent appearance in B. A. Examination of Islamia University of Bahawalpur. The crucial point involved herein is that as to whether on the basis of above facts respondent No.1 can be declared to be an honest, righteous and ameen person.

10. It is argued by learned counsel for the petitioner that he seeks the declaration of disqualification of the respondent No.1 keeping in view the provision of Article 62 clause (f) read with Article 63 (s) of the Constitution of Islamic Republic of Pakistan, 1973. The question is covered by the comprehensive issue No.6:

"Whether respondent No. 1 was correctly announced/declared a returned candidate?
OPD"

11. It is contended that the Disciplinary Committee constituted by the University of the Punjab to look into the allegations of the B.A. results of the respondent No.1 for the year 1993 held the result card of the respondent as based upon bogus entries and that the said allegations have been sufficiently established through the report Exh.P2 and the official communication Exh.P3 sent to the respondent No.1 by the Disciplinary Committee. It is next contended that no cross-examination was conducted upon P.W. 1 witness with respect to the correctness or otherwise of the report Exh. P2 and the intimation Exh. P3, therefore, according to the learned counsel for the petitioner the said documents have gone unimpeached to establish the involvement of the respondent No.1 in unfair means having been committed by him in the B.A. results of the University of Punjab. The learned counsel further argued that a person involved in adopting unfair means in obtaining his Result Card and further use of bogus result cards cannot be considered as a righteous, honest and ameen person. It was further argued that the respondent No.1 did not even appear in the witness-box to controvert the evidence produced against him, therefore, the allegation against respondent No.1 not only stand established through documents Exhs.P2 and P3 but were also not rebutted by the respondent No.1 and therefore he be declared as disqualified from contesting the election of Majlis-e-Shoora and from holding the membership of the National Assembly of the Constituency 100-Gujranwala-VI.

12. The contention of the learned counsel for the petitioner has been opposed by the learned counsel for respondent No.1 by arguing that respondent was not declared by the Syndicate of the University to be involved in any unfair means nor his result was quashed by the Syndicate. It was further argued that the report of the Disciplinary Committee as Ex.P2 is just recommendatory in nature and does not constitute a final decision on the matter, therefore, the allegations against respondent No.1 are not established. It is further argued that the contents of the order-sheet and of the written statement of the earlier writ petition cannot be made use of by the petitioner for drawing an inference against the respondent No.1 as the said writ petition was not decided on merits as it became infructuous and no finding was recorded in the said writ petition against respondent No.1. It was further argued by learned counsel for respondent No.1 that under such circumstances, the respondent No.1 does not suffer from the lack of qualities as enumerated in Article 62 clause (f), therefore, the instant Election petition is liable to be dismissed. In the alternative it was argued that the provisions of Article 62 have been amended by Eighteenth Amendment in the Constitution which allows a benefit to the respondent to the effect that unless a declaration to the contrary by a Court of law is made, the provisions of Article 62 clause (f) cannot be invoked against the respondent No.1, thus it was prayed by learned counsel for respondent No.1 that the election petition be dismissed.

13. I have considered the arguments of the learned counsel for the parties and have perused the evidence produced by the petitioner.

14. Respondent No.1 is alleged to have first claimed himself to be holder of a B.A. degree from the University of the Punjab which he obtained after appearing in B.A. examination conducted by the University of the Punjab in the year 1993. In the Writ Petition No.21578 of 2002 instituted to challenge the election of respondent No.1 against the Provincial Assembly Constituency No.PP102-Gujranwala-XII, the present respondent No.1 was impleaded as respondent No.4 and a specific plea was raised in the written statement Exh.P12 by the present respondent No.1 in paragraph 4 of his reply that he has passed B.A. examination from the University of Punjab correctly. The contents of para 4 of preliminary objection of the written statement Exh.P12 are reproduced below:--

"That the result of the Matriculation examination, Intermediate or the B.A. of the Answering-respondent has never been cancelled by the Board of Intermediate and Secondary Education or by the University of Punjab. Therefore no challenge can be thrown to the educational qualification of the Answering-respondent and the writ petition challenging these results is not competent".

It is also to be observed that in preliminary objection No.7 of written statement of Writ Petition No.21578 of 2002 Exh.P12, the respondent raised the following objection to the maintainability of the writ petition:--

"Similarly, he had filed an application to the University of Punjab (Annex "C/A" attached with the Writ Petition) challenging the B.A. Degree of the Answering-respondent. Both these applications have not yet been decided. But the writ petitioner

has rushed to this Honourable Court. The Writ Petition is premature and liable to be dismissed."

15. The respondent No.1 further asserted the following facts in reply to the paragraph No.11 on facts of the Writ Petition No. 21578 of 2002 in his "written statement Exh.P12:--

"11. Not admitted. The petitioner had passed his Matriculation examination in 1988 from the Board of Intermediate and Secondary Education Gujranwala and had passed his B.A. Examination in 1993 from the University of Punjab Lahore and was fully qualified to conduct the election to the Provincial Assembly of Punjab."

16. The election petitioner has produced the report of the Disciplinary Committee Exh. P2 through the statement of Muhammad Rauf Nawaz, Deputy Controller Examination, University of the Punjab Lahore P.W. who in examination-in-chief made the following statement:

"I have brought the record for the year 1993 (annual examination) regarding Roll No. 70614 which roll number was assigned to Mudassar Qayyum Nehra son of Sultan Ahmad of Gujranwala district according to my record. The Said candidate appeared in the examination and was declared "fail" in the subjects of Punjabi and History."

17. The said witness also placed on record the certified copies Exh.P2 and P3. The witness P.W. was subjected to cross-examination by the learned counsel for respondent No.1 and only following two questions were put to him.

"It is correct that intimation was given to Mudassar Qayyum Nehra that he is eligible to appear again in all subjects of B.A. examination as a fresh candidate. It is correct that Mudassar Qayyum Nehra has not passed B.A. examination from University of Punjab as per our record. The copy of the Register is produced as Exh.P.1".

18. The contents of Exh.P2 are also very relevant which are reproduced below:

The candidate Mr. Mudassar Qayyum, Roll No.70614, B.A. First Annual Examination, 1993 appeared before the Disciplinary Committee on 23-9-2004 and 4-11-2004. He was asked to explain his position but he stated that he will submit his reply within two or three days after consulting his Legal Advisor. He was again called on 27-11-2004, 16-12-2004 and 1-2-2005 to appear before the Committee but did not appear. However, a telephonic message was received on 1-2-2005 that he cannot appear before the Committee. The Committee felt that the candidate is evading to appear before its meeting. Therefore, the Committee decided to proceed against him ex parte.

The Committee examined the documents available in the file as well as the relevant record. It was noted that result of the candidate was declared as 'fail' in two subjects Punjabi and History, R.L. fee and Permission: in the Result Notification. He was shown absent in Punjabi and History on the Result-Sheet and marks were also written thereon. Award Lists of Punjabi-A and History-B are also pasted on the Result-Sheet whereas

Award Lists of Punjabi-B and History-A are not available. The Committee compared the handwriting on the Awards of Punjabi-A and History-B with the Award lists of other candidates pasted on the Result-Sheet and noted that the handwriting on the Awards of the said candidate is different from other Awards. The Committee also noted that as per statement of concerned clerk Mr. Muhammad Yaqub his signatures on the B.A. Result Card of the candidate, are bogus, Mr. Muhammad Yaqub also mentioned in his statement that the signatures of the Assistant Controller are also bogus. The Committee also examined the findings of the Inquiry Committee of Examinations Department as well as of Scrutiny Committee and noted that as per final report of Scrutiny Committee result of the candidate is bogus. Admission- Form of the candidate of B.A. Examination was incomplete because of which he was issued three letters requesting him to provide his documents i.e. original F.A. Certificate, Admission Memo Form and original National Identity card but no response was received, Roll No. of passing F.A. Examination was not written by candidate in his Admission Form, due to the reason photo copy of F.A. Result Card was sent to the Secretary, Lahore Board who verified that F.A. result is correct.

After going through the case on various aspects the Committee observed that the candidate managed to pass the B.A. Examination through illegal means with the connivance of some one.

The committee after considering the case held the candidate guilty and disqualified him for a period of three years under Regulations 13 and 14. The Committee also decided that result of the candidate be-quashed. The Committee further decided that an inquiry be held against the concerned staff.

(Sd.)
Secretary
Disciplinary Committee
1-2-2005

Members of the Committee.

1. Prof. Dr. Shahida Husnain,
Chairperson,
Department of Botany,
Punjab University, Lahore.
2. Prof. Dr. Muhammad Hafeez,
Department of Sociology,
Punjab University, Lahore.
3. Prof. Sami Ozair,
University Law College,
Punjab University, Lahore."

19. The University of the Punjab through document Exh. P3 sent an intimation to the respondent No.1 that he is found involved in unfair means case of the B.A./B.Sc. first annual examination 1993 held in May, 1993 and was further declared ineligible for appearing in the B.A. examination for a period of three years. The respondent No.1 is thus proved, to have been involved into the allegation of use of unfair means by the Disciplinary Committee of the University of the Punjab through document Exh. P2 and Exh.P3 it is also interesting to note that in the written statement Exh. P-12 submitted to Writ Petition No. 21578 of 2002 the respondent No.1 categorically claimed himself to be holder of B.A. degree from the University of the Punjab and has not produced any such degree during his evidence before this Tribunal. The allegation against respondent No.1 of his involvement in unfair means by the Punjab University B.A. examination not only stand proved through documents Exh.P2 and P3 but even his contention which he raised before the High Court in the written statement Exh.P-12 that he has validly passed B.A. examination 1993 appeared to be a total false statement. The trend of cross-examination on PW2 which I have reproduced earlier clearly shows that respondent No.1 has not passed the B.A. examination from the University of Punjab as he was declared fail due to his involvement in case of unfair means and it was so admitted when the following suggestion was made to the said P.W.2:-

"It is correct that Muddasar Qayyum Nehra has not passed. B.A. Examination from university of Punjab as per our record".

The respondent has not appeared in the witness-box as well to controvert the allegations against him which are proved through the documents Exh.P2 and P3 and the statement of P.W. Deputy Controller of Examinations University of the Punjab Lahore. Thus allegations levelled in the election petition are not only proved through the above evidence but have also not been rebutted. The respondent was declared ineligible to appear for three years in the B. A. Examination to be held by the University of the Punjab vide document Exh.P2 dated 1-2-2005 and official letter dated 8-2-2005 Exh.P3. The respondent No.1 was thus debarred uptill February, 2008 to appear in B.A. Examination by the Punjab University.

20. Now what he did then that he applied in the Islamia University of Bahawalpur for B.A 2nd Annual Examination 2006 by showing his address at H.No.3, Street No.5, Mahajar Colony, Bahawalnagar. His Admission Form for Bahawalpur University is Exh.P4. Copy of his NIC has been produced as Exh. P5 and the entries of his address given both in NIC and National Data Base of Registration Authority Record are different from those given in his Admission Form for Bahawalpur University Examination of 2006 Exh.P4. It also appears that the respondent No.1 did not disclose before the University of Bahawalpur his three years disqualification on account of his involvement in unfair means in the University of the Punjab B.A. Examination. At least he did not state so in his written statement. In this way, he managed to appear in Islamia University Bahawalpur in the year 2006 through fraudulent means by concealing his previous disqualification imposed by the University of the Punjab and also by giving his incorrect address before the Bahawalpur University which is different from his address given in the NIC Exh.P5 and Data Base 'of Registration Authority record entries Exh.P10. The disqualification of three years which was imposed upon' the respondent No.1 by the University of the Punjab was effective for three years

from 1-2-2005 as is reflected in documents Exh.P2 and P3. Had the respondent No.1 disclosed his previous disqualification as declared by the University of Punjab before Islamia University of Bahawalpur while appearing in the 2006 examination of the latter University, he would, not have been allowed to appear in the University of Bahawalpur for examination at least during the subsistence period of his disqualification which expired in February, 2008. Thus procuring of the B.A. degree from the University of Bahawalpur by the respondent No.1 is also based upon concealment of facts and constitutes a fraudulent and dishonest act. The respondent No.1 did not at all appear in his evidence before this Tribunal and failed to rebut allegations proved against him. He did not challenge the finding of Disciplinary Committee of the University of Punjab whereby he was found guilty of committing unfair means in the B.A. examination before any forum of competent jurisdiction. The respondent No.1 took up the plea in his written statement Exh.P12 submitted to Writ Petition No.21578 of 2002 by contending that he has passed the B.A. examination from the University of the Punjab whereas during the hearing of the present election petition he took a completely different stance by putting the suggestion to P. W.2 in cross-examination that the he has not passed B.A. examination from University of the Punjab. All the above facts and circumstances establish that the respondent No.1 is not a righteous, honest or truthful person. He was found guilty of involved in unfair means by the Disciplinary Committee of the Punjab University and was declared disqualified to appear again for three years. He did not challenge this decision in any forum. He also concealed the verdict of his guilt given by the Disciplinary Committee of the University of the Punjab and the imposition of three years disqualification upon him for a period of three years in the B.A. examination of Punjab University and submitted his admission form before Islamia University of Bahawalpur during the period of his three years declared disqualification and managed to submit the form before the Islamia University with an incorrect address and procured a degree by appearing in the B.A. examination of Islamia University of Bahawalpur in the Second Annual Examination of 2006 the result of which was declared in the year 2007.

21. The concept of inserting Article 62 clause (f) in the Constitution is very purposeful: Constitution of Islamic Republic of Pakistan, 1973 cannot be said to have incorporated the said clause without any meaningful objective. The holders of Public offices like members of National and Provincial Assemblies are expected to be persons of unimpeachable character. The terms used in clause (f) of Article 62 of the Constitution of Islamic Republic of Pakistan, 1973 need to be understood and implemented in order to stop dishonest and cheatful persons from entering into the corridors of the National and Provincial Assemblies. The words written in clause (t) are thus reproduced below which are defined and interpreted in well-known English Dictionaries as are available in website/internet with universally accepted meanings:

Sagacious

- (i) Skillful in statecraft or management
- (ii) Marked by artful prudence expedience and shrewdness
- (iii) Having prompt wisdom

(iv) A wise leader

(v) Insightful; foresighted

Righteous

(i) Morally upright, without guilt or sin

(ii) Characterized by accepted standard of morality or justice

(iii) Good: morally admirable

(iv) Clean handed; guiltless

(v) Just: Used especially of what is legally or ethically right or proper or befitting.

(vi) Moral: concerned with right and wrong or conforming to standards of behavior: morally excellent worthy Virtuous; morally excellent worthy

(vii) Worthy: having worth or merit or value; being honourable or admirable

(viii) Honest: blameless

Non-Profligate

(i) Recklessly wasteful

(ii) Wildly extravagant

(iii) Shamelessly immoral or debauched

(iv) Spend-thrift

(v) Prodigal in their expenditures

(vi) Squandering

Honest

(i) Displaying integrity,; upright

(ii) Not deceptive or fraudulent

(iii) Characterized by truth; not false

(iv) Sincere

(v) Not given to cheating

Ameen (An Arabic word)

Meaning:-

Trustworthy: faithful

22. The concepts projected in using all the above terminology is not difficult to understand. It demonstrates a keen desire of the Constitution that persons desiring to engage themselves in the process of law-making of the country must themselves be possessed with high qualities of personal character and moral values. A legislator who indulges into unfair means in earning or procuring his educational documents cannot be termed to be possessing the required standards of high personal characteristics mentioned in clause (f) of Article 62 of the Constitution of Islamic Republic of Pakistan, 1973. Members of the National or Provincial Assemblies on their successful election have been further obliged to take oath as incorporated in the Third Schedule of the Constitution, with necessary condition of undertaking the performance of the duties and functions honestly in accordance with Constitution. Elected members are further likely to be entrusted with the other high and onerous offices of the Prime Minister, Federal Ministers, Speaker of the National and Provincial Assemblies, Deputy Speakers of the National and Provincial Assemblies and Chief Ministers of the Provinces. The swearing of solemn oath from such holders of public offices are also prescribed in the Constitution requiring similar performances of duties and functions with honesty and also to be faithful to the Constitution and the law. A person who indulges into using unfair means in procuring his educational qualifications and is also found guilty by the Disciplinary Committee, which is the only authority competent to inquire into the matters of such allegations against candidates appearing in the examination of the said University, does not deserve to claim to be an honest, righteous or ameen person so that he be assigned the high responsibilities of performing national functions of running the affairs of the country. The spirit with which the words sagacious, righteous, non-profligate, honest and Ameen have been used by the Constitution of Islamic Republic of Pakistan, 1973 for the eligibility of the candidates contesting the elections of Members of National or Provincial Assembly cannot be frustrated if persons who secure their educational documents through unfair means and are found guilty of such a condemnable act by the competent authority are allowed to be given entry into the doors of National or Provincial Assemblies of our country. The respondent No.1 not only is found guilty of a dishonest or cheatful involvement into the use of unfair means in procuring his B.A./degree/results from the University of Punjab but also made deliberately false statement before this Tribunal as well when PW1 was suggested that he was admittedly not holder of the B.A. degree from the University of the Punjab whereas in his written statement Ex.P12, the respondent where he was respondent No.4 in the said writ petition categorically took up the plea and claimed to be holder of a valid B.A. degree from the University of the Punjab. He is thus not worthy of credence and cannot be allowed to be entrusted with State responsibilities of Law-Making; to be in-charge of the National Exchequer or be eligible to represent the people of Pakistan.

23. The contention of the learned counsel for the respondent to the effect that after the incorporation of Eighteenth Amendment, in clause (f) of Article 62 of the Constitution, a prior declaration by a competent Court of law has not been made against the respondent No.1 declaring him not to be sagacious, righteous, non-profligate, honest and Ameen, therefore, clause (f) of Article 62 cannot be invoked against him is not entertainable. The Eighteenth Amendment was effected through Constitutional (Eighteenth Amendment Act) X of 2010 dated 19-4-2010. The instant election petition was instituted on 12-4-2008 and the election of the respondent, which has been challenged through the election petition, was held in February 2008, therefore, the instant election petition has to be decided in accordance with the law which existed at the commencement of the lis. The legislature has not given retrospective effect to the Eighteenth (Amendment) Act X of 2010, therefore, the amendment effected in Article 62 clause (f) through the Constitution (Eighteenth Amendment Act) X of 2010, cannot be made applicable to the facts and circumstances of the instant case.

24. In view of all the above circumstances, the respondent No.1 is found involved in unfair means as declared by the Disciplinary Committee of the University of the Punjab through Exh. P2 and Exh. P3. The respondent further concealed his disqualifications as declared by the University of the Punjab of three years and fraudulently applied before Islamia University of Bahawalpur for appearing in Second Annual Examination, 2006 and procured a B.A. degree from the said University in the year 2007. He submitted his written statement Exh.P12 in the Writ Petition No.21578 of 2002 claiming himself to be a valid B.A. degree holder from the University of the Punjab at the time of contesting the elections of 2002 of PP-102-Gujranwala-XII whereas during the recording of evidence of the instant election petition, he suggested to P.W.1 that he has not passed B.A. examination from the University of the Punjab. He procured his B.A. degree from Islamia University Bahawalpur by concealment of facts and fraudulent means. He is declared a person who is neither righteous nor honest and ameen. His election to the seat of NA-100-Gujranwala-VI is, therefore, set aside and the notification dated 1-3-2008 to the extent of respondent No.1 of his being returned candidate of NA-100-Gujranwala-VI is ordered to be cancelled.

25. The request of the election petitioner seeking his declaration to be duly elected member from NA-100-Gujranwala-VI is declined as substantial majority of electorates of NA-100-Gujranwala-VI did not cast their votes in his favour. The Election Commission is directed to immediately arrange for holding of bye-elections for NA-100-Gujranwala-VI in accordance with Constitution and the election laws.

M.H./B-15/L

Order accordingly.