

BLUE SLIP

Revised: (under Act No. II of 1990)

ORDER OF THE COURT

In the Court of: **MR. JUSTICE MUHAMMAD AMEER BHATTI**

Case No:- **WRIT PETITION: 222728 OF 2018**

TITLE:

Youdester Chohan

VERSUS

Election Commission of Pakistan etc.

Date of hearing:

(a) Judgment approved for reporting

YES

CERTIFICATE

Certified that the judgment/ order is based upon or enunciates a Principle of law/ decides a question of law which is of first impression/ distinguishes/ over-rules/reverse/explains a previous decisions.

Sd/-

JUDGE

Note:- (1) This slip is only to be used when some action is to be taken.

- (2) If the slip is used, the **CA/SCA/Addl. Registrar (Court)** must attach it to the top of the first page of the judgment.
- (3) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
- (4) Those directions which are not to be used should be deleted.
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Dated _____

From No:HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Case No. Writ Petition No.222728/2018

Youdester Chohan

Vs Provincial Election Commission etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or Counsel, where necessary.
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29.06.2018

Mr. Farrukh Gulzar Awan, Advocate for the petitioner.
M/s Muhammad Masood and Faisal Iqbal Awan, Advocates for the petitioners in connected writ petitions.
Zafar Iqbal Hassan, Provincial Election Commissioner, Punjab, and Ch. Umar Hayat, Director (Legal), ECP.
Mr. Waqar Ahmad Raees, Assistant Attorney General for Pakistan.

Through this single order, we intend to decide the following writ petitions, which involve the same factual and legal controversy:-

- i) Writ Petition No.222728/2018
(Youdester Chohan Vs. Provincial Election Commission etc.)
- ii) Writ Petition No.222729/2018
(Haroon Imran Gill Vs. Provincial Election Commission etc.)
- iii) Writ Petition No.221903/2018
(Ijaz Masih V. Provincial Election Commissioner, Punjab etc.)
- iv) Writ Petition No.222727/2018
(Peter Gill V. Provincial Election Commission Punjab, etc.)
- v) Writ Petition No.222851/2018
(Mahinder Pall Singh V. Election Commissioner Punjab etc.)

2. Through the above-captioned constitution petitions, the petitioners have assailed the legality and validity of the orders passed by the Returning Officer, whereby he refused to receive the party lists of their candidates in order of priority for seats reserved for women and non-Muslims on account of one day delay in submission of same from the time stipulated in the election schedule. Attempt to persuade the learned Appellate Tribunal by filing election appeal was made, which also remained unsuccessful.

3. Section 104 of the Elections Act, 2017 mandates that party lists of candidates in order of priority for seats reserved for women and non-Muslims shall be submitted with Returning Officer within the time specified for filing the nomination papers. The purpose of attaching this list issued by the party with the nomination papers is to confirm that he/she is a candidate of any political party for such seats. It is also clear from bare reading of said section that it is meant for the candidates belonging to any political party. Subsection (4) of Section 104 further postulates that if, at any time, the party list is exhausted, the political party may submit a name for any vacancy which may occur on account of any reason. In other words, without obtaining this list the Election Commission is not in a position to nominate any candidate claims to be related to any political party. It is also discernible from aforesaid provisions of law that the reserved seats have been allocated proportionately according to the seats obtained in general election by the political parties and those seats which come in the entitlement of any party, are not transferable, therefore, mere delay of one day cannot be considered a sufficient ground to deprive the present petitioners to include their names in the list of eligible candidates. Even otherwise there are no penal consequences of non-submission of the party lists for reserved

seats; hence, this deficiency alone, which occurred on account of late issuance of party lists by a party due to unavoidable circumstances, does not cause any prejudice to any other candidate and on the other hand non-acceptance of the lists may affect the election notwithstanding it will not be beneficial to any other party. In this backdrop, by condoning one day delay, we are inclined to **accept** all these writ petitions and set-aside the orders impugned passed by the Returning Officer and the learned Appellate Tribunal concluding that the party lists for reserved seats shall be accepted and candidates shall be accordingly declared and included in the list of eligible candidates.

(MUHAMMAD SAJID MEHMOOD SETHI) (MUHAMMAD AMEER BHATTI)
JUDGE. **JUDGE.**

Approved for reporting.

Gull*

JUDGE.

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