

**ORDER SHEET**  
**LAHORE HIGH COURT, LAHORE**  
**(JUDICIAL DEPARTMENT)**

CM. No.02 of 2019

Muhammad Masood ul Hassan

Vs. Maulana Masroor Nawaz Jhangvi, etc.

S.No. of order/ proceedings	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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04.02.2019 Mr. Yousaf Naseem Chandio, Advocate for applicant  
Mr. Muhammad Khalid Pervaiz Sipra, Advocate for respondent No.1  
Nemo for respondents No.2 to 25

The election of respondent No.1, Maulana Masroor Nawaz Jhangvi, as a Member of the Punjab Assembly from constituency PP-78, Jhang-II (old PP-77, Jhang-V) in Bye Election, 2016 has been challenged through this application under Section 76-A of the Representation of the People Act, 1976 on the ground of concealment of assets.

2. The Election Tribunal, comprising Mr. Shahid Rafique, issued notice to respondent No.1, who appeared before it and contested the allegation. During pendency of instant application the tenure of the Assembly stood expired. Subsequently, the Election Commission of Pakistan, Islamabad vide letter No. F-14(3)/2012-Estt-II dated 30<sup>th</sup> October, 2018 transferred the present application to this Court for decision. Complying with the said letter the Provincial Election Commissioner, Punjab through Letter No.F-17(1)/2018-Law dated 1<sup>st</sup> November, 2018 directed the Deputy Registrar of the Election Tribunal (GE-2013) to submit complete record of this application in the office of this Court. Pursuant to the direction of the Provincial Election Commissioner, office of this Court received the record of the present case

through letter No. F.1 (1)/2018-ETL (GE) dated 6<sup>th</sup> November, 2018.

3. The term of the election under challenge had expired by efflux of time in 2018; thereafter another General Election was held on 25<sup>th</sup> July 2018 and another Assembly constituted. Since the term of the Assembly constituted under the impugned election is over, the election of respondent No.1 cannot be set aside in the present proceedings even if the instant application is ultimately allowed on trial as the respondent No.1 is not continuing as Member of the Punjab Assembly on the basis of Bye-Election held in December, 2016. In fact the relief for setting aside the election has been rendered infructuous by lapse of time. In this view ground raised in the present application for setting aside the election of respondent No.1 has been rendered academic. This Court cannot undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in *Sun Life Assurance Co. of Canda v. Jervis (1944 AC 111)* observed:

*“I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between*

*the parties to a matter in actual controversy which the House undertakes to decide as a living issue.”*

4. In the case of *Munawar Iqbal Gondal v Mrs. Nasira Iqbal and other* (2014 SCMR 860) election to the office of President, Lahore High Court Bar Association was challenged. During pendency of the petition the term of office of the President, Lahore High Court Bar Association elected in terms of election held on 11<sup>th</sup> July, 2009 expired in February, 2010; and thereafter periodical election of the said office was held. In these circumstances, Hon’ble Supreme Court of Pakistan disposed of the matter with the observation that issue had become academic. Exactly on the same lines is the ratio of the cases of *Kashi Nath Mishra v Vikramaditya Pandey and others* (1998) 8.S.C. C. 735) and *Mundrika Singh Yadav v Shiv Bachan Yadav and others* (2005) 12 S.C. C. 211).

5. Under these circumstances, this application having become infructuous is disposed of.

**(SHAHID WAHEED)  
JUDGE**

**APPROVED FOR REPORTING**

**JUDGE**