

IN THE HONOURABLE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

Constitutional Petition No. _____/2023

1. Pakistan Tehreek-e-Insaaf its office at Plot# 1-A, Street # 32, Sector-G-8/4, Islamabad.
2. Mr. Asad Umer, son of Ghulam Umer, resident of Flat No. 716, F-10, Silver Oaks, Islamabad.

..... Petitioners

Versus

1. The Federation of Pakistan through the Secretary Law and Justice Division, Ministry of Law and Justice, Pak Secretariat, Islamabad.
2. The Speaker of the National Assembly of Pakistan, Mr. Raja Pervaiz Ashraf, at National Assembly of Pakistan at National Assembly Secretariat, Parliament House, Islamabad.
3. Mr. Raja Riaz Ahmad, leader of the Opposition, National Assembly of Pakistan at National Assembly Secretariat, Parliament House, Islamabad.
4. The Province of Punjab, through its Chief Secretary, Civil Secretariat, Lower Mall, Lahore.
5. The Province of Khyber Pakhtunkhwa, through its Chief Secretary, Peshawar.
6. The Election Commission of Pakistan represented by:
 - (a) Mr. Sikandar Sultan Raja (Commissioner)
 - (b) Mr. Nisar Ahmed Durrani (Member)
 - (c) Mr. Shah Muhammad Jatoi (Member)
 - (d) Mr. Babar Hassan Bharwana (Member)
 - (e) Justice (R) Ikramullah Khan (Member)

Election Commission of Pakistan Secretariat,
Election House, Constitution Avenue, G-5/2, Islamabad.

7. Mr. Mohsin Raza Naqvi
Care-taker Chief Minister of Punjab
through his Principal Secretary, Lahore.

..... Respondents

Constitutional Petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 read with all other enabling provisions thereof and the Supreme Court Rules, 1980

Respectfully submitted:

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The reasons for filing this petition directly before the August Supreme Court of Pakistan are of immense public importance; the same are:

- a. The titled petition is being filed as per the principle/rule laid down in the cases reported as PLD 2021 SC 1 and PLD 2022 SC 119 inasmuch as the facts and circumstances contained herein cannot be adjudicated by any honourable High Court of the concerned Provinces except this August Court. Thus, a petition before any honourable High Court of any Province was not preferred nor could be preferred by the Petitioners as required under Order XXV Rule 6 of the Supreme Court Rules, 1980 ("SC Rules").
- b. The relief sought herein is with reference to inter alia the interpretation of the Articles contained in Chapter I and II of Part VIII to the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"). The Respondent Election Commission of Pakistan ("Respondent Commission") has been unlawfully composed along with the members thereof; a Reference against one of the same i.e. Mr. Nisar Ahmed Durrani/Respondent No. 6(b) has remained futile and without progress. **Without prejudice thereto**, on account of their unlawful as well as biased conduct and manifest incapacity, they have become disqualified to hold office of the Respondent Commission *en masse*.
- c. A recourse for their removal under Article 209 of the Constitution is neither efficacious nor appropriate as the Supreme Judicial Council of Pakistan ("SJCP"), it is stated with utmost respect and humility, is practically dysfunctional in the context of the recent judgments of this honourable Apex Court, as referred above. It is stated *with*

respect that the function of the SJCP has been rendered naught inasmuch as it is now to be regulated by and/or ruled upon by a learned Bench of this honourable Court itself. It is thus that the disqualification of all of the members "*en masse*" of the Respondent Commission cannot be achieved in proceedings under Article 209 of the Constitution.

- d. Without prejudice to the afore, a reference to Article 209 of the Constitution manifests that it refers to an "incapacity" or "guilty of misconduct" of anyone at any point in time during holding of office. However, admittedly the matter of misconduct as a "*composite body*" of the entire Respondent Commission does not fall within the purview of Article 209 of the Constitution; particularly to a matter relating to non-suitability of the appointment of its members. Even otherwise, the matter relates to all Provinces of Pakistan in the context of the General Elections, which are to be held presently in the Provinces of Khyber Pakhtunkhwa and Punjab and likely to be held within the Provinces of Balochistan and Sindh. Indeed, any single honourable High Court at this point of time cannot exercise and/or adjudicate on a cause which relates to all of the Provinces with respect to an unlawfully constituted Respondent Commission and the disqualification/misconduct by the same as a body corporate.
- e. The conduct of the Respondent No. 6 as the Election Commission of Pakistan even otherwise is against the code of conduct prescribed under Article 209; the same will become clear as detailed herein under. Thus, the only recourse is before this honourable Court, which is fit and proper with reference to the reliefs claimed herein.

QUESTIONS OF LAW:

The following questions of public importance arise for determination before this honourable Court in the facts and circumstances given herein:

- I. Whether the appointment and notification dated 20.05.2022 of the Respondent No. 3 as leader of the Opposition in terms of Rule 39 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007 is a farce; it is a fraud on the Constitution and the mentioned Rules of Business. The Respondent No. 2 had exercised *mala fide* powers in notifying the mentioned leader of the Opposition/Respondent No. 3 and has equally conducted himself with *mala fide*. The notification aforesaid be struck down accordingly along with the nominated and appointed respective Respondent members of the Election Commission of Pakistan?
- II. Whether the abuse of constitutional and statutory powers by the Respondent Commission and its respective members, in the matter of appointment of the Respondent care-taker Chief Minister, has rendered them "*en masse*" biased and in violation of the code of conduct prescribed under Article 209 of the Constitution?
- III. Whether the mode and manner adopted by the Respondent Commission and its respective members, in the matter of appointment of the Respondent care-taker Chief Minister, is in direct violation of the provisions of the Constitution read with the provisions of the Elections Act, 2017 and the Election Rules, 2017?
- IV. Whether the notification no. F.2(5)/2033-Cord. - dated 22.01.2023 issued by the Respondent Commission in the absence of a "Decision" and without meeting the procedural requirements as contained in the election laws, is bad in law and thus liable to be struck down?

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The brief facts and circumstances of the case may now be laid before this August Court.

BRIEF FACTS

1. The political crisis in Pakistan has been a constant feature though the Constitution requires all state functionaries to ensure that the best democratic norms are followed to the benefit of the people of Pakistan. Unfortunately, this has always remained an illusion.
2. In September 2021, various political thinkers and journalists had started to point out that a political conspiracy has been hatched to destabilise and to oust the democratically elected Government of Pakistan Tehreek-e-Insaaf ("PTI/Petitioner No. 1").

The events of January 2022 till April 2022 established their prediction to be correct. A fully stable Federal Government of Petitioner No. 1, comprising of 149 Members thereof¹ and 27 Members of coalition partners suddenly split; simultaneously, 20 members of the Petitioner No. 1/PTI defected and did not follow the party guidelines/party instructions issued by the Parliamentary Party i.e. the Petitioner No. 1.

3. Under the pre-meditated conspiracy, hatched between the defectors of PTI and the then minority parties, a Vote of No-Confidence was moved by the then Leader of the Opposition Mr. Mian Muhammad Shahbaz Sharif. The same resulted in contentious litigation; it culminated in a short order of the honourable Apex Court dated 07.04.2022, while the detailed judgment is reported as PLD 2022 SC 574 titled "Pakistan Peoples Party Parliamentarians (PPPP) vs. Federation of Pakistan and others".

In pursuance thereof, voting in the National Assembly was conducted vis-à-vis the referred resolution. The Petitioner No. 1/PTI suffered defection of its members and a break-away of its coalition partners;

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PTI as a ruling party after suffering such a stab by its conspiring members were thus *ousted* from power; this was a classic case of defection/floor crossing which constitutionally has been held to be an abhorrent act. The details thereof are known to everyone and do not require further deliberation.

4. At that point in time or prior thereto, the Respondent Commission comprised only of 3 Members including the Commissioner thereof. The Respondent Commission was admittedly *coram non judice* as it did not contain the requisite composition as prescribed in Article 218 of the Constitution.
5. In a move which beats all norms of democracy, a false facade of Opposition was created within the National Assembly. This was an ill-motivated collusive action led by the new government in liaison with the new Speaker of the National Assembly/Respondent No. 2 who unlawfully exercised his powers under Rule 39 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007. Mr. Raja Riaz Ahmad/Respondent No. 3, was appointed as the "Leader of the so-called Opposition" within the National Assembly. This very group comprising of defectors from PTI, the very architects who had demolished their own government through an unwholly defection/floor crossing, an act abhorrent according to democratic norms, were 'artificially treated' as the Opposition. The shenanigans of these defectors, who cannot be termed as a real democratically elected "Opposition", were and are a false façade of an Opposition. This is nothing else then a fraud on the Constitution.
6. In the given circumstances, through an artificial process which was in fact *inter se* the Prime Minister of Pakistan and the Opposition Leader/Respondent No. 3, in connivance with the members of the

Parliament, nominated (1) Mr. Babar Hassan Bharwana/Respondent No. 6(d) and (2) Mr. Justice (R) Ikramullah Khan 6(e) as Members of the Respondent Commission and were duly notified as Members thereof.

The entire process of consultation, nomination and appointment is in gross violation to the provisions of the Constitution as well as the judgments of the honourable superior courts, including this honourable Apex Court. The same further offends the right of due process as guaranteed by the Constitution.

7. Notwithstanding the afore, the Respondent Commission as a body *en-masse* has taken persistent and consistent *mala fide* measures to non-suit PTI/Petitioners as a political force; violating the rights of the voters sympathetic and supportive to the cause of PTI/Petitioner No. 1. The most important aspects of these ill-motivated measures are:

- a) Various cases particularly the foreign funding case was heard in extenso by a *coram non judice* Respondent Commission without the requisite strength of Members and the stated Respondent decided the matter against PTI; it is relevant to state at this juncture that during the hearing of the Petitioner No. 1, the Respondent Commission was *coram non judice*, however on rendering the determination, the Respondent Commission ostensibly had the required *coram*. Till date the Respondent Commission has not taken up similar issues of other political parties.
- b) The inimical posture led by the Respondent Commission/No. 6(a) was again classically highlighted during the final hearing in *Suo Moto Case No. 1 of 2022*, reported as PLD 2022 SC 574. On the last date of hearing of the afore matter, the Respondent No. 6(a)/Commissioner of the Respondent Commission had

appeared before the honourable Apex Court and took the position that General Elections could not be conducted as per the mandate of the Constitution *inter alia* due to absence of census and the ongoing process of delimitation. However, this statement was not brought on the judicial record despite the fact it was an admission on part of the Respondent Commission that it could not perform its constitutional obligations; this was simple and pure misconduct made in the presence of the entire audience of the honourable Supreme Court including the undersigned counsels as well as the Petitioners and their officer bearers.

8. The statement continues despite the overwhelming popularity of PTI within the masses of Pakistan. This is manifest from the Provincial Bye-Elections in Punjab on 20 Seats which had fallen vacant due to de-seating of the defectors of Members of the Provincial Assembly ("MPA") in Punjab. 15 returned candidates were those of PTI.
9. The posture of the Respondent Commission continues unabated and the example thereof is the unlawful appointment of Respondent No. 7 as the care-taker Chief Minister of Punjab. The irony of the issue is that Mr. Faisal Vawda, an ex-Senator, who is stated to have an insight into the system had publicly confirmed in a TV talk show of Mr. Nadeem Malik aired on Samaa TV that Respondent No. 7 is the only person who will be appointed as the said care-taker Chief Minister.
10. This appointment is in sheer abuse of the process of the Constitution and is duly established because of the following:
 - a. On the dissolution of the Punjab Assembly as per the advice of the last Chief Minister, Mr. Chaudhary Pervaiz Elahi, the parliamentary process as envisaged in the Constitution to

appoint the care-taker Chief minister could not succeed. The outgoing Government of Punjab had recommended the following persons: (1) Mr. Ahmed Nawaz Sukhera, (2) Mr. Naveed Akram Cheema. The Opposition had recommended (1) Mr. Ahad Khan Cheema and (2) Mr. Syed Mohsin Raza Naqvi.

- b. As a consequence, the "final decision" came to the Respondent Commission in terms of proviso to Article 224A (3) of the Constitution. This provision is to be read along with the Elections Act, 2017 and the Election Rules, 2017.
- c. A reference to Rule 3 of the Election Rules, 2017 manifests that a modality has to be adopted for the "final decision". The same comprises of (a) holding of a formal meeting on a date to be fixed by the Respondent Commissioner; (b) a notified agenda along with a working paper to be submitted to the Respondent Commissioner for approval of the Respondent Commission and (c) the minutes of the meeting containing "decisions" of the Respondent Commission is to be communicated by the Secretary to "all concerned" for implementation.
- d. In the present case as already mentioned the names of the above gentlemen for the appointment of the care-taker Chief Minister stood referred to the Respondent Commission on 20.01.2023. None of the above formalities took place to the best of knowledge of the Petitioners.
- e. Notwithstanding the afore, the Respondent Commission has not passed/made any "*decision*" as required under the

provision to Article 224A (3) of the Constitution. The word "decision" has been from time to time interpreted by the superior courts to mean a conscious decision which determines an issue and is akin to a judgment. The same must meet the test of reason and relevance as well as is justifiable on merits.

A determination, whether executive or judicial, has to meet a certain level of expectation since it is rendered by constitutional position holders.

It is also stated that the care-taker Chief Minister ought to possess certain but necessary intellectual and relative experience as well as characteristics which is to ensure that the appointed care-taker Chief Minister, is better equipped with expertise required for the office of the Chief Minister. This is unfortunately not the case herein. Equal or better suited candidates were available and have not been considered consciously. A individual without any experience of political, constitutional, bureaucratic set-ups has been selected/ appointed for this position for reasons which are not available nor discernible. The "decision" has not been made available, as none is present in writing, though a conclusion thereof has been communicated vide notification No. F.2(5)/2023-Cord.- dated 22.01.2023 ("*Impugned Notification*") by the Respondent Commission. The same is patently unlawful and smacks of sheer arbitrariness.

- f. It is stated with respect that constitutional position holders such as the Respondent Members of the Commission, are

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duty bound to be circumspect of their mandate which they hold under the Constitution. The criterion of their appointment is constitutionally specified [Kindly see Article 230 as well as Articles 215 and 216].

Indeed, functioning of the Members of the Respondent Commission have to be according to the defined parameters of section 4 of the Elections Act, 2017 and must have contours of the orders/directions of the honourable High Court. The same cannot be a simple direction without a speaking and a sustainable "decision" as required under the Constitution.

- g. The Respondent No. 7 is a person who is qualified in Media Sciences; he was a correspondent/reporter of CNN (Cable News Network); he worked his way through to become the founder of City News Network, a local TV Channel and is the CEO of various other Channels. He has unfortunately no political, administrative and legal experience in ensuring the rule of law, the working of governments, bureaucracy, the requirements of law and/or the Constitution. How the issue of his suitability has been decided so as to result in a "unanimous" communication of the Respondent Commission appointing him as the care-taker Chief Minister, is not manifest and in negation to the mandate of the Constitution.
- h. It is asserted categorically and without reservation that there is not an iota of record which would justify the Respondent No. 7's appointment as the care-taker Chief Minister of Punjab.

11. The Respondent Commission occupies a unique role and its core business is to hold 'free and fair elections', as contained in Article 218 read with Article 219 and Article 220 of the Constitution. The statutory criteria of functionaries of the Respondent Commission which is an independent constitutional forum must manifest judicious and transparent use of administrative as well as judicial powers as it acts administratively and judicially in discharge of its various constitutional functions as per judgments of the superior courts including *inter alia*, PLD 2018 SC 189 titled "*Muhammad Hanif Abbasi vs. Imran Khan Niazi*" and PLD 2022 SC 39 titled "*Aam Log Ittehad vs. The Election Commission of Pakistan*".

It is therefore imperative for the Respondent Commission to manifest the referred appointment through a "decision"; expressed and available [See section 4 of the Elections Act, 2017 read with Rule 3 of the Election Rules, 2017] for "all concerned". Admittedly, such a "decision" and that too a "final one" is not available to anyone, including the stakeholders, to inspire confidence in everyone that the Respondent Commission is impartial and is acting fairly and justly and in accordance with the mandate of the Constitution. The Impugned Notification, sans the decision, is thus bad in law.

12. It is settled law that all public functionaries and bodies vested with constitutional and statutory powers, have to ensure that their discretion is structured and meets the judicial criteria expected from such office holders; it cannot be *ipse dixit* of any functionary of the State who are to ensure that the ultimate rulers of this country, that is the people of Pakistan, must be aware of the selective criteria *viz.* the appointment of a care-taker Chief Minister; he ought to be someone who possesses all potential capabilities to discharge this office.

13. The absence of a decision and failure to meet the requirements of the Constitution, the Elections Act, 2017 as well as the Election Rules, 2017, is an issue which is a classic case of incapacity and misconduct; it establishes bias and an abuse of process of the constitutional position held by the Respondent Commission/its Members. The same renders the Respondent Commissioner and the Members of the Respondent Commission to be unfit to continue to hold the stated office "*en masse*". The issuance of the Impugned Notification without meeting the requirements of the referred positions herein has rendered the Impugned Notification to be without lawful authority and the appointment of the Respondent as a care-taker Chief Minister to be an ultra-constitutional act; the same is *void ab initio*.
14. Without prejudice to the afore, the established bias of the Respondent Commission is manifest that in collusion with the care-taker Chief Minister within 2-3 days, it has caused massive transfers and postings and have brought officials who are inimical to the presence of PTI as a party and seek to disturb their voters/voting process in the upcoming elections; the same includes *inter alia* (1) Mr. Zahid Akhtar Zaman as Punjab Chief Secretary, (2) Dr. Usman Anwar as Inspector General of Police (Punjab) and (3) Mr. Bilal Siddique Kamyana as CCPO Lahore, Punjab Police.

The action of the Respondent Commission as a whole is equally worrisome. How and on what criteria they have chosen to re-arrange the bureaucracy of the Province of Punjab on such a massive scale without any reason and rationale or complaint, is indeed unprecedented as it is only oriented to thwart the popularity of PTI in the Province of Punjab. The continuous persistence and unabridged power requires a suitable modality to be prescribed and laid down by the Apex Court so that free and fair elections may take place in the respective Provinces.

15. The Petitioners have raised questions relating to the rule of law/violation thereof, the violation of due process, the violation of safeguards relating to a true and transparent democratic process and the violation of their fundamental rights as provided in the Constitution. The objective of the petition is to ensure that the constitutional mandate be not violated, as has been done herein.

PRAYER

In view of the foregoing, it is respectfully prayed that:

- (i) The Impugned Notification No.F.24(9)/2022-Legis. dated 20.05.2022 issued by the Respondent Speaker to treat the Respondent Raja Riaz Ahmed as leader of the Opposition is without lawful authority and of no legal effect; the same be graciously struck down.
- (ii) The appointment of the respective Members/Respondent No. 6 (d) and No. 6 (e) be accordingly held to be in violation to the provisions of the Constitution and thus be declared as such and struck down accordingly.
- (iii) The Impugned Notification No.F.2(5)/2023-Cord.- dated 22.01.2023 of the care-taker Chief Minister issued by the Respondent Commission is in violation to Article 224A (3) of the Constitution read with the Elections Act, 2017 and the Election Rules, 2017; the same be declared to be without lawful authority and be graciously struck down.
- (iv) Without prejudice to the afore, the Respondent Commission and its Members be found by this Apex Court to have violated the constitutional and statutory requirements vis-à-vis appointing the care-taker Chief Minister of Punjab/No. 7; they be censored and be held guilty of violating their constitutional position and committing misconduct, as detailed above. They be declared to be partial and incapable to hold a '*free and fair election*'. This Apex Court be pleased to take suitable remedial measures in *liaison*

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with all stakeholders to ensure that free and fair elections in *letter and in spirit* take place to allow a true democratically elected government to take-over power in the Province of Punjab as well as in other Provinces of Pakistan.

- (v) In the meantime, the Respondent No. 7/care-taker Chief Minister of Punjab be restrained in selecting/appointing any Cabinet and/or he be restrained from performing any function vis-à-vis the issues of elections till the decision of the titled petition by this honourable August Court. Furthermore, the operation of the Impugned Notifications referred above be suspended and the Respondent No. 7/care-taker Chief Minister of Punjab be restrained from performing any function of the stated office.
- (vi) Any other relief as deemed fit and proper may also be graciously granted.

Filed BY

AHMED NAWAZ CHAUDHRY
Advocate-on-Record
Supreme Court of Pakistan
Islamabad. Cell: 0332-5414643

Drawn and settled by:

Imtiaz Rashid Siddiqui
ASC

CERTIFICATE: Certified as per instructions that this is the first petition on the subject matter herein on behalf of the Petitioners before this August Court.

Advocate on Record
Supreme Court of Pakistan

AHMED NAWAZ CHAUDHRY
Advocate-on-Record
Supreme Court of Pakistan
Islamabad. Cell: 0332-5414643

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 20th May, 2022

NOTIFICATION

No.F.24(9)/2022-Legis. In pursuance of rule 39 of the Rules of Procedure and Conduct of the Business in the National Assembly, 2007, Mr. Speaker has been pleased to declare Raja Riaz Ahmad, MNA as Leader of the Opposition in the National Assembly with effect from 20th May, 2022.

M. Riaz Ahmad
(CHAUDHRY MUBARAK ALI)
Acting Secretary



The Manager,
Printing Corporation of Pakistan Press,
Islamabad.

For publication in the Gazette of
Pakistan Extraordinary Part-III,
25 copies of the Gazette may be
supplied to the National
Assembly Secretariat.

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No.F.2(5)/2023-Cord
ELECTION COMMISSION OF PAKISTAN



NOTIFICATION

Islamabad, the 22nd January, 2023

No.F.2(5)/2023-Cord.- Pursuant to the proviso of Clause (3) of Article 224A of the Constitution of the Islamic Republic of Pakistan and as a result of detailed deliberations made on 22nd January, 2023, the Election Commission of Pakistan has unanimously decided to appoint Syed Mohsin Raza Naqvi as Care-Taker Chief Minister, Punjab with immediate effect.

By Order of the Election Commission of Pakistan.

(Omar Hamid Khan)
Secretary
Election Commission of Pakistan

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IN THE HONOURABLE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

C.M.A. No. _____/2023

In

Const. P. No. _____/2023

Pakistan Tehreek-e-Insaf etc.

Versus

The Federation of Pakistan etc.

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APPLICATION under Order XXXIII Rule 6 of the Supreme Court Rules 1980 for
suspension of operation of the Impugned Notifications inter alia

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Respectfully submitted:

1. That the titled petition has been filed before this August Court wherein no date of hearing has been fixed so far.
2. That the questions of law and grounds taken in the main petition may graciously be read as an integral part of this petition.
3. That the balance of convenience and inconvenience lies in favour of the Petitioners; the Petitioners have a good prima facie case and are likely to succeed in the matter.
4. In the meantime, the Respondent No. 7/care-taker Chief Minister of Punjab be restrained in selecting/appointing any Cabinet and/or he be restrained from performing any function vis-à-vis the issues of elections till the decision of the titled petition by this honourable August Court. Furthermore, the operation of the Impugned Notifications referred above

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be suspended and the Respondent No. 7/care-taker Chief Minister of Punjab be restrained from performing any function of the stated office.

PRAYER

In view of the above it is most respectfully prayed that in the meantime, the Respondent No. 7/care-taker Chief Minister of Punjab be restrained in selecting/appointing any Cabinet and/or he be restrained from performing any function vis-à-vis the issues of elections till the decision of the titled petition by this honourable August Court. Furthermore, the operation of the Impugned Notifications referred above be suspended and the Respondent No. 7/care-taker Chief Minister of Punjab be restrained from performing any function of the stated office.

Any other relief as deemed fit and proper may also be graciously granted by this honourable Apex Court.


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