

**THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Justice Syed Hasan Azhar Rizvi  
Justice Muhammad Karim Khan Agha  
Justice Rozi Khan Barrech

**C.P.L.A. Nos.3992, 3993, 3994, 3995 and 3996 of 2025**

*(Against the judgment dated 03.07.2025 of the Peshawar High Court, Peshawar in W.P Nos.1830-P, 1831-P, 1832-P, 1833-P, 1834-P and 2629-P of 2025)*

Nauman Ahmad and others	In C.P.L.A.3992 of 2025
Mst. Fatima and others	In C.P.L.A.3993 of 2025
Syed Jamal Shah and others	In C.P.L.A.3994 of 2025
Awais Karni and others	In C.P.L.A.3995 of 2025
Mst. Faryal and others	In C.P.L.A.3996 of 2025
	...Petitioner(s)

***Versus***

Government of Khyber Pakhtunkhwa through its Chief Executive/Chief Minister and others	...Respondent(s) (in all cases)
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For the Petitioner(s)	: Mr. Khush Dil Khan, ASC (in all cases)
For the Respondent(s)	: Erag Sheraz, Litigation Officer (HEC)
Date of Hearing	: 14.05.2026

**ORDER**

**Rozi Khan Barrech, J.**- In these connected petitions, the petitioners assail the common judgment dated 03.07.2025 passed by the learned Peshawar High Court, Peshawar, whereby all the connected petitions, involving identical legal and factual issues, were held to be not maintainable and devoid of merit, and were accordingly dismissed.

2. The factual matrix, as projected by the petitioners in the instant and connected petitions, is that they were appointed against vacant Class-IV posts in various colleges situated in District Peshawar, during

the tenure of the Caretaker Government, vide appointment orders dated 14.06.2023. It is further averred that, thereafter, the Provincial Government enacted “The Khyber Pakhtunkhwa Employees (Removal from Service) Act, 2025”, whereby, under Section 3 thereof, all appointments made during the tenure of the Caretaker Government, i.e., from 22.01.2023 to 29.02.2024, were declared void ab initio on the touchstone of Section 230 of the Elections Act, 2017, on the premise that such appointments were unlawful and without lawful authority. Consequent upon the enactment of the aforesaid Act, Respondent No.4 circulated a letter dated 21.02.2025, directing all concerned departments to remove such employees from service. In pursuance thereof, Respondent No.8, namely the Principal, Government Hakeem Abdul Jalil Naqvi Degree College, Gulbahar, Peshawar, issued Office Order dated 01.03.2025, whereby the services of the petitioners were terminated.

3. Learned counsel for the petitioners, during the course of arguments, contended that the impugned removal from service is illegal, premised upon an erroneous interpretation of law, contrary to the factual matrix of the case, and violative of the petitioners’ vested rights as well as the fundamental rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973.

4. On the other hand, the respondents contested the instant and connected petitions, raising several legal and factual objections, and prayed for dismissal of the petitions on various grounds.

5. We have heard the learned counsel for the parties and perused the record. Since common questions of law and facts are involved in all the petitions, therefore, the same are being decided through this single judgment.

6. In view of the foregoing, the first principal question for adjudication is whether the Khyber Pakhtunkhwa Employees (Removal from Service) Act, 2025 is constitutionally valid and intra vires the legislative competence of the Provincial Assembly, particularly insofar as it retrospectively declares appointments made during the caretaker tenure void ab initio and authorizes termination of such employees? It is

pertinent to observe that the Provincial Government has been duly elected through a normal course of electoral process and took the charge of the affairs of the government. Likewise, challenging the Khyber Pakhtunkhwa Employees (Removal from Service) Act, 2025 (hereinafter referred to as “**the ibid Act**”) on the grounds that it is void ab initio and violative of the fundamental rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973, (**the Constitution 1973**) is misconceived and devoid of legal substance. Record reveals that the *ibid Act* has been duly enacted by the competent Provincial Legislature within the four corners of its constitutional authority. Upon careful examination, the Act neither infringes nor curtails any of the fundamental rights guaranteed under Chapter I of Part II of the Constitution. The legislative competence of the Provincial Assembly to enact such a law is firmly entrenched within the constitutional framework, and the said Act enjoys a presumption of constitutionality unless and until it is otherwise declared by a competent forum. Whereas, Article 141 of the Constitution 1973 explicitly declares that, subject to the Constitution, the Majlis-e- Shoora (Parliament) may make laws. Similarly, a Provincial Assembly may make laws for the respective province and article 142 of the Constitution 1973 sets out the powers of the Majlis e Shoora (Parliament) to make laws within the four corners of the constitutional authority. The relevant Articles of the Constitution are reproduced for ready reference respectively:

**141. Extent of Federal and Provincial laws.** *Subject to the Constitution, [Majlis-e-Shoora (Parliament)] may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the province or any part thereof.*

**142. Subject-matter of Federal and Provincial laws.** *Subject to the Constitution\_\_*

*(a) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;*

*(b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence.*

*(c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List.*

*(d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province.*

7. Additionally, in the context of declaring a law unconstitutional, it is pertinent to note that the principles governing the exercise of this solemn judicial function have been elaborated by Cooley in his “*Treatise on Constitutional Limitations*” (pages 159 to 186), by H.M. Seervai in “*Constitutional Law of India*” (Volume I, pages 260 to 262), by the late Mr. A.K. Brohi in “*Fundamental Law of Pakistan*” (pages 562 to 592), and by Mr. Justice Fazal Karim in “*Judicial Review of Public Actions*” (Volume I, pages 488 to 492). These authorities set out the rules that must guide the Court while considering whether a law is liable to be struck down as unconstitutional. In the relevant context the Supreme Court of Pakistan, in Ms. Imrana Tiwana’s case, after considering the aforesaid authorities as well as its own jurisprudence, summarized the grounds and formulated the principles governing the striking down of legislation in paragraph 65. The relevant portion is reproduced hereunder for ready reference:

- (i) *There is a presumption in favour of constitutionality, and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;*
- (ii) *Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;*
- (iii) *A statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;*
- (iv) *If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;*
- (v) *The Court will not decide a larger constitutional question than is necessary for the determination of the case;*
- (vi) *The Court will not declare a statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution,*
- (vii) *The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;*
- (viii) *The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution.*

(ix) *Mala fides will not be attributed to the Legislature.*

8. The mere fact that certain individuals may feel aggrieved by the consequences of the legislation does not, by itself, render the statute unconstitutional or ultra vires. Consequently, the impugned termination orders passed under the authority of the said legislation are lawful, intra vires, and have been issued in accordance with the principles of natural justice and due process of law. No violation of any constitutionally guaranteed right has been established on the record by the petitioners.

9. In support of the above proposition, reliance is placed on the authoritative judgment of the Hon'ble Supreme Court of Pakistan in Pakistan through Secretary Finance and others v. Shahta Sugar Mills Ltd. and others, reported as 2024 SCMR 1656, wherein the august Court observed that the Constitution rests upon the foundational principle of trichotomy of powers; that law-making is the exclusive province of the legislature; and that the courts are bound to uphold the presumption in favour of constitutionality. It was further held that the burden lies upon the person challenging the vires of a law to demonstrate its invalidity, that courts must lean in favour of sustaining legislation rather than destroying it, and that a statute may only be struck down where reconciliation with the Constitution is impossible. The Court also emphasized that no mala fide can be attributed to the legislature and that judicial review must be exercised within narrow and stringent limits.

10. In light of the foregoing, additionally, it is a well-settled constitutional principle that caretaker governments function merely as custodians of the State machinery and are not vested with the mandate to formulate or implement substantive policy decisions. Their primary obligation is to ensure administrative continuity, maintain neutrality, and facilitate the conduct of free, fair, and transparent elections. Any departure from this limited mandate, including permanent appointments, policy decisions, or financial undertakings having long-term consequences, constitutes a transgression of their constitutional limits and is amenable to judicial scrutiny. If found to be in violation of the constitutional or legal framework, such actions are liable to be declared ultra vires, void, and of no legal effect.

11. Now adverting to the second question of law that whether appointments made by the caretaker government during the period 22.01.2023 to 29.02.2024, and the consequential removal/termination of the petitioners pursuant to the Elections Act, 2017 and the impugned provincial legislation, were lawful and within the limited mandate of the caretaker setup, or whether they violated the petitioners' constitutional and vested rights under Articles 4, 9 and 25 of the Constitution? In this regard, after hearing the parties at length and upon examination of the available record, it appears that the central controversy turns on the construction and scope of Section 230 of the Elections Act, 2017, particularly whether the Caretaker Government was lawfully empowered to make appointments, removals, terminations or dismissals of employees, whether permanent or contractual, in an unrestricted or arbitrary manner. The petitioners contend that the impugned action was taken without lawful authority or jurisdiction and in excess of the constitutional and statutory limits governing a caretaker setup. They, therefore, seek a declaration that the removals are illegal and void ab initio, and that the Khyber Pakhtunkhwa Employees (Removal from Service) Act, 2025 is ultra vires and unconstitutional to the extent it affects employees appointed during the caretaker tenure. It is, accordingly, imperative to examine whether the Caretaker Government, being a transitory arrangement, possessed the legal competence to take decisions of permanent consequence, including mass termination, alteration of service conditions, or making appointments of a permanent nature. The scope of Section 230 of the Act 2017 must thus be tested against the governing constitutional principles, the relevant judicial precedents, and the requirement that the caretaker setup remain neutral, non-partisan, and confined to its limited mandate during the electoral period.

12. The Caretaker Government owes its existence to, and derives its constitutional basis from, the Constitution of the Islamic Republic of Pakistan, 1973. Under Article 52, 224 and 224-A of the Constitution of the Islamic Republic of Pakistan, 1973, upon completion of their term, the National Assembly and the Provincial Assemblies stand dissolved, and, for the purposes of administrative continuity, a caretaker Government is constituted to function during the interregnum between

the dissolution of the Assemblies and the formation of the new Government both at Provincial and National levels. It is important to examine the mandate and functions of the Caretaker Government, as defined in Section 230 of the Elections Act, 2017, and same is reproduced as under:

"**230. Functions of caretaker Government**(1) *A caretaker Government shall-*

- a) perform its functions to attend to day-to-day matters which are necessary to run the affairs of the Government,*
- b) assist the Commission to hold elections in accordance with law,*
- c) restrict itself to activities that are of routine, non-controversial and urgent, in the public interest and reversible by the future Government elected after the elections; and*
- d) be impartial to every person and political party.*

(2) *The caretaker Government shall not-*

- a) take major policy decisions except on urgent matters;*
- b) take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government;*
- c) enter into major contract or undertaking if it is detrimental to public interest;*
- d) enter into major international negotiation with any foreign country or international agency or sign or ratify any international binding instrument except in an exceptional case;*
- d) make promotions or major appointments of public officials but may make acting or short-term appointments in public interest;*
- e) transfer public officials unless it is considered expedient and after approval of the Commission; and*
- f) attempt to influence the elections or do or cause to be done anything which may, in any manner, influence or adversely affect the free and fair elections.*

(3) *the Prime Minister, Chief Minister or a Minister or any other members of a Caretaker Governments shall, within three days from the date of assumption of office, submit to the Commission a statement of assets and liabilities including assets and liabilities of his spouse and dependent children as on the preceding 30th day of June on Form B and the Commission shall publish the statement of assets and liabilities in the official Gazette.*

(4) *In this section, caretaker Government' means the caretaker Federal Government or a caretaker Provincial Government.*

Upon a plain reading of the relevant statutory and constitutional provisions, it is evident that the mandate of the Caretaker Government is narrowly confined in scope and character. Its primary responsibility is to attend to the day-to-day affairs of the State and to ensure a smooth,

orderly, and transparent transition of power from the outgoing elected government to the incoming elected government after general elections. This interim arrangement draws its constitutional foundation from Article 218(3) of the Constitution of the Islamic Republic of Pakistan, 1973, which obliges the Election Commission to organize and conduct elections honestly, justly, fairly, and in accordance with law.

13. Being a temporary, transitional, and non-political setup, the Caretaker Government does not possess the same constitutional mandate as an elected government. Its authority is therefore circumscribed and does not extend to framing or implementing new policies, undertaking long-term development initiatives, making permanent appointments, whether in civil service, public sector institutions, autonomous bodies, or corporations, or entering into binding financial or contractual obligations that may outlive its tenure or prejudice the discretion of the incoming government. Any act beyond these limitations would be in excess of jurisdiction and contrary to the settled constitutional scheme.

14. It is also well settled that any administrative or developmental measure undertaken by a caretaker setup must be justified by compelling public interest, and even then, such action is permissible only with the prior approval of the Election Commission of Pakistan, so as to preserve neutrality, transparency, and fairness in the electoral process.

15. Moreover, adverting to the subsequent legislation enacted by the Provincial Government, namely the Khyber Pakhtunkhwa Employees (Removal from Service) Act, 2025, and particularly to Section 3 thereof concerning the status of the employees, the same is reproduced hereunder for ready reference:

**3. Status of the employees.**

*---(1) The employees, unlawfully appointed, shall be deemed to have never been appointed and their appointment are hereby declared to be void-ab-initio.*

**Explanation:** *For the purpose of this section the expression “unlawfully appointed” means appointment made in contravention of the provisions of section 230 of the Elections Act, 2017 (Act No. XXXIII of 2017) and the instructions of the Election Commission of Pakistan issued vide Notification No. F.No. 2(1)/2023-Cord, dated: 22-01-2023.*

(2) The Department concerned shall, for the purpose of sub-section (1), issue a notification, in this regard.

(3) Upon declaration of employees, under sub-section (1), all the emoluments, admissible to the employees under the post, to which they were unlawfully appointed, shall stand discontinued forthwith.

Emphasis Supplied

Turning to Section 3 of the Khyber Pakhtunkhwa Employees (Removal from Service) Act, 2025, it is evident that the Provincial Legislature, by express statutory declaration, has treated employees appointed in contravention of Section 230 of the Elections Act, 2017 and the Election Commission's Notification No. F.No. 2(1)/2023-Cord dated 22.01.2023 as having never been validly appointed, with such appointments deemed *void ab initio*. The provision further mandates issuance of a departmental notification and provides that, upon such declaration, all emoluments attached to the relevant post shall stand discontinued forthwith. In the context of the present case, the said statutory scheme directly impacts the petitioners, whose appointments were made during the caretaker tenure from 22.01.2023 to 29.02.2024, and forms the legal basis for the impugned termination orders challenged before this Court.

16. Moreover, according to the established and accepted norms, the caretaker Government (Chief Minister and the Cabinet) is required to perform its functions to attend to the day-to-day matters, which are necessary to run the affairs of the state keeping in view of the national interest. In the light of the settled jurisprudence of the Supreme Court of Pakistan, it is manifest that the Caretaker Government is an interim and transitional arrangement, meant to confine itself to the day-to-day administration of the State and to facilitate the holding of free, fair, honest, and just elections. It is not vested with authority to undertake decisions of a permanent character, including fresh appointments, particularly where such appointments are likely to have enduring consequences for the incoming elected government. In *Khawaja Muhammad Asif v. Federation of Pakistan and others*, reported as 2013 SCMR 1205, it is held that a Caretaker Government is not authorized to make decisions or appointments having effect on the working or policies of the future Government, and that it must remain within its limited

mandate of election-related and routine administrative functions. Likewise, in paragraph 18 of the same judgment, it was reiterated that while a caretaker setup may take decisions required for the ordinary and orderly running of the State, any decision having far-reaching effects, including fresh appointments of civil servants and appointments on contract basis, should ordinarily be left to the elected Government.

17. Tested on this touchstone, the appointments made during the caretaker tenure from **22.01.2023 to 29.02.2024** fall within the category of actions which, if they entail permanence or long-term consequences, would prima facie travel beyond the lawful scope of caretaker authority and therefore warrant scrutiny in the context of Section 230 of the Elections Act, 2017 and the impugned provincial legislation (*Khyber Pakhtunkhwa Employees (Removal From Service) Act 2025*).

18. In view of the foregoing discussion, it is a settled constitutional proposition that the Caretaker Government functions merely as a temporary custodian of the State machinery and is not clothed with the mandate to frame or implement substantive policy decisions. Its role remains confined to ensuring administrative continuity, maintaining neutrality, and facilitating the conduct of free, fair, and transparent elections. Any act beyond this limited mandate, including permanent appointments, policy decisions, or financial commitments having long-term consequences, would amount to a departure from its lawful sphere and would be amenable to judicial scrutiny. However, in the present case, the petitioners have failed to demonstrate any violation or infringement of their fundamental rights under Articles 4, 9, and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, nor has any such infringement been established from the available record.

19. Consequently, for the reasons recorded hereinabove, these petitions involving identical legal and factual questions, are found to be without merit and are hereby dismissed.

Judge

Judge

Judge

Islamabad  
14.05.2026  
Zahid Hussain/Ihtaram Ul Haq  
**Approved for Reporting**