



**BEFORE THE
RETURNING OFFICER OF BYE-ELECTION 2019 NA-205 GHOTKI-II**

Aitzaz Ali & one another.....Objectors

V/S

Mr. Ahmed Ali Khan Mahar.....Contesting Candidate

ORDER

18-06-2019

Whereas, the Nomination Form was filed by Mr. Ahmed Ali Khan S/o Ali Muhammad Khan Mahar, for contest of by election of 2019 NA-205 Ghotki-II on 14-06-2019 and the date of scrutiny was fixed on 16-06-2019 at 11:00 AM. The said candidate attended the scrutiny process along with proposer and seconder as well as his Conusel Mr. Ghulam Shabir Dayo on the given date and time. During the scrutiny of nomination form Mr. Aitzaz Ali R/o Village Sono Pitafi taluka Mirpur Mathelo and Agha Qurban Ali R/o Muhalla Tando Maso Pathan raised the objections on the following grounds through his counsel Mr. Mukesh Kumar G-Karara .

That candidate being the Chairman of Town Committee Khangarh at Khanpur Mahar, falls within the “Service of Pakistan” therefore not qualified to contest election in terms of Art. 63 (d) of the Constitution of Pakistan and Section 60 (2) (a) of the Election Act 2017, the section 79(2) of the Sindh Local Act 2013, provide the executive powers of the counsel, which shall vest in and be exercised by the Mayor or Chairman, as the case may be since the candidate is Chairman of the Town Committee Khangarh at Khanpur, hence is disqualified to contest by Election of NA-205 Ghotki-II in terms of Art. 63 (1)(k) of the Constitution of Pakistan 1973, therefore the nomination form may be rejected.

Whereas the learned counsel of the objector argued that the above mentioned objections in the light of PLD 2014 of Lahore 330 and SCMR 1087/2016 candidate stands disqualified. The copy of the objection got received to the learned counsel of the candidate. The matter was fixed for hearing on 17-06-2019 at 1:00 PM for submission of the reply of the objection by the learned counsel of candidate and for further arguments.

Whereas, on 17-06-2019 the learned counsel of the candidate submitted the reply of the objections and argued that the candidate is elected member of Sindh Local Government, but was not appointed / employed by the Local Government and does not come in the definition of the “Service of Pakistan” as envisaged under article 260 of the Constitution of Pakistan 1973. the post of the Mayor /Chairman of any council has not been declared by Provincial or Federal Government or by any court of law, being the “Service of Pakistan” but are out of definition provided under article 260 of the Constitution of Pakistan 1973.

The learned council further argued that in the authority reported in 2016 of SCMR 1087 the question of Civil Servant within the preview of S.2 (a) of Civil Servants Act 1973 was decided that the Ambassador which was contractual appointment for a period of two years, it was held, that irrespective the person was not a civil servant within the meaning of Civil Servants Act.

The learned counsel argued in another case law reported in PLD 2014 Lahore-330 (m) the question of bar of fundamental rights under the Article 17 (2) of the Constitution which was regarding "Freedom of Association". The learned counsel further argued that Section 37 (5) of Sindh Local Government Act, 2013 clearly provide that "if a person of a council elected as a member of parliament of Provincial Assembly, his seat as member of the council shall stand vacated on his taking oath as member of the parliament of Provincial Assembly, as the case may be.

Whereas, learned counsel of the objector on 17-06-2019 submitted the PLD 2018 Lahore 895 and argued that in said PLD the appeal has been dismissed by the Honourable Election Tribunal Lahore in the identical nature of matter.

Whereas the learned Council also argued that the candidate has tendered his resignation from from the post of Chairmanship of Town Committee of Khagarh (Copy of the resignation was also submitted.)

In view of the above facts the nomination forms of Mr. Ahmed Ali Khan S/o Ali Muhammad Khan Mahar, are hereby allowed/accepted.

No.RO/By-Elec-NA-205 Ghotki-II /2019/-12

Given under my hand and Seal of this Office.
This 18th day of June 2019.

(Pervaiz Ahmed Kalhoro)
District Election Commissioner, Korangi, Karachi/
Returning Officer Bye-Election NA-205, Ghotki-II