

**ORDER SHEET**  
**IN THE LAHORE HIGH COURT**  
**LAHORE.**  
**JUDICIAL DEPARTMENT**

**W.P.No.82603/2022**

**Chaudhary Pervez Elahi      Vs.    Governor Punjab 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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| 23.12.2022 | M/S Barrister Syed Ali Zafar, Amir Saeed Rawn, Barrister Syed Ali Noman Shah, Safdar Shaheen Pirzada, Jahanzaeb Sukhera, Ahmad Asfandiyar Waheed, Ch. M. Farman Manais, Adnan Ramay, Haider Majeed, Zaheer Abbas, Mian Sood Asif, M. Usman Saleem Ch., Advocates for the petitioner.<br>Mr. Ahmad Awais, Advocate General, Punjab.<br>Mr. Tipu Salman Makhdoom, Additional Advocate General.<br>Mr. Zafar Zulqarnain, Additional A.G.<br>Rai Shahid Saleem Khan, AAG.<br>Mian Swad Hanif, AAG.<br>Mr. Kashif Bashir, AAG.<br>Barrister Shahryar Riaz, AAG.<br>Rana Zain Tahir, AAG.<br>Mr. Mustafa Shaukat Imran Pasha, AAG.<br>Mirza Nasar Ahmad, Additional Attorney General for Pakistan.<br>Syed Tanveer Ahmad Hashmi, Deputy Attorney General.<br>Mr. Tahir Mahmood Khokhar, Deputy Attorney General.<br>Mr. Khalid Ishaque, Advocate for respondent No.1. |
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In this Constitutional Petition, the petitioner has challenged the orders dated 19.12.2022 and 22.12.2022 passed by respondent No.1 (Governor of Punjab), whereby in exercise of powers under Article 130(7) of the Constitution of Islamic Republic of Pakistan, 1973 (**Constitution**) read with rule 22(7) of the Rules of Procedure of the Provincial Assembly of the Punjab, 1997 (**Rules**), the respondent No.1 held that the Chief

Minister, Punjab (petitioner) does not command the confidence of the majority of the members of Punjab Assembly and therefore, ceases to hold its office with immediate effect and consequently dissolved the Provincial Cabinet forthwith, however, under Article 133 of the Constitution, the petitioner was asked to continue as Chief Minister until his successor enters upon in the office. Learned counsel for the petitioner submits that petitioner became the Chief Minister, Punjab by securing 186 votes of Provincial Assembly on 22.7.2022. He submits that on 19.12.2022, respondent No.1 issued order for summoning the session of Provincial Assembly requiring the Chief Minister of Punjab/petitioner to obtain vote of confidence on 21.12.2022. Submits that in response to the above summoning of session of Provincial Assembly by respondent No.1, vide order dated 19.12.2022, respondent No.3 gave a ruling on 20.12.2022, declaring that summoning of session by respondent No.1 is unconstitutional when Provincial Assembly is already in session, hence order could not be processed. Submits that notwithstanding the aforesaid ruling by respondent No.3, the respondent No.1 passed impugned order dated 22.12.2022 by relying upon the legal opinion of few Advocates. Learned counsel contends that since no session of Assembly was held in pursuance of order of respondent No.1, therefore, it could not be presumed that petitioner lost confidence of majority members of the Provincial Assembly. He submits that no doubt, under Article 130(7) of the Constitution, no time frame is given to hold the Assembly session, however,

reasonable time is to be fixed by the Speaker of the Assembly under Rule 22 of the Rules for holding the session for the purpose of vote of confidence under Article 130(7) of the Constitution. He also submits that under Article 136 of the Constitution, the time to move resolution is minimum three days and maximum seven days, which under the rules commences from the date when resolution is presented before the Assembly, which almost consumes eleven to fourteen days. Submits that at best this time is to be read in Article 130(7) of the Constitution to allow reasonable time for holding the session. Submits that in this case, only two days were provided by respondent No.1 to take vote of confidence, which directions are unreasonable. He also submits that as per law settled in Pir Sabir Shah vs. FOP etc.” (PLD 1994 Supreme Court 738), the reasonable time for voting under Article 130(7) of the Constitution, which is pari materia to Article 130(5) before 18<sup>th</sup> amendment of the Constitution, ten days were held to be reasonable time. He submits that merely because no Assembly Session took place, it cannot be presumed that petitioner avoided taking vote of confidence and there was no occasion to invoke rule 22(7) of the Rules and to assume that he has lost confidence of majority of the members of the Assembly. Learned counsel submits that as per law settled by this Court in “Mian Manzoor Ahmad Wattoo Versus Federation of Pakistan and 3 others” (PLD 1997 Lahore 38), the Governor can only remove the Chief Minister if he cannot obtain majority vote in the assembly and not otherwise. He further submits that mere

difference of opinion between respondent No.1 and respondent No.3 regarding holding of session could not be construed that petitioner was reluctant to obtain vote of the members of the Assembly, and to declare that Chief Minister ceases to hold its office and Provincial Cabinet stands dissolved forthwith. He also argued that rule 22(7) of the Rules could only be invoked provided rule 22 was followed in entirety and in letter and spirit, and clause 22(7) of the Rules could not be invoked in isolation. On the question of interim relief, he submits that there is urgency in the matter as only Chief Minister is asked to continue his office under Article 133 of the Constitution but Provincial Cabinet was dissolved, which means that actually there will be no government in view of ratio settled in the case of Messrs Mustafa Impex etc vs. The Government of Pakistan etc. (PLD 2016 Supreme Court 808). Submits that Provincial Cabinet is required to run day to day affairs of the Government. Learned counsel submits that Governor under Article 130(7) of the Constitution can only ask the petitioner to take vote of confidence if he is satisfied that the circumstances exist that Chief Minister has lost confidence of the majority of the members of Provincial Assembly and that satisfaction must be based on objective assessment. He submits that perusal of impugned order dated 19.12.2022 shows that grounds based on which satisfaction was alleged do not fulfill objective criteria to invoke the jurisdiction under Article 130(7) of the Constitution.

2. Mr. Khalid Ishaque, Advocate appeared at this stage on behalf of respondent No.1 (without submitting power of

attorney) submits that respondent No.1 is ready to withdraw the impugned orders if petitioner will take vote of confidence within a period of seven days. He also submits that petitioner should also undertake that he will not dissolve the Assembly within said period. Learned counsel for the petitioner submits that once said offer will be received in writing, he will respond to the same after seeking instructions.

3. In view of above submissions, let notices be issued to respondents for 11.1.2023. As interpretation of various provisions of the Constitution are involved, notice shall also be issued to learned Attorney General of Pakistan and learned Advocate General, Punjab under Order XXVII-A CPC.

**C.M No.1/2022**

Dispensation sought for is allowed subject to all just and legal exceptions. C.M stands disposed of.

**C.M No.2/2022**

Learned counsel for the petitioner on the question of interim relief was confronted with para 121 of the Mian Manzoor Ahmad Wattoo vs. FOP etc (PLD 1997 Lahore 38), to ensure that in case, impugned order is held in abeyance and petitioner as well as cabinet is restored as an interim measure, whether petitioner will exercise his right to dissolve the Provincial Assembly. Barrister Syed Ali Zafar, Advocate for the petitioner, in response gave a written undertaking by the petitioner in following terms:-

*“I Chaudhry Parvez Elahi, Chief Minister Punjab, undertake that if the Governor’s order is suspended and*

*Chief Minister and Cabinet restored to its original position, I shall not advise the Governor to dissolve the Assembly till the next date of hearing”.*

In view of above submissions and undertaking given by the petitioner, the operation of impugned orders dated 19.12.2022 and 22.12.2022 shall be held in abeyance till the next date of hearing, however, this order will not preclude the petitioner from taking vote of confidence on his own accord.

**(ABID AZIZ SHEIKH)**  
**JUDGE.**

**(TARIQ SALEEM SHEIKH)**  
**JUDGE**

**(CH. MUHAMMAD IQBAL)**  
**JUDGE**

**(ASIM HAFEEZ)**  
**JUDGE**

**(MUZAMIL AKHTAR SHABIR)**  
**JUDGE**