

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa, CJ
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Syed Mansoor Ali Shah

Constitution Petition No. 39 of 2019

(Against Extension of Tenure of Chief of the Army Staff)

The Jurists Foundation through its Chairman

...Petitioner

versus

***Federal Government through Secretary Ministry of Defence,
etc.***

...Respondents

Petitioner: In person.

For the respondents: Mr. Anwar Mansoor Khan, Attorney-General for Pakistan with
Mr. Sajid Ilyas Bhatti, Addl. Attorney-General
Mr. Amir-ur-Rehman, Addl. Attorney General
Ch. Ishtiaq Ahmed, Addl. Attorney General.
Mr. Sohail Mehmood, Dy. Attorney General.
Mian Asghar Ali, Dy. Attorney General.
Assisted by Ms. Faryal Shah Afridi, Advocate.
Syed Iqbal Hussain, ASC.
Brig. Falak Naz, Director (Law), M/o Defence.
Flt. Lt. Khalid Abbas, Asst. Director (Law), M/o Defence.
Brig. Muhammad Khalid Khan, JAG Department, GHQ.
Lt. Col Rai Tanveer Ahmed Kharral, OIC, JAG Department, GHQ.
Dr. Farogh Nasim, ASC for respondent No.4, alongwith
Mr. Abid S. Zuberi, ASC.
assisted by M/s Ayan Memon, Mr. Shahid Naseem Gondal & Barriser Neelum Bukhari.

Date of hearing: 28.11.2019

ORDER

For detailed reasons to be recorded later we pass the following short order:-

2. The extension/reappointment of General Qamar Javed Bajwa, Chief of the Army Staff ("**COAS**") has been challenged before us. In the proceedings before us during the last three days the Federal Government has moved from one position to another referring to it as reappointment, limiting of retirement or extension of tenure and has also interchangeably placed reliance on Article 243(4)(b) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") and Regulation 255 of the Army Regulations (Rules), 1998. However, finally today the Federal Government through the learned Attorney General for Pakistan has presented this Court with a recent summary approved by the President on the advice of the Prime Minister alongwith Notification dated 28.11.2019 which shows that General Qamar Javed Bajwa has been appointed as COAS under Article 243(4)(b) of the Constitution with effect from 28.11.2019.

3. We have examined Article 243(4)(b) of the Constitution, Pakistan Army Act, 1952, Pakistan Army Act Rules, 1954 and Army Regulations (Rules), 1998 and inspite of the assistance rendered by the learned Attorney-General, we could not find any provision relating to the tenure of COAS or of a General and whether the COAS can be reappointed or his term can be extended or his retirement can be limited or suspended under the Constitution or the law. The learned Attorney-General has taken pains to explain that the answers to these questions are based on practice being followed in the Pakistan Army but the said practice has not been codified under the law.

4. Article 243 of the Constitution clearly mandates that the Federal Government shall have control and command of the Armed Forces and the supreme command of the Armed Forces

shall vest in the President. It further provides that the President shall, subject to law, have power to raise and maintain the military, etc. and it is the President who on the advice of the Prime Minister shall appoint, inter alia, COAS. Article 243 of the Constitution, therefore, clearly shows that the President shall, subject to law, raise and maintain the military, however, the laws referred to above do not specify the tenure, retirement, re-appointment and extension of the COAS or of a General of the Pakistan Army.

5. The learned Attorney-General has categorically assured the Court that this practice being followed is to be codified under the law and undertakes that the Federal Government shall initiate the process to carry out the necessary legislation in this regard and seeks a period of six months for getting the needful done. Considering that the COAS is responsible for the command, discipline, training, administration, organization and preparedness for war of the Army and is the Chief Executive in General Headquarters, we, while exercising judicial restraint, find it appropriate to leave the matter to the Parliament and the Federal Government to clearly specify the terms and conditions of service of the COAS through an Act of Parliament and to clarify the scope of Article 243 of the Constitution in this regard. Therefore, the current appointment of General Qamar Javed Bajwa as COAS shall be subject to the said legislation and shall continue for a period of six months from today, whereafter the new legislation shall determine his tenure and other terms and conditions of service.

6. This petition is disposed of in the above terms.

Chief Justice

Judge

Islamabad,
28th November, 2019
Approved for reporting.
Sadaqat

Judge