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SENATE OF PAKISTAN



REPORT OF THE SENATE COMMITTEE ON DELEGATED LEGISLATION

On

STARRED QUESTION NO. 40 ASKED BY SENATOR KAUDA BABAR IN THE SENATE SITTING HELD ON 14TH JUNE, 2021 REGARDING EXISTING CRITERIA, CONDITIONS AND PROCEDURES OF POSTINGS AS CHIEF SECRETARIES IN THE FOUR PROVINCES AS WELL AS AZAD JAMMU AND KASHMIR AND GILGIT BALTISTAN

PRESENTED BY

SENATOR FAROOQ HAMID NAEK

CHAIRMAN COMMITTEE

SENATE SECRETARIAT

REPORT OF THE SENATE COMMITTEE ON DELEGATED LEGISLATION

I, Chairman of the Senate Committee on Delegated Legislation, have the honour to present report of the Committee on Starred Question No. 40 asked by Senator Kauda Babar in the Senate sitting held on 14th June, 2021 regarding existing criteria, conditions and procedures of postings as chief secretaries in the four provinces as well as Azad Jammu and Kashmir and Gilgit Baltistan. The matter was referred to the Committee on 14th June, 2021 for consideration and report.

2. The composition of the Committee is as follows:

1.	Senator Farooq Hamid Naek	Chairperson
2	Senator Syed Yousaf Raza Gillani (Leader of the Opposition)	Member
3	Senator Dr. Muhammad Farogh Naseem	Member
4	Senator Muhammad Azam Khan Swati	Member
5	Senator Samina Mumtaz Zehri	Member
6	Senator Rubina Khalid	Member
7	Senator Keshoo Bai	Member
8	Senator Kauda Babar	Member
9	Senator Prof. Sajid Mir	Member
10	Senator Prof. Dr. Mehr Taj Roghani	Member
11	Senator Azam Nazeer Tarar	Member
12	Senator Molvi Faiz Muhammad	Member
13	Senator Syed Ali Zafar	Member

3. The matter referred by the House was taken up for consideration in the Committee meetings held on 08th July, 2021, 25th August, 2021, 28th October, 2021 & 16th November, 2021.

The last meeting of the Committee was attended by the following members:-

1.	Senator Farooq Hamid Naek	Chairperson
2.	Senator Azam Nazeer Tarar	Member
3.	Senator Keshoo Bai	Member
4.	Senator Syed Ali Zafar	Member
5.	Senator Prof. Sajid Mir	Member
6.	Senator Prof. Dr. Mehr Taj Roghani	Member
7.	Senator Kauda Babar	Member/Mover
8.	Minister of State for Parliamentary Affairs	Ex-Officio Member

4. The first meeting on this agenda was held on 08th July, 2021. The representative of the Establishment Division explained that postings or transfers as Chief Secretaries are made in consultation with provinces as per provisions contained in Rule 15 of the Civil Service of Pakistan (Composition and Cadre) Rules, 1954 read with Inter-Provincial Agreement of 1993. Committee members, including the Chairman Committee, expressed concerns over the Rules of 1954 and procedure for posting as Chief Secretaries in Kashmir, Gilgit-Baltistan and the four provinces of Pakistan. Addressing the Additional Secretary Establishment Division, the Chairman Committee Senator Farooq Hamid Naek highlighted with concern that if the rules were made in 1954 then why the Constitution of 1973 is mentioned and Baluchistan is even ignored in the said rules. Chairman Committee pointed out that Article 146 of the Constitution of Pakistan, 1973, relied upon by the federal government to frame said rules does not grant rule-making powers to the federal government regarding posting of Chief Secretaries. He explained that Article 146 of the Constitution simply provides for entrustment, either conditionally or unconditionally, on the provincial government functions in relation to matters to which executive authority of federal government extends. He further observed that apparently Rules of 1954 are without jurisdiction, inconsistent with the Constitution and beyond the scope and purpose of the Constitution. Consequently, the whole superstructure raised over these rules falls

to the ground and all postings of Chief Secretaries and Inspector Generals of Police being made by the Establishment Division are violative of the Constitution.

5. In the 2nd meeting held on the same agenda, the Secretary Establishment submitted that whatever is being done regarding appointment of PAS officers as Chief Secretaries is according to the Constitution and the rules framed thereunder. He further informed that the matter under consideration is sub-judice as twelve cases wherein vires of Civil Service of Pakistan (Composition and Cadre) Rules 1954 are challenged are pending in FST and High Courts. Therefore, any discussion over it in the Committee is likely to prejudice decision making in the courts of law and tribunal. Upon which, Chairman Committee enquired Secretary, Law and Justice as to whether any embargo is imposed upon parliamentary committees to not touch a matter pending in a court of law. Secretary, Law and Justice, while referring to Rule 50 of Rules of Procedure and Conduct of Business in the Senate 2012, responded that matters pending in courts are beyond the gaze of or scrutiny by the legislature. Whereafter, the Chairman Committee directed Secretary Establishment to share copies of memo of petitions and comments filed in return by Establishment Division before next meeting of the Committee to check as to whether matter being agitated before the courts is similar or not.

6. In the 3rd meeting held on 28th October, 2021, the matter was deferred as the Establishment Division could not properly explain contents of petitions. Whereas, last meeting on the same agenda item was held on 16th November in which the Chairman Committee again enquired Secretary Establishment Division about constitutionality and legality of senior officers' appointments e.g. chief secretaries, IGs in the provinces by the federal government, especially after passage of 18th Constitutional Amendment. Further, whether cases pending in various courts pertains to vires of Civil Services of Pakistan (Composition and Cadre) Rules 1954, Inter Provincial Agreement 1993 or not. Senator Kauda Babar asked why PAS Officers are only posted as chief secretaries and PMS officers are ignored. In response, Secretary Establishment division cited two cases from a list of nineteen which are pending in various courts. According to the Secretary Establishment, case titled Arshad Farooq Faheem verses the Federation of Pakistan is pending before Federal Services Tribunal wherein it is alleged that SROs issued under Civil Services of Pakistan (Composition and Cadre) Rules 1954 are void ab initio and ultra vires of the Constitution of Islamic Republic of Pakistan. Similarly, in the Peshawar High Court, in Jibreel Raza verses Federation of Pakistan vires of some SROs under the same rules

have been challenged. Moreover, there are some other identical cases pending adjudication in Federal Service Tribunal, Peshawar High Court, and Lahore High Court, wherein same matter is under the scanner of judicature. In the light of above- submissions, he pleaded that discussion on subjudice matter in Committee is likely to prejudice findings of the courts in future. Senator Azam Nazeer Tarar pointed out that identical petitions are pending in three High Courts wherein vires of above Rules of 1954 are under challenge. Upon which, the Committee held that as per sub rules (XVIII) & (XX) of Rule 50 of the Rules of Procedures and Conduct of Business in the Senate, 2012, the question referred by the House is disposed of being subjudice. However, in view of public importance of the matter, the Committee decided to take it up in the next meeting to see as to whether the Civil Services of Pakistan (Composition and Cadre) Rules 1954 and Inter Provincial Agreement 1993 are in consonance with the Constitution of Pakistan or not, especially post 18th Amendment scenario.

Recommendation:-

The Committee recommends that as per sub rules (XVIII) & (XX) of Rule 50 of the Rules of Procedures and Conduct of Business in the Senate, 2012, the question referred by the House to the Committee be disposed of being subjudice before various courts.



15.12.2021

(Muhammad Javed Iqbal)
Secretary Committee



(Senator Farooq Hamid Naek)
Chairman Committee on Delegated Legislation