

APPEAL NO. E-71-01-2021

Murtaza Hashim

Versus

Senate Secretariat

Date of Hearing: 20.10.2021

Fawad Malik: Information Commissioner

Present: Mr. Mohammad Javed Iqbal, Deputy Director along with Mr. M. Irfan Choudhry, A.D, Senate on behalf of the Senate Secretariat.

**A. APPEAL.**

1. Mr. Murtaza Hashim invoking the right under Article 19A of the Constitution of Islamic Republic of Pakistan read with Section 11 of the Right of Access to Information Act, 2017 has asked information from the office of the Deputy Secretary (Legislation) / Public Information Officer, Senate Secretariat, Parliament House, Islamabad via email [haris.rehman@senate.gov.pk](mailto:haris.rehman@senate.gov.pk), request dated 5.1.2021. The detail of the requested information and record is reproduced as under:

1. *“Total vacant posts in Senate of Pakistan, Senate Secretariat Islamabad in BPS-17 and above nomenclature wise details.*
  2. *Certified copy Senate Secretariat (Service) Rules, 2017 along with all schedules (copy available at website did not contain schedule).*
  3. *Is there any proposal under consideration or in near future for filling of above noted vacant posts through direct recruitment?*
  4. *Gross and net salary paid to Section Officer BPS-17 & 18, Deputy Secretary in Senate of Pakistan, Senate Secretariat Islamabad along with all allowances.*
  5. *Allowances admissible to employees of Senate of Pakistan, Senate Secretariat Islamabad in BPS-17, 18 & 19.*
  6. *Notification for payment of Bonus paid to employees of Senate of Pakistan, Senate Secretariat Islamabad on eve of budget session conclusion.”*
2. Feeling aggrieved of the non-provision of the requested information and record from the respondent within the stipulated frame of time limit of ten

days provided in the Act, he preferred appeal dated 18.01.2021 before the Pakistan Commission on access to information, Islamabad.

## **B. PROCEEDINGS.**

3. The notice of the Commission was not responded by the public body nor was the reply submitted therefore the appeal was fixed for hearing before the Commission. The representative appearing on behalf of the Senate Secretariat sought time on 14.07.2021, 11.08.2021, 25.08.2021, 01.09.2021, 10.09.2021, 06.10.2021, 13.10.2021 and finally submitted the reply before the Commission on 20.10.2021. The arguments on behalf of the public body in the support of the reply were presented. The reply submitted by the respondent public body is reproduced as under:

### “Preliminary Objections

1. *That right of access to information in all matters of public importance is a fundamental right provided and recognized by the Constitution of Pakistan, 1973 and further explained by the Right of Access to Information Act, 2017. However, a fine balance is required to be maintained between the right to information and right to secrecy or right to shield actions when it is in the interest of the department to do so, as both rights stem out of the same Act of Parliament.*
2. *That the information or record asked by the appellant does not stricto sensu falls within the ambit of term “public record” as envisaged by Section 6 of the Right of Access to Information Act, 2017.*
3. *That under Article 6 of the Qanoon-e-Shahadat Order, 1984 nobody is permitted to give evidence derived from unpublished official record relating to affairs of State, except with the permission of head of department.*
4. *That under Rule 8 of the Right of Access to Information Rules, 2019 an appellant is bound to attach a certificate with the appeal stating therein that he/she has not already or concurrently filed any application, complaint or suit before any other forum or court. However, said provision of Rule 8 has not been adhered to in the instant case hence the appeal is not maintainable in its present form.*

### On Facts

*That in terms of Rule 258 of the Rules of Procedures and Conduct of Business in the Senate, 2012 read with Section 7(f) of the Right of Access to Information Act, 2017 the Chairman Senate is authorized to declare any record of the Senate Secretariat as classified. By invoking said provisions of the law, the Chairman Senate has already in another appeal No. 1072-05/21 titled as Murtaza Hashim vs Senate Secretariat declared that record of Senate Secretariat employees, their sanctioned strength and related numbers, their perks and privileges, incumbency/vacancy position and all other related and ancillary matters as classified. It is important to provide here that said authority of the Chairman Senate is absolute, unqualified and final to which no exception could be taken. Further, the Honourable Pakistan Commission lacks jurisdiction to sit in appeal*

*over the decision of an important constitutional office bearer or to interpret provisions of Section 7 (f) in a different way which otherwise is sole prerogative of superior judiciary.*

*In view of above legal and factual position, it is humbly prayed that the appeal may kindly be dismissed being meritless.”*

## **ISSUES.**

4. The following issues arise for resolve by the Commission, from the reply filed by the respondent public body:
  - a. Whether the information sought by the appellant does not fall within the ambit of term “public record” as defined in the Right of Access to Information Act, 2017?
  - b. Whether Article 6 of Qanun-e-Shahadat, 1984 bars the provision of the requested information?
  - c. Whether the appeal can be struck down for non-compliance of Rule 8 of the Right of Access to Information Rules, 2019?
  - d. Whether Rule 258 of the Rules of Procedures and Conduct of Business in the Senate, 2012 read with Section 7(f) of the Right of Access to Information Act, 2017, authorises the Chairman Senate to declare any record of the Senate Secretariat as classified?
  - e. Whether the Pakistan Information Commission lacks jurisdiction in an appeal against the Constitutional office bearer or to interpret provisions of Section 7(f) of the Right of Access to Information Act, 2017, being the prerogative of the Superior Judiciary?

## **C. COMMISSION’S VIEW.**

5. The issue wise discussion and observation of the Commission are as follows.

### Issue e.

It would be appropriate to deal with the jurisdictional objection at the first instance before proceeding on the other issues on merit. Section 2(ix)(c) of the Act, 2017 clearly mention the “Senate” including its secretariat, committees and members as “public body”. There is absolutely no cavil in holding that the legislators have encompassed Senate including its Secretariat, Committees and Members in the definition of the public body as defined in the Act.

The objection raised by the public body that the Commission lacks jurisdiction in appeal on the matter pertaining to the Constitutional office

bearer and that interpreting the provisions of the Act is sole prerogative of the Superior judiciary is factually incorrect. After the promulgation of the Right of Access to Information Act, 2017, the Pakistan Commission on Access to Information, is constituted under section 18 the Act. The Commission have all the powers, direct or incidental, as are necessary to perform its functions including conducting inquiries in an appeal and for that purpose summoning and enforcing the attendance of witness and requiring public bodies to produce the records. It holds the power to order the public body to disclose information to an applicant or to take such other reasonable measures as it may deem necessary to remedy any failure to implement the provisions of the Act. It may further be added that the order of the Commission is final and non-compliance of the same may warrant imposition of fine under section 20(1)(f) or may be dealt with in the way as contempt of court. The Commission holds the power to interpret any provision of the Act in the light of the Act and the Constitution of Islamic Republic of Pakistan, 1973. The order of the Commission however can be challenged before the Honourable Constitutional Courts of Pakistan through the constitutional petition as alternate remedy.

Issue a.

The appellant has asked for the total vacant posts in BPS-17 and above with nomenclature wise details, copy of Senate Secretariat (Service) Rules, 2017 along with all schedules, gross and net salary paid to Section Officer BPS-17 & 18, Deputy Secretary with all allowances, allowances admissible to employees of Senate in BPS-17, 18 & 19 and notification for payment of bonus to the employees of Senate of Pakistan, Senate Secretariat, Islamabad on the eve of budget session conclusion. The sort of information and record is mandated to be published by the public body including uploading over the internet to ensure its access as prerequisite under section 5 of the Act. The principal officer of each public body is under obligation to implement sections 5 & 8 of the Act in letter and spirit within six months of the commencement of the Act.

The information and record sought by the appellant does not touch the privacy of any identifiable individual nor adversely affect the interests of the department or the country therefore there exist no component of secrecy to shield the information.

Furthermore the position that involves the wielding of significant legal control over people's lives is generally a public office therefore the officers, employees and staff of the Senate Secretariat, Islamabad are the holder of

Public Office, drawing any or some benefits from public exchequer in any scale or grade or in any office or position and include all whether elected, nominated, selected or under any contractual obligations where public exchequer is wholly or partially involved.

Transparency in the working of the government departments is the essence for the enactment of the Act 2017. Its spirit is to ensure that the people of the Islamic Republic of Pakistan have access to the records held by the federal public bodies for making the government accountable to the people. This practice would improve the participation of the people in the public affairs aimed at reducing corruption, nepotism, favoritism and inefficiency in the governance.

The information and record asked by the appellant falls within the category that ought to have been made accessible proactively by the public body.

Issue b.

The respondent public body has referred article 6 of the Qanoon-e-Shahadat Order, 1984 in the reply. The text of the article 6 is reproduced hereunder for appraisal and understanding:

Art. 6 Evidence as to affairs of state.

*“No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he think fit.”*

Referred article of the Qanoon-e-Shahadat Order, 1984 has no relevance with the matter in hand. Neither any record is to be produced for the recording of the evidence nor is the Pakistan Commission a court rather established for the provision of the fundamental right guaranteed by article 19A of the Constitution of Islamic Republic of Pakistan, 1973. This right cannot be withheld, obstructed or delayed by erecting beurocratic obstacles if the requested record falls within the range of the public record.

Moreover under section 13 of the Act the designated officer is not required to seek permission or approval of the principal officer of the public body, provided the requested information is encompassed as public record, however the refusal mandates such requirement.

## Issue c.

The representative of the respondent organization has vehemently argued that the appellant has failed to certify the request that he has not filed any application, complaint or suit before any other forum or court, as required under Rule 8 of the Right of Access to Information Rules, 2019. On this score he stressed the dismissal of appeal. Be that as it may, Section 11(3) of the Act, 2017 states that any written request that identifies the information or record sought in sufficient detail and which reflect complete address and contact details of the applicant shall be treated as request. The Section 13(1) of the Act, 2017 mandates the designated officer to acknowledge the applicant through written reply, which is not adhered in the present appeal nor the time limit for responding is followed. Further the designated officer is presumed to assist the applicant to meet the prerequisites, not possessing enough knowledge about the law on the subject and fulfilling the legal technicalities as required under section 10(2) of the Act. If on the one hand the appellant has not met the codal formalities on the other hand the designated officer has also failed to meet his mandatory responsibilities. Even otherwise it is settled principal by the Superior Courts that the appellant cannot be struck out merely on technicalities if the appellant has otherwise good case on merits.

## Issue d.

To evaluate, whether the Rule 258 of the Rules of Procedures and Conduct of Business in the Senate, 2012 read with Section 7(f) of the Right of Access to Information Act, 2017, authorises the Chairman Senate to declare any record of the Senate Secretariat as classified, both are reproduced hereunder:

Rule 258 of the Rules of Procedures and Conduct of Business in the Senate, 2012:

Custody of documents and records:-

*“Secretary shall have the custody of all records, documents, including the original documents notified in the Gazette, and papers belonging to the Senate or any of its Committees or the Secretariats of the Senate, and he shall not permit any such records, documents or papers to be taken out of the Secretariat without the permission, in writing, of the Chairman:*

*Provided that the audio or video recording of the proceedings may be provided to a member on demand on payment basis.”*

Section 7(f) of the RTI, Act, 2017:

*Exclusion of certain record:-*

*“Nothing contained in section 6 shall apply to the following records of all public bodies, namely:-*

*(f) Records declared as classified by the Minister-in-charge of the Federal Government*

*Provided that the Minister-in-charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information out weights public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded.”*

Bare reading of the Rule 258 of the Rules of Procedures and Conduct of Business in the Senate, 2012 and Section 7(f) of the Right of Access to Information Act, 2017, depicts that the Secretary of the Senate is the custodian of the of all records, documents, including the original documents notified in the Gazette, and papers belonging to the Senate or any of its Committees or the Secretariats of the Senate and Section 7(f) of the Right of Access to Information Act, 2017 endows the Minister-in-charge of the Federal Government to declare it classified subject to recording reasons as to why the harm from disclosure of information out weights public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded.

Here the “reasons” mean good, plausible and acceptable reasons. Under the Right of Access to Information Act, 2017, the acceptable reasons would be the ones mentioned in section 16 of the Act wherein the information and record exempted from disclosure is cited in detail.

The Commission is also mindful that the matters of Parliament are not only extremely significant but also highly sensitive therefore the sanctity merits to be protected but under no stretch of imagination the information concerning the terms and conditions of the officials of the secretariat, asked by the appellant can be classified for an acceptable and plausible reason. The appellant has never asked about the sensitive nature of work performed by its employees nor will the Commission allow it but the strength and related numbers, their perks and privileges, incumbency/vacancy position are the category of information that ought to have been posted at the official website of the each public body. The Commission will never allow the classified record to be made public but also will not allow the shielding of the public

record under the excuse of classified record. There is no element of secrecy in the requested information.

**D. ORDER**

6. The appeal is allowed. The public information officer/ Deputy Secretary (legislation) is directed to furnish the appellant the requested information forthwith, but not later than ten working days of the receipt of this order.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

Announced on 27.10.2021

Certified that this order consists of eight (8) pages, each page has been read and signed.