The Office has placed before me a request by a learned two member Bench of the Court, made in its order dated 16.02.2023 in Civil Petition No.3988 of 2022 that the suo motu jurisdiction of the Court under Article 184(3) of the Constitution be invoked. The request is made in the following terms:

> "…7. We note that the Provincial Assembly of Punjab stood dissolved on 14.01.2023 pursuant to the Advice of the Chief Minister, Punjab dated 12.01.2023. As such, elections to the Punjab Provincial Assembly are required to be held within 90 days of the said date in terms of Article 224(2) of the Constitution. However, no progress appears to have taken place in this regard and there is a real and eminent danger of violation of a clear and unambiguous constitutional command.
>
> 8. In view of the fact that this matter is not before us in the present lis, we are not inclined to pass any order in this regard in view of the principle of law laid down by this Court in its judgment reported as Suo Motu Case No. 4 of 2021: In the matter of (PLD 2022 SC 306). We are, however, of the view that the matter brought to our notice during these proceedings raises a serious question of public importance with reference to enforcement of Fundamental Rights conferred by Chapter-1 of Part-II of the Constitution. Considering the fact that unless timely steps are taken to remedy the situation, there is an eminent danger of violation of the Constitution which we are under a constitutional, legal and moral duty to defend. We therefore consider it a fit case to refer to the Hon'ble CJP to invoke the suo motu jurisdiction of this Court under Article 184(3) of the Constitution, who may if he considers appropriate after invoking jurisdiction under the said Article constitute a bench to take up the matter. Let the office place this file before the Hon'ble CJP for appropriate orders.
>
> 9. To the extent of Civil Petition No. 3988 of 2022 alongwith all miscellaneous applications, the matter shall be taken up tomorrow i.e 17.02.2023."

2. The context of the request is that the Punjab and Khyber Pakhtunkhwa Assemblies were dissolved on 14.01.2023 and 18.01.2023 respectively. In both cases, the then Chief Ministers tendered advice to their respective Governors under Article 112(1) of the Constitution to dissolve the Assembly. In the case of the Punjab Province the Governor chose not to act on the said advice so that the Assembly stood dissolved on the expiry of 48 hours, on the date mentioned above. In the case of

Protected with free version of Watermarkly. Full version doesn't put this mark.

the KPK Province, the Governor did act on the advice and made an order dissolving the Assembly on 18.01.2023.

3. Almost immediately after the dissolution of both Assemblies a question was raised as to who had the constitutional responsibility and authority to appoint the date of the general election to obtain the mandate of the electorate and elect fresh Assemblies. It is to be noted that Article 224(2) requires that a general election be held within a period of 90 days after the dissolution, and the use of the word "shall" indicates that this is, prima facie, a constitutional imperative.

4. In respect of the appointment of the date for the holding of the general elections to the dissolved Provincial Assemblies there is Constitution Petition No.1 of 2023 (Islamabad High Court Bar Association vs. Election Commission of Pakistan) already filed and pending in this Court prior to the making of the request by the Bench. Subsequently, Constitution Petition No.2 of 2023 has been jointly filed, inter alia, by Muhammad Sibtain Khan and Mushtaq Ahmad, Speakers of Punjab and Khyber Pakhtunkhwa Provincial Assemblies respectively, seeking the same relief.

5. Apart from the foregoing, it appears that several petitions were filed in the Lahore High Court, inter alia, seeking compliance of the constitutional obligation imposed by Article 224(2). By judgment dated 10.02.2023 a learned Single Judge in Chambers concluded that the authority lay with the Election Commission of Pakistan and called upon the same "to immediately announce the date of election of the Provincial Assembly of Punjab with the Notification specifying reasons, after consultation with the Governor of Punjab, being the constitutional Head of the Province, to ensure that the elections are held not later than ninety days as per the mandate of the Constitution." Reportedly both the Governor and the Election Commission have filed Intra Court Appeals which are pending before a learned Division Bench of the High Court. It seems to be the Governor's case that since he did not act on the advice tendered by the then Chief Minister and made no order dissolving the Assembly, he does not have the responsibility or authority to appoint the date for the general election. The Election

Protected with free version of Watermarkly. Full version doesn't put this mark.

Commission has, it appears, also taken the position that under the Constitution it has no authority to appoint the date for a general election, though it has categorically stated (as reported in the public media, both print and electronic) that it is fully committed to conducting the said election in accordance with the Constitution. At the same time, the Governor of KPK Province has also not appointed a date for the holding of the general election and a petition in this regard is pending before the Peshawar High Court.

6. There is another material development in the last few days. It appears that subsequent to certain correspondence initiated by the President of Pakistan with the Election Commission, the President has taken the position that it is he who has the authority and responsibility for appointing a date for the general elections, in terms as provided in section 57(1) of the Elections Act, 2017. By an order made on 20.02.2023 the President has appointed 09.04.2023 to be the date for the holding of the general elections in both Provinces and has called upon the Election Commission to fulfill its constitutional and statutory obligations in this regard.

7. More than one month has now elapsed since the dissolution of the Provincial Assemblies and it seems prima facie that even the matter of appointing the date of the general elections which is the first step towards the holding of the elections, has still not been resolved. Constitutional authorities appear to hold divergent, and perhaps even conflicting, views on the issue. Thus, several Federal Ministers appear to have contested the authority asserted by the President. Since Ministers act under the constitutional rule of collective responsibility it appears, prima facie, that this is the view taken by the Federal Cabinet as a whole. There is, to put it shortly, a lack of clarity on a matter of high constitutional importance. It is also to be noted that statements attributed to the Election Commission have appeared in the public record to the effect that it is not being provided the requisite assistance and support, in particular by the provision of necessary funds, personnel and security, as would enable it to hold the general elections in accordance with the Constitution.

lardeiurm.com
KISMAT KHAN
Protected with free version of Watermarkly. Full version doesn't put this mark.

8. Having considered the above, and the material placed before me, I am of the view that the issues raised require immediate consideration and resolution by this Court. Several provisions of the Constitution need to be considered, as also the relevant sections of the Elections Act. In particular, the issues involve, prima facie, a consideration of Article 17 of the Constitution and enforcement, inter alia, of the fundamental right of political parties and the citizens who form the electorates in the Punjab and KPK Provinces to exercise their right to elect representatives of their choice to constitute fresh Assemblies and Provincial Cabinets. This is necessary for government in the two Provinces to be carried on in accordance with the Constitution. These matters involve the performance of constitutional obligations of great public importance apart from calling for faithful constitutional enforcement.

9. Accordingly, I hereby invoke the suo motu jurisdiction of the Court under Article 184(3) of the Constitution and constitute a nine member Bench to consider, if so deemed appropriate, inter alia, the questions set out below. The Bench shall comprise of the following Hon'ble Judges:

Mr. Justice Umar Ata Bandial, CJP
Mr. Justice Ijaz ul Ahsan
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Munib Akhtar
Mr. Justice Yahya Afridi
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Athar Minallah

10. The questions referred for the consideration of the Hon'ble Bench if so deemed appropriate are, inter alia, as follows:

a) Who has the constitutional responsibility and authority for appointing the date for the holding of a general election to a Provincial Assembly, upon its dissolution in the various situations envisaged by and under the Constitution?

b) How and when is this constitutional responsibility to be discharged?

Protected with free version of Watermarkly. Full version doesn't put this mark.

c) What are the constitutional responsibilities and duties of the Federation and the Province with regard to the holding of the general election?

11. The Office is directed to register an appropriate Suo Motu Case in the above terms and fix the same along with the petitions pending in the Court as noted above, and fix the same before the Hon'ble Bench on **23.02.2023 at 2:00 pm.**

Sd/-
Chief Justice
22.02.2023.

Addl. Registrar (Judicial)

fardejurm.com
KISMAT KHAN

Protected with free version of Watermarkly. Full version doesn't put this mark.