
Unlawful reversal of suspension order



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN



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TO: HON'BLE _____
SUBJECT: ADMINISTRATIVE LAW/CONSTITUTIONAL LAW
DATE: 26TH SEPTEMBER 2024
BY: RESEARCH OFFICERS

Query:

Whether the Provincial Bar Council has the authority to summarily reject a complaint made under section 54 of the Legal Practitioner & Bar Council Act 1997 and reverse an order of suspension passed by the High Court, on the pretext of procedural omissions?

Response:

The Legal Practitioners and Bar Councils Act, 1973, plays a pivotal role in maintaining professional integrity and upholding the nobility of the legal profession in Pakistan. By establishing a comprehensive framework for regulating the conduct of advocates, the Act ensures that instances of professional misconduct are addressed promptly and effectively. It empowers Bar Councils to investigate complaints, conduct disciplinary hearings, and impose penalties, thereby holding legal practitioners accountable for their actions. This regulatory mechanism not only deters unethical behavior but also reinforces public confidence in the legal system. By promoting high standards of professionalism and ethical conduct, the Act safeguards the dignity of the legal profession and ensures that advocates serve as honorable representatives of justice, thereby enhancing the rule of law and the administration of justice in society.

Framework for Disciplinary Action

The Legal Practitioners and Bar Councils Act, 1973, prescribes various modes for initiating disciplinary action against advocates, ensuring a structured and systematic approach to addressing professional misconduct. Complaints can be lodged by clients, the general public, or judicial officers, and these complaints

may be received by either the High Court or the relevant Bar Council. Under **Section 54** of the **Legal Practitioners and Bar Councils Act, 1973**, the High Court holds the authority to suspend an advocate's license while making a complaint under section 41 of the Act 1973, if the advocate is found guilty of grave indiscipline in view of the Court or grave professional misconduct during any judicial proceedings before the Court. This power allows the High Court to make an immediate suspension order, effective for a period of up to three months, provided the advocate has been given a chance to be heard. The suspension is exercised when the Court determines that it is expedient or necessary for the proper administration of justice. Furthermore, the High Court may act on complaints made by subordinate courts either suspend the advocate under sub section (1) of section 54 and forward the matter to the relevant Bar Council for disciplinary action or without making such order forward the matter to the Bar Council for an action under section 41 of the Act 1973.

Role of the Bar Council's Disciplinary Committee

When the Bar Council disciplinary Committee receives a complaint against an advocate, including one referred by the High Court, its role is governed by **Section 41, more precisely by subsection (4) of said section** of the **Legal Practitioners and Bar Councils Act, 1973**. Upon receiving the complaint, the Bar Council's **Disciplinary Committee** after making such enquiry and giving the parties such opportunity of being heard as it may consider necessary either reject the complaint or refer the same to a Tribunal consisting of Bar Council members and a High Court judge, to conduct a thorough inquiry. The Committee also has the authority to summarily reject the complaint if it finds no basis, **but in cases where the complaint originates from the Supreme Court or a High Court, it has no authority to reject the complaint summarily**. While on receipt of the complaint, the **Tribunal** follows formal procedures, hears evidence from both parties, and can impose penalties such as reprimands, suspensions, or removal from practice if the advocate is found guilty of misconduct as provided under subsection (1) of the section 41 of the Act 1973.

At this junction, it may also befittingly highlighted here that if a Bar Council has sufficient grounds to suspect that an advocate has committed professional

or other forms of misconduct, it may, on its own initiative, refer the matter to its Disciplinary Committee and if the Disciplinary Committee, upon referring the case to the Tribunal, itself concludes that the Advocate has engaged in serious indiscipline or professional misconduct, and that immediate suspension from practice is essential for the effective administration of justice, it may impose a suspension for a maximum duration of three months. The disciplinary process ensures that advocates are held accountable for professional and ethical breaches, while the involvement of the Tribunal provides a fair and impartial platform for adjudicating such matters.

Remedy to Aggrieved Advocates or complainant

The **Legal Practitioners and Bar Councils Act, 1973** provides a structured appellate mechanism for advocates aggrieved by disciplinary actions or orders passed against him. Under subsection (5) of section 41 of the Act 1997, any person whose complaint is rejected by the disciplinary Committee under sub-section (4) may within thirty days of the day on which the order of the Committee is communicated to him, prefer an appeal to the tribunal, whose decision in such appeal shall be final. Under **Section 47**, any person aggrieved by a decision of a Provincial Bar Council's Tribunal can appeal to the **Pakistan Bar Council**. The appeal must be filed within **60 days** from the date the order is communicated. The appeal is heard by the **Disciplinary Committee of the Pakistan Bar Council**, which has the power to confirm, vary, or set aside the Tribunal's decision. Furthermore, under **Section 48**, an appeal can be made to the **Supreme Court of Pakistan** against any final order passed by the Disciplinary Committee of the Pakistan Bar Council. The aggrieved party must file this appeal within **60 days** of the communication of the order. These provisions ensure a comprehensive system of review, offering advocates multiple levels of recourse for addressing grievances, thereby maintaining fairness and transparency in disciplinary proceedings.

Suspension Orders and Authority

The Legal Practitioners and Bar Councils Act, 1973, does not authorize the Bar Council's disciplinary Committee to reverse a suspension order issued by the High Court. The High Court, acting under **Section 54**, has the authority to suspend an advocate, and such suspension is generally regarded as an interim measure pending full disciplinary proceedings before the Bar Council. The

advocate, whose license has been suspended, must follow due process to challenge the suspension. There is no legal provision allowing the Bar Council to summarily reject the complaint filed or forwarded by the High Court independently or recall or undo a suspension ordered passed by the High Court. The Bar Council's role, in this context, is confined to conducting the disciplinary proceedings and determining penalties, while the suspension remains in effect unless the process is complete or statutory period has elapsed. The law is well settled that *all statutory authorities or bodies derive their powers from statutes which create them and from the rules or regulations framed thereunder. Any order passed or action taken which is in derogation or in excess of their powers can be assailed as ultra vires. Reference may be made to the case of ZARAI TARAQIATI BANK LIMITED and others Versus SAID REHMAN and others* (2013 SCMR 642).

Remedies for Improper Reversal of Suspension Orders

If the Bar Council improperly reverses a High Court's suspension order, the High Court has several remedies such **Judicial Review under Article 199**: The High Court may exercise its constitutional jurisdiction under **Article 199** to review the legality of the Bar Council's action, by converting any formal report submitted in this regard bring the act of reversal order into its knowledge. If the Bar Council acted beyond its jurisdiction or violated statutory procedures, the High Court can quash the Bar Council's decision and restore its original order under Article 199 to compel compliance with the law. The High Court may refer the matter to the **Disciplinary Committee** of the Pakistan Bar Council who has the authority to adjudicate such matters and can review the Bar Council's decision.

In case **SUO MOTU CASE NO. 18 OF 2010 reported as (P L D 2011 Supreme Court 927)** the Apex Court of Pakistan held that the Court has the power of judicial review to intervene in administrative actions if they are perverse, influenced by irrelevant factors, or otherwise unreasonable. This judicial scrutiny extends to ensure that executive actions comply with legal standards and protect Fundamental Rights as guaranteed by the Constitution. A reproduction of paragraph 39 is for reference as under: -

“39.....
 The exercise of constitutional powers by the High Court and the Supreme Court, under the relevant Articles, have been categorized as power of "judicial review". Every executive or administrative action of the State or other statutory or public bodies is open to judicial scrutiny and the High Court or the Supreme Court can, in exercise of the power of judicial review under the Constitution, quash the executive action or decision which is contrary to law or is violative of Fundamental Rights guaranteed by the Constitution. With the expanding horizon of Articles dealing with Fundamental Rights, every executive action of the Government or other public bodies, including Instrumentalities of the Government, or those which can be legally treated as "Authority", if arbitrary, unreasonable or contrary to law, is amenable to the writ jurisdiction of the Supreme Court or the High Courts and can be validly scrutinized on the touchstone of the Constitutional mandates. [Common Cause, A Regd. Society v. Union of India (AIR 1999 SC 2979)].

Besides, the High Court may also refer the matter under section 41 (5) to the Tribunal for reconsideration of the order of the Disciplinary Committee as the subsection provides that ***“Any person whose complaint is rejected by the disciplinary Committee under sub-section (4) may within thirty days of the day on which the order of the Committee is communicated to him, prefer an appeal to the tribunal, whose decision in such appeal shall be final.”***

It is also noteworthy that if the act of an advocate constitute contempt of the Court subordinate to the High Court, such High Court may take cognizance of such contempt under the Contempt of Court Ordinance 2003 and proceed against such Advocate as per law.

In conclusion, the Bar Council’s role in disciplinary actions against advocates is limited to conducting inquiries and imposing penalties as outlined in the Legal Practitioners and Bar Councils Act, 1973. The Bar Council does not have the authority to reverse suspension orders issued by the High Court unless acting within the context of disciplinary proceedings. Advocates must challenge suspension orders through legal appeals, and the High Court retains its constitutional power to review Bar Council decisions if they exceed jurisdiction or violate the law. Through **Article 199**, the High Court can ensure that its decisions are upheld and that Bar Council actions remain within legal boundaries or sending the matter to Tribunal an illegal order of Disciplinary Committee can be rectified or in proper cases contempt proceedings may be initiated to ensure that any act of an advocate amount to contempt of the Court may not go with impunity.

RCBHC