

**IN THE HONOURABLE ISLAMABAD HIGH COURT**

Writ Petition No. \_\_\_\_\_ of 2021

1. Mosharraf Ali Zaidi,  
Son of Mansoob Ali Zaidi,  
Muslim, Adult,  
Resident of House 234,  
Street 1, D-12/3,  
Islamabad
2. Prof. Dr. Pervez Hoodbhoy,  
Son of Ameer Ali Hoodbhoy,  
Muslim, Adult,  
Resident of H360,  
St 29, G-14/4,  
Islamabad
3. Prof. Dr. M. Asif Khan,  
Son of Abdul Ghafoor,  
Muslim, Adult,  
Currently Resident of House No. 74,  
Road 1, Sector C, Bahria Enclave,  
Islamabad
4. Mr. Syed Ahmed Masood,  
Son of Syed Akbar Masood,  
Muslim, Adult,  
Resident of House No. 13,  
Street 89, Sector G-6/3,  
Islamabad
5. Prof. Dr. A. H. Nayyar,  
Son of Ahmed Mohyuddin,  
Muslim, Adult,  
Resident of House No. 16,  
Street 35, G-14/4,  
Islamabad
6. Prof. Dr. Naazish Attaullah,  
Wife of Shahid Ahmed Ata-Ullah,  
Muslim, Adult,  
Resident of 18 G,  
Gulberg III,  
Lahore,  
Through her authorized Attorney (Syed Ahmed Masood)
7. Prof. Ms. Salima Hashmi,  
Wife of Shoaib Hashmi,  
Muslim, Adult,  
Resident of 156,  
G Block Model Town,  
Lahore,  
Through her authorized Attorney (Syed Ahmed Masood)
8. Ms. Khawar Mumtaz,  
Wife of Kamil Khan Mumtaz,  
Muslim, Adult,  
Resident of 18 A,

Street C, Upper Mall,  
Lahore,  
Through her authorized Attorney (Syed Ahmed Masood)

9. Dr. Rubina Saigol,  
Daughter of Usman Saigol,  
Muslim, Adult,  
Resident of 37/8,  
Green City, Barki Road,  
Lahore,  
Through her authorized Attorney (Syed Ahmed Masood)
10. Mr. M. Abid Hussain Saqi,  
Son of Munir Ahmed Bhatti,  
Muslim, Adult,  
Resident of 60-P,  
Model Town Extension,  
Lahore,  
Through his authorized Attorney (Syed Ahmed Masood)
11. Mr. Karamat Ali,  
Son of Amanat Ali,  
Muslim, Adult,  
Resident of A-143,  
Sector X-5, Gulshan-e-Maymar,  
Karachi,  
Through his authorized Attorney (Syed Ahmed Masood)
12. Mr. Nazim Fida Hussain Haji,  
Son of Fida Hussain Haji,  
Muslim, Adult,  
Resident of House No. A-21/2-A,  
KDA Scheme A-1, Stadium Road,  
Karachi,  
Through his authorized Attorney (Syed Ahmed Masood)
13. Javed Jabbar,  
Son of Ahmed Abdul Jabbar,  
Muslim, Adult,  
Resident of House No. 57,  
Street 21, off Khayaban I Mujahid, Phase 5, DHA,  
Karachi,  
Through his authorized Attorney (Syed Ahmed Masood)
14. Prof. Dr. Syed Tipu Sultan,  
Son of Syed Abu Zafar,  
Muslim, Adult,  
Resident of 22-23,  
Shaheed-e-Millat Road,  
Karachi,  
Through his authorized Attorney (Syed Ahmed Masood)
15. Muhammad Tahseen,  
Son of Rukan Ud Din,  
Muslim, Adult,  
Resident of House No. 10,  
Alpine Street, Mohallah  
Lahore,  
Through his authorized Attorney (Syed Ahmed Masood).....Petitioners

Versus

1. The President of Pakistan,  
Through the Secretary,  
Presidential Secretariat,  
Awan-e-Saddar,  
Islamabad
2. Federation of Pakistan,  
Through the Cabinet Secretary,  
Cabinet Secretariat,  
Establishment Division,  
Islamabad
3. Ministry of Federal Education and Professional Training,  
Through the Secretary,  
Pakistan Secretariat,  
Islamabad
4. Ministry of Law & Justice,  
Through the Secretary,  
Pakistan Secretariat,  
Islamabad
5. Higher Education Commission,  
Through the Secretary,  
Head Office, Sector H-9,  
E Service Road,  
Islamabad
6. Dr. Tariq Javed Banuri,  
Son of Mir Badshah Banuri,  
Resident of House No.16,  
Street No.47, Sector F-7/1,  
Islamabad.....Respondents

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE  
ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted as under:

1. That the subject matter of the present Petition is the unconstitutional, illegal and malafide issuance of the Notification No.1/82/2006-E-6, dated: 26.03.2021 (hereinafter referred to as the 'First Impugned Notification' ) and Notification No.1/82/2006-E-6, dated: 05.04.2021 (hereinafter referred to as the 'Second Impugned Notification'), purportedly issued under the unconstitutional Higher Education Commission (Amendment) Ordinance, 2021, dated: 26.03.2021 (hereinafter to as the 'First Impugned

Ordinance’) and Higher Education Commission (Second Amendment Ordinance, 2021, dated: 07.04.2021 (hereinafter to as the ‘Second Impugned Ordinance’) to unconstitutionally, illegally and malafidely remove the Respondent No.6 (‘Tariq Banuri’) from his office of Chairperson of the Respondent No.5 (‘HEC’), causing irreparable damage to the security of tenure of persons, which is essential for productive and efficient autonomous state institutions as well as causing irreparable damage to the development of higher education in Pakistan by destroying such autonomy of autonomous state institutions through the curtailment of security of tenure of persons.

*A copy of the above mentioned First Impugned Ordinance, Second Impugned Ordinance, First Impugned Notification and Second Impugned Notification are annexed and marked as **Annex ‘A’ to ‘A-3’** respectively.*

2. That the Petitioner No. 1 is a development sector practitioner, policy analyst and columnist. He has also served as an Advisor to the Foreign Minister of Pakistan. Petitioner No. 2 is a nuclear physicist, educationist, and activist. He has served as a Professor at Quaid-e-Azam University, LUMS and FCC University. Petitioner No. 3 is a geologist and the former Vice Chancellor of the University of Peshawar, and the Karakorum International University. Petitioner No. 4 is the patron of Sir Syed Memorial Society and is the great grandson of Sir Syed Ahmed Khan. In view of the aforementioned background, Petitioners have a vested interest in the autonomy of Higher Education Commission (HEC) and improvement of education sector in Pakistan.
3. That the Petitioner No. 5 is a physicist, educationist, author and consultant. He has served as a Professor at Quaid-e-Azam University and LUMS. Petitioner No. 6 is an artist, educationist, and former Principal of the National College of Arts (NCA) Lahore. Petitioner No. 7 is an artist, educationist, social activist, and former minister. She has served as the head of the National College of Arts (NCA), Lahore. In view of the

aforementioned background, Petitioners have a vested interest in the autonomy of Higher Education Commission (HEC) and improvement of education sector in Pakistan.

4. That the Petitioner No. 8 is a women's rights activist, author, environmentalist, and university lecturer. She has served as the Chairperson of the National Commission on the Status of Women (NCSW). Petitioner No. 9 is a writer, teacher, and human rights activist. Petitioner No. 10 is an advocate and the former Vice Chairman Pakistan Bar Council. Petitioner No. 11 is a social activist for labor rights, human right and women's rights. Currently, he serves as the Executive Director of PILER and the Secretary of the National Labour Council (NLC). Petitioner No. 12 is a philanthropist, business leader and social activist. He was awarded Sitara-e-Shujaat in 1993. In view of the aforementioned background, Petitioners have a vested interest in the autonomy of Higher Education Commission (HEC) and improvement of education sector in Pakistan.
  
5. That the Petitioner No. 13 is a writer, advertising executive, social activist and a former Federal Minister. Petitioner No. 14 is one of the highest certified anesthesiologists in Karachi. He is involved in a number of philanthropic activities. Currently, he serves as the Chancellor of Malir University of Health and Sciences (MUHS), Karachi, an institution dedicated to provision of affordable quality education and conducting research to solve the problems of the community. Petitioner No. 15 is a social activist. In view of the aforementioned background, Petitioners have a vested interest in the autonomy of Higher Education Commission (HEC) and improvement of education sector in Pakistan.

*Copy of Wikipedia Profiles of some of the Petitioners are annexed and marked as **Annex 'B' to 'B-7'**.*

6. That the Respondent No.1 ('President') is the entity which has issued the two Impugned Ordinances impugned in this Petition. The Respondent No.2 ('Cabinet Division') is the entity which has issued the two Impugned Notifications removing the Respondent No.6 ('Tariq Banuri') and the Respondent No.3 ('Ministry of Federal Education') and Respondent No.4 ('Ministry of Law') was involved in the drafting of the Impugned Ordinances impugned in this Petition. The Respondent No.5 ('HEC') is the entity related to higher education in Pakistan and whose Chairperson has been removed through the Impugned Notifications. Lastly, the Respondent No.6 ('Tariq Banuri') is the former Chairpersonship of the HEC, who was removed through the Impugned Notifications from the office of the Chairpersonship.
  
7. That in the interest of improvement and promotion of higher education, research and development, the Higher Education Commission Ordinance, 2002 (hereinafter referred to as 'Ordinance, 2002'), was enacted. This Ordinance, 2002, established the Higher Education Commission and one of the central features of this new Higher Education Commission was to guarantee the autonomy of the Commission from governmental as well as political control by ensuring the security of tenure of the Chairperson and the members of the Higher Education Commission. Such autonomy through security of tenure was ensured through Section 6(5) and (6), which stated that the Chairperson and the members shall hold office for the period of four years and the Chairperson and members could not be removed from office before the expiry of their terms save on proven charges of corruption, inefficiency, personal inability and failure of attend two consecutive meetings without intimation in advance. In other words, Section 6(5) and (6) of the Ordinance, 2002, was a foundational and fundamental provision to ensure the improvement of higher education, research and development by safeguarding the Chairperson and the

members of the Higher Education Commission from arbitrary, illegal and malafide interference from governmental and political quarters.

*A copy of the HEC Ordinance, 2002, is annexed and marked as **Annex 'C'**.*

8. That in accordance with the provisions of the Ordinance, 2002, the Respondent No.2 through Notification dated 29.05.2018 notified the appointment of the Respondent No.6 ('Tariq Banuri') as the Chairperson of the Respondent No.5 ('HEC') and the Respondent No.5 ('HEC') through Notification dated 30.05.2018 notified that the Respondent No.6 ('Tariq Banuri') had assumed the charge of the office of Chairperson of HEC. Therefore, under Section 6(5) and (6), Ordinance, 2002, the tenure of the Respondent No. 6 was legally secured through this statutory provision for four years ending on 29-05-2022 and this could not be curtailed through any arbitrary, unconstitutional and malafide actions and orders. In order words, the vested right of security of tenure of four years was created in favour of the Respondent No.6 by the statute itself i.e. aforementioned Section 6(5) & (6) (as existing at the time of appointment), and the aforementioned subsequent notifications merely operationalized through executive notifications this vested right created by the statute itself.

*A copy of the Notification dated 29.05.2018 and Notification dated 30.05.2018, are annexed and marked as **Annex 'D' & 'D-1'**, respectively.*

9. That the appointment of the Respondent No.6 was widely appreciated as the Respondent No.6 is an internationally recognized academic as well as a person who has experience in serving in leadership positions in international organizations and academic institutions. The Respondent No.6 served as Professor (Lecturer) in Economics, University of Utah, Director, Division of Sustainable Development, United Nations, New York and Director Future Studies Program, Stockholm Environmental

Institute, Boston. He is an expert on sustainable development policy and institutional design and is a prolific author authoring books, articles and various reports. He has contributed to the design of several development institutions and international networks, either as founding director (of SDPI and SEI-Asia); or as expert member or consultant in the design process (UN's SE4A11 Initiative, Pakistan's HEC, NSPP, the HDF, and SRSP). He has also served on policy and research forums, including as CLA on the IPCC, member of major UN Committees, member of official Pakistan Environmental Protection Council, member, central board of governors of Pakistan's central bank, and member/secretary of the Presidential Committee on Higher Education. Therefore, as obvious from the aforementioned credentials as well as from the CV attached below, the Respondent No. 6 ('Tariq Banuri') is a person of high intellectual and personal integrity.

*A copy of the CV of the Respondent No.6 is annexed and marked as **Annex 'E'**.*

10. That during the tenure of the Respondent No.6 at the HEC till his unconstitutional and malafide removal on 26.03.2021, the HEC achieved major milestones in key areas of development, namely, capacity building, transparent and efficient financing, effective regulation, research promotion, technology, administrative efficiency and global arrangements with Pakistani institutions. It is respectfully submitted that the purpose of para 9 above narrating the internationally recognized stature of the Respondent No.6 as well as the purpose of this particular paragraph is not to eulogize the Respondent No.6 but to make the essential point for the purposes of this Petition, which is that in view of the aforementioned facts, it was not possible to remove the Respondent No.6 as Chairperson because under the un-amended Ordinance, 2002 (as enforced on 25.03.2021), the only way to remove the Respondent No.6 was on proven charges of



corruption, inefficiency, permanent disability or failure to attend two consecutive meetings without intimation in advance, and none of these allegations could even be alleged against the Respondent No.6 to seek his removal.

*A summary of the various achievements and progress of the HEC between June, 2018, to June, 2020, is annexed and marked as **Annex 'F'**.*

11. That the Petitioners are informed that the present government who came to power in 2018 from the very beginning was misled into a campaign against the Respondent No.5, under the Chairpersonship of the Respondent No.6. This campaign included drastic reduction in funding, directives to PM Inspection Team to investigate the Respondent No.5 and No. 6, which resulted in no substantive adverse findings, orchestrated media campaign, campaign by partisan VCs and faculty members against the Respondents No.5 and No. 6, repeated request to NAB to investigate the Respondent No. 5, and constant interference by the Prime Minister office in the regular working of the Respondent No. 5. It is further submitted that the Petitioners are informed that the Respondent No.5, under the Chairpersonship of the Respondent No.6 discovered various illegal and corrupt practices of the International Centre for Chemical and Biological Sciences ('ICCBS') whose patron is Mr. Atta-ur-Rehman, who is a close confidante of this present Federal government. It is important to note here that the ICCBS received around Rs. 40 Billion in public funding during the last over 20 years but has managed to avoid any performance-based scrutiny as they have failed to produce any medicines and vaccines from natural products as required by its mandate and even though they have claimed to have registered 40 patents but none of these patents have been deployed commercially. It is precisely for this reason that when ICCBS was subjected to scrutiny by the Respondent No. 5, it consistently refused to disclose information or subject itself to scrutiny and surprisingly, letters were sent by the Respondent No. 3 ('Federal Ministry

of Education’) as well as repeated interferences were made by Prime Minister office to exempt ICCBS from any accountability for the huge funds given to them. Therefore, the reason for mentioning the aforementioned campaign as well as the uncovering of the illegal and corrupt practices in higher education is to provide the factual malafide background in which the Impugned Ordinances as well as Impugned Notifications were enacted and issued.

12. That to the shock and horror of the Petitioners, the Respondent No.3 clearly acting in a malafide manner on the dictates of the present Federal government suggested amendments in the Ordinance, 2002, on the ridiculous pretext that *“in [the] post Covid era, the paradigm of Higher Education System and its delivery mode has undergone tremendous changes”*, and furthermore that the process and criteria of tenured appointments need to be reviewed in order to *“keep pace with the changing eco-system of 21<sup>st</sup> century skills”*. It is respectfully submitted that the aforementioned stated purpose is floating with malafides and as explained below, the amendments suggested in the Ordinance, 2002 had the consequence of malafidely removing the Respondent No.6 as the Chairperson of the Respondent No.5 (although the text of the First Impugned Ordinance does not support such intention) in order to destroy the autonomous nature of the Respondent No.5, which was fundamentally safeguarded by the security of tenure of the Respondent No.6 and the members of the Respondent No.5.

*A copy of the summary for the Cabinet dated: 22.03.2021 and the note dated 22.03.2021 of the Respondent No.4 are annexed and marked as **Annex ‘G’ & ‘G-1’**, respectively.*

13. That in pursuant to the abovementioned malafide purposes, the Higher Education Commission (Amendment) Ordinance, 2021, was enacted on

26-3-2021. For the purposes of this Petition, the relevant provisions of the First Impugned Ordinance also made the following amendments.

‘2. Amendment of section 6, Ordinance No.LIII of 2002.-

(a) In the Higher Education Commission Ordinance, 2002 (Ordinance No. LIII of 2002), hereinafter called as the said Ordinance, in section 6, for sub-section (5), the following shall be substituted:-

“(5) The Chairperson shall hold office for a period of two years and members shall hold office for a period of four years. In no case the Chairperson and members shall be eligible for re-appointment for more than one similar term.”

(b) after sub-section (5) amended as aforesaid, the following new sub-section shall be inserted, namely:-

“(5A) Notwithstanding anything in any order, notification, contract, agreement or any instrument containing the duration and terms of service, a Chairperson or a member who, on or after commencement of this Ordinance completes the term or tenure as provided in sub-section (5), shall on such commencement forthwith cease to be the Chairperson or member, as the case may be.”

**Explanation:**

Sub-section (5), as amended, shall have operation despite any vested right or right as a past and closed transaction in any appointment or terms thereof acquired or purported to have been acquired prior to the Higher Education Commission (Amendment) Ordinance, 2021 coming into force.’

It is important to note the fundamental aspects of the aforementioned amendments. Firstly, the tenure of the Chairperson was curtailed from four years to two years. Secondly, although the Respondents No.2 to No.4 have interpreted it to apply to the four years of tenure of the Respondent No.6 but the amendments only take away vested rights created by any order, notification, contract, agreement or any instrument but does not apply to vested rights created or conferred by statute as in the case of the Respondent No.6. Moreover, the aforementioned Section 6(5) & (5A) have not been retrospectively applied to 2002 or 2018 so the vested right

of tenure created by statute in 2018 in favour of the Respondent No.6 has not been altered. Thirdly, without prejudice to the aforementioned contention, if the First Impugned Ordinance was intended to apply to the Respondent No.6's tenure then it is a discriminatory person specific temporary law. Fourthly, the above-mentioned summaries to the First Impugned Ordinance itself do not mention the circumstances which rendered it necessary to take immediate action to issue the subject ordinance.

14. That in purported pursuance of the above mentioned First Impugned Ordinance, Notification No.1/82/2006-E-6, dated: 26.03.2021, was issued removing the Respondent No. 6 as Chairperson of the Respondent No. 5. It is important to note here that the aforementioned First Impugned Notification contains an inherent fundamental contradiction as it both declares that the Respondent No. 6 has ceased to hold office in terms of the First Impugned Ordinance as well as directs the removal of the Respondent No. 6 as Chairperson. This is a clear example of malafides in law because on the face of it, the First Impugned Ordinance made no amendment to Section 6, Ordinance, 2002 which deals with the removal of the Chairperson only on specified grounds and thus, even on the basis of the First Impugned Ordinance, the Respondent No. 6 could not be removed.
15. That not surprisingly an attempt was made to correct the above-mentioned fundamental error in the First Impugned Notification by issuing a new Notification No.1/82/2006-E-6, dated: 05-04-2021 through which the Respondent No. 6 was again declared to have ceased to hold office from the date of the First Impugned Ordinance (i.e. from 26-03-2021) and consequently, the First Impugned Notification dated 26-03-2021 was withdrawn. This Second Impugned Notification exposed the illegalities of the Respondents No. 2 to 4. Firstly, it admits that the First Impugned Notification was legally defective otherwise it would never have been

withdrawn. Secondly, this Second Impugned Notification has been made retrospective whereas it is settled law that executive orders which affect vested rights cannot be retrospective. Thirdly, from the aforementioned, it follows that the removal of the Respondent No. 6 between 26-3-2021 and 5-4-2021 was without the backing of any notification and admittedly, for this period, it was completely unlawful as admitted by the issuance of this Second Impugned Notification.

16. That in further pursuance of the abovementioned malafide purposes, another Higher Education Commission (Second Amendment) Ordinance, 2021, was enacted. For the purposes of this Petition, the relevant provision of the Second Impugned Ordinance also made the following amendments.

‘1.... (2) It shall come into force at once and shall deemed to have taken effect on and from the 26<sup>th</sup> day of March, 2021.

2. Amendment of Section 2, Ordinance IX of 2021.- In the Higher Education Commission (Amendment) Ordinance, 2021, (IX of 2021), in section 2,-

(A) in clause (a), after the word “substituted”, the words “and shall always be deemed to have been so substituted” shall be inserted; and

(B) in clause (b), after the expression “sub-section (5)”, occurring for the second time, the expression “, as amended,” shall be inserted.’

It is important to note the following fundamental aspects of the Second Impugned Ordinance. Without prejudice to the argument that the text of the First and Second Impugned Ordinance doesn't lead to the conclusion that the two Impugned Ordinances apply to the tenure of the Respondent No.6, it is submitted that, firstly, the addition of a deeming clause itself admits that the removal of the Respondent No. 6 purportedly in pursuance to the First Impugned Ordinance could not legally take place and it is precisely for this reason that this Second Impugned Ordinance has been

made retrospective i.e. from 26-03-2021. Secondly, the removal of the Respondent No. 6 through the First Impugned Notification could not take place without this deeming clause as itself admitted by issuing the Second Impugned Ordinance retrospectively. Thirdly, the Second Impugned Notification was issued on 5-4-2021 but the Second Impugned Ordinance was issued on 7-4-2021 and without a valid validation clause validating the illegal removal of Respondent No. 6 on 26-3-2021, the Second Impugned Notification could not be legally saved by Second Impugned Ordinance. Therefore, without accepting the constitutional validity of the First and Second Impugned Ordinances, even on the face of it the removal of the Respondent No. 6 on 26-3-2021 is completely unconstitutional and illegal.

17. That against the above mentioned unconstitutional, illegal and malafide removal of the Respondent No. 6, there was widespread condemnation and anger among members of civil society. This condemnation was expressed through various articles, reports and discussions in the print, electronic and social media and what specifically needs to be mentioned here is an open letter to the Prime Minister by the concerned academics and citizens on the subjugation of HEC by the Federal Government and the unlawful removal of the Respondent No. 6, which was signed by leading academics and civil society leaders and which letter has now received 3,379 signatures. It is respectfully submitted that the aforementioned widespread condemnation against the issuance of the above-mentioned Impugned Notifications and Ordinances is not simply about the removal of a distinguished academic like the Respondent No. 6 but in fact what leaders of the academic world as well as distinguished civil society members are condemning is the destruction of the Respondent No. 5, by destroying the autonomy of autonomous state institutions by curtailing their security of tenure and as a result, destroying the future development of higher education in Pakistan.

*An Open Letter to the Prime Minister and other newspaper clippings are annexed and marked as Annex 'H' to 'H-3'.*

18. That for the sake of disclosure, the Petitioners are informed that on the same issue but by different Petitioners, three proceedings are pending. Firstly, Writ Petition No. 1758 of 2021 has been filed by a member of the Islamabad High Court Bar before this Honourable Islamabad High Court. Secondly, a Civil Suit No. 774 of 2021 has been filed by the Respondent No. 6 before the Honourable Sindh High Court in which certain interim orders have been passed, which will be placed before this Honourable Court as soon as they are available. Thirdly, a Constitution Petition has been filed by the Province of Sindh against the Federal Government as well as the Respondent No. 5 before the Honourable Supreme Court of Pakistan invoking the violations of Article 154 of the Constitution, 1973. It is important to clarify that in none of the aforementioned proceedings, the Petitioners are Plaintiffs, Petitioners, Defendants or Respondents in the said proceedings as this present Petition is the first Petition by the Petitioners on this subject matter.

*Copy of Order dated 18-05-2021 passed in Writ Petition No. 1758 of 2021 is annexed and marked as Annex 'I'.*

19. That it is most respectfully and most humbly submitted that being aggrieved by the unconstitutional, without jurisdiction and malafide acts of the Respondents No.1 to 4 by enacting and issuing the First Impugned Notification, Second Impugned Notification, First Impugned Ordinance and Second Impugned Ordinance, the Petitioners have no alternative and efficacious remedy except to invoke the constitutional jurisdiction of this Honourable Court on the, inter alia, facts and grounds stated herein:

## GROUNDS

A. That it is most respectfully and most humbly submitted that the First Impugned Notification as well as the Second Impugned Notification are fundamentally flawed as they are based on the presumption that Section 6 (5A) and its Explanation inserted by the First Impugned Ordinance apply to the vested rights of the security of tenure of four years conferred and acquired by the Respondent No. 6 under Section 6(5), Ordinance, 2002 at the time of his appointment on 29-5-2018. This presumption is incorrect for the following reasons. Firstly, the aforementioned Section 6(5A) only applies to any vested right or right as a past and closed transaction acquired by any order, notification, contract, agreement or any instrument containing the duration and terms of the service prior to the issuance of the First Impugned Ordinance. But it is obvious and apparent that the security of tenure of four years acquired by the Respondent No. 6 on his appointment on 29-5-2018 was not the result of a vested right conferred or acquired through any order, notification, contract, agreement or instrument but this vested right of the security of tenure was acquired and conferred directly from Section 6(5) of the Ordinance, 2002 as it existed on the date of his appointment. In other words, the First Impugned Ordinance does not apply to the vested right of tenure of the Respondent No.6 at all. Secondly, the mere fact that the appointment of the Respondent No. 6 was notified through a Notification dated 29-5-2018 is merely an executive action and it is not that notification itself which creates and confers the right of the security of tenure of four years upon the Respondent No. 6 but merely operationalizes the vested right as acquired through Section 6(5) of the Ordinance, 2002 as it existed on the date of his appointment. In other words, the First and Second Impugned Notifications are violative of the First Impugned Ordinance. Thirdly, the aforementioned inherent jurisdictional defects are the direct result of the factual malafide context as described in paras 10, 11 and 12 above which resulted in the issuance of



the First and Second Impugned Notifications and these without jurisdiction Notifications clearly flow out of this contextual malafides of the Respondents No. 2 to 4. Fourthly, two principles of interpretation apply to provisions effecting vested rights', (a) they have to be strictly interpreted as not taking away vested rights unless clearly stated and (b) such provisions have to be strictly construed especially when prejudicial reliance has been made and legitimate expectations have accrued. Both these principles apply in this case and the First and Second Impugned Notifications are violative of the First Impugned Ordinance. Therefore, the First Impugned Notification as well as the Second Impugned Notification is without jurisdiction, illegal, malafide and liable to be set aside.

B. That it is most respectfully and most humbly submitted that the First Impugned Notification as well as the Second Impugned Notification are fundamentally flawed as they are based on the presumption that Section 6 (5A) and its Explanation inserted by the First Impugned Ordinance apply to the vested rights of the security of tenure of four years conferred and acquired by the Respondent No. 6 under Section 6(5), Ordinance, 2002 at the time of his appointment on 29-5-2018. This presumption is incorrect for the following reasons. Firstly, the aforementioned Section 6(5A) only applies to any vested right or right as a past and closed transaction acquired by any order, notification, contract, agreement or any instrument containing the duration and terms of the service prior to the issuance of the First Impugned Ordinance. But it is obvious and apparent that the security of tenure of four years acquired by the Respondent No. 6 on his appointment on 29-5-2018 was not the result of a vested right conferred or acquired through any order, notification, contract, agreement or instrument but this vested right of the security of tenure was acquired and conferred directly from Section 6(5) of the Ordinance, 2002 as it existed on the date of his appointment. In other words, the First Impugned Ordinance does not apply to the vested right of tenure of the Respondent No.6 at all. Secondly,

the mere fact that the appointment of the Respondent No. 6 was notified through a Notification dated 29-5-2018 is merely an executive act and it is not that notification itself which creates and confers the right of the security of tenure of four years upon the Respondent No. 6 but merely operationalizes the vested right as acquired through Section 6(5) of the Ordinance, 2002 as it existed on the date of his appointment. In other words, the First and Second Impugned Notifications are violative of the First Impugned Ordinance. Thirdly, even the Second Impugned Ordinance doesnot effect the vested right of the Respondent No.6 as conferred by Section 6(5), Ordinance, 2002 (as existing on the date of his appointment) because the Second Impugned Ordinance only retrospectively applied from 26-3-2021, and not from 2002 or 29-5-2018 i.e. the date on which the vested right of tenure of four years was conferred on the Respondent No.6. Fourthly, two principles of interpretation apply to provisions effecting vested rights (a) they have to be strictly interpreted as not taking away vested rights unless clearly stated and (b) such provisions have to be strictly construed especially when prejudicial reliance has been made and legitimate expectations have accrued. Both these principles apply in this case and the First and Second Impugned Notifications are violative of the First and Second Impugned Ordinances. Therefore, the First Impugned Notification as well as the Second Impugned Notification is without jurisdiction, illegal, malafide and liable to be set aside.

- C. That without prejudice to the Petitioner's contention that the relevant sections of the Impugned First Ordinance and Impugned Second Ordinance are either unconstitutional or not applicable or require reading down, it is most respectfully and most humbly submitted that the without jurisdiction and illegal removal of the Respondent No. 6 ('Tariq Banuri') as Chairperson of the Respondent No. 5 ('HEC') cannot be legally justified on the ground that the Second Impugned Notification dated 05-04-2021 was validated by the Second Impugned Ordinance dated: 07-04-

2021, for the following reasons. Firstly, the Second Impugned Notification dated: 05-04-2021 withdraws the First Impugned Notification dated: 26-03-2021, which itself proves that there was some fundamental defect in the First Impugned Notification including but not limited to the fundamental contradiction within the First Impugned Notification that it sought to both declare that Respondent No. 6 has ceased to be Chairperson and also at the same time removed Respondent No. 6 as Chairperson without following the removal procedure laid down in Section 6(6), Ordinance, 2002. Secondly, the Second Impugned Notification was issued five days prior to the Second Impugned Ordinance and thus, could not be said to have been issued in purported pursuance of the Second Impugned Ordinance. Thirdly, even though the Second Impugned Notification is retrospective and is deemed to have taken effect on or from 26-03-2021 (i.e. the date of the removal of the Respondent No. 6) but since for the aforesaid reasons, the inherent jurisdictional defect in the Second Impugned Notification could only be legally cured by a validation and saving clause in the Second Impugned Ordinance, which is completely absent from the Second Impugned Ordinance. Fourthly, the jurisdictional requirement of the validation and saving clause in the Second Impugned Ordinance is critically necessary in view of the fact that the amendments sought through the Second Impugned Ordinance in the First Impugned Ordinance were two dimensional, namely, Section 6(5) and 6(5A), Ordinance, 2002, were always deemed to have been so substituted meaning that they were deemed to be always part of the First Impugned Ordinance but only applied from 26-3-2021 and also the word “amended” was added to Section 6(5A), Ordinance, 2002. These two amendments through the Second Impugned Ordinance are an admission that unless they are incorporated both the First Impugned Notification and the Second Impugned Notification are without jurisdiction. Thus, at the time when the First Impugned Notification dated 26-03-2021 and as well as the time when the Second Impugned Notification dated 05-04-2021 was issued,

there was no Second Impugned Ordinance nor did the Second Impugned Ordinance contain a validation and saving clause and as a consequence, there was no legal removal of Respondent No. 6 either on 26-03-2021 or 05-04-2021 or on the date of the Second Impugned Ordinance i.e. 07-04-2021. Therefore, the First Impugned Notification as well as the Second Impugned Notification is without jurisdiction, illegal, and liable to be set aside.

D. That without prejudice to the above-mentioned Grounds A and B that a textual reading of the First and Second Impugned Ordinances does not lead to the conclusion that it takes away the vested rights of the Respondent No. 6, it is further most respectfully and most humbly submitted that the amendments in Section 6(5) as well as the addition of Section 6(5A) and its Explanation in the Ordinance, 2002, through the amending First and Second Impugned Ordinances has been interpreted by the Respondents No. 2 to 4 to curtail the tenure of the Respondent No. 6 ('Tariq Banuri') as Chairperson from 4 years to 2 years. If this intention and consequence is presumed to be correct then the First and Second Impugned Ordinances are clearly violative of Article 25, Constitution, 1973, as being person specific discriminatory for the following reasons. Firstly, the two Impugned Ordinances adversely affect the tenure of only the Respondent No. 6 because the tenure of the other members of the Commission has not been curtailed. In other words, it is an undeniable fact that the only person adversely affected by these two Impugned Ordinances is the Respondent No. 6 as this is a person specific law par excellence. Secondly, the two Impugned Ordinances disclose no rational basis or intelligible differentia to justify as to why a single individual (i.e. Respondent No. 6) has been targeted adversely and prejudicially nor does the two Impugned Ordinances disclose any rational nexus of these laws to any purpose or object because there appears to be no reasonable purpose to target a single individual and his security of tenure and the law appears

to be a classical example of malafides in law. Thirdly, a much more stringent test of person specific discrimination would be applied to an Ordinance because it is temporary legislation and it may or may not be made permanent by Parliament and also because the Ordinance does not carry the presumption of the wisdom of Parliament and is in essence an Executive act subject to more stringent judicial review in the face of a prima facie person specific discrimination. Thus, applying the aforementioned principles, Section 6(5) and (5A), along with its Explanation, as amended by the First and Second Impugned Ordinances are clearly violative of Article 25, Constitution, 1973. Therefore, Section 6(5) and (5A), along with its Explanation, as amended by the First and Second Impugned Ordinances is unconstitutional, without jurisdiction, illegal, and liable to be declared as such.

E. That without prejudice to the above-mentioned Grounds A, B and D, it is a settled principle that laws should be saved through the process of interpretation including the principle of reading down especially if reading of the statutory text leads to violation of fundamental rights including the right of non-discrimination. Thus, as explained in Ground D above, if the interpretation of the Respondents No. 2 to 4 is accepted then Section 6(5) and (5A), along with its Explanation, as amended by the First and Second Impugned Ordinances, would be ex facie violative of Article 25, Constitution, 1973. The only way to save the aforementioned amending provisions is to read them down in the following way: It is most respectfully and most humbly submitted that the First Impugned Notification as well as the Second Impugned Notification are fundamentally flawed as they are based on the presumption that Section 6 (5A) and its Explanation inserted by the First Impugned Ordinance apply to the vested rights of the security of tenure of four years conferred and acquired by the Respondent No. 6 under Section 6(5), Ordinance, 2002 at the time of his appointment on 29-5-2018. This presumption is incorrect

for the following reasons. Firstly, the aforementioned Section 6(5A) only applies to any vested right or right as a past and closed transaction acquired by any order, notification, contract, agreement or any instrument containing the duration and terms of the service prior to the issuance of the First Impugned Ordinance. But it is obvious and apparent that the security of tenure of four years acquired by the Respondent No. 6 on his appointment on 29-5-2018 was not the result of a vested right conferred or acquired through any order, notification, contract, agreement or instrument but this vested right of the security of tenure was acquired and conferred directly from Section 6(5) of the Ordinance, 2002 as it existed on the date of his appointment. In other words, the First Impugned Ordinance does not apply to the vested right of the tenure of the Respondent No.6 at all. Secondly, the mere fact that the appointment of the Respondent No. 6 was notified through a Notification dated 29-5-2018 is merely an executive action and it is not that notification itself which creates and confers the right of the security of tenure of four years upon the Respondent No. 6 but merely operationalizes the vested right as acquired through Section 6(5) of the Ordinance, 2002 as it existed on the date of his appointment. In other words, the First and Second Impugned Notifications are violative of the First Impugned Ordinance. Thirdly, even the Second Impugned Ordinance does not affect the vested right of the Respondent No.6 as conferred by Section 6(5), Ordinance, 2002 (as existing on the date of his appointment) because the Second Impugned Ordinance only retrospectively applied from 26-3-2021, and not from 2002 or 29-5-2018 i.e. the date on which the vested right of tenure of four years was conferred on the Respondent No.6. Fourthly, two principles of interpretation apply to provisions affecting vested rights (a) they have to be strictly interpreted as not taking away vested rights unless clearly stated and (b) such provisions have to be strictly construed especially when prejudicial reliance has been made and legitimate expectations have accrued. Both these principles apply in this case and the First and Second Impugned Notifications are violative of the

First and Second Impugned Ordinances. Therefore, the First Impugned Notification as well as the Second Impugned Notification is without jurisdiction, illegal, malafide and liable to be set aside.

F. That, without prejudice to the above, it is most respectfully and most humbly submitted that Section 6(5) and (5A), along with its Explanation, as amended by the First and Second Impugned Ordinances are violative of Article 89, Constitution, 1973 as it fails to fulfil the condition that circumstances must exist that render it necessary to take immediate action. This failure is obvious for the following reasons. Firstly, no such emergency circumstances rendering immediate actions are either described in the summary to the Impugned Ordinances or in the Preamble of the Impugned Ordinances. Secondly, there appears to be no justifiable or objective reasons for curtailing the tenure of a single person (i.e. Respondent No. 6) which will fulfil the criterion of Presidential satisfaction for initiating emergency legislation. The only purported reason given is reference to Covid-19 but if such a reason is accepted then Presidential Ordinances should have been issued to curtail the security of tenure of at least some other autonomous governmental organizations also, which was not done as this was a HEC Chairperson specific law. Moreover, the burden of proof to justify as to why security of tenure of a single person required emergency legislation is on the said Respondents. Thirdly, the Presidential satisfaction requiring emergency legislation cannot be absurd or perverse as inferred from the admitted circumstances and if it is absurd and perverse then this would be an exercise of power which is malafide in law and will be subject to judicial review. Fourthly, such satisfaction will be strictly scrutinized especially since the relevant provisions of the two Impugned Ordinances are ex facie violative of Article 4, 9, 10A and 25, Constitution, 1973. Therefore, Section 6(5) and (5A), along with its Explanation, as amended by the First and Second

Impugned Ordinances is unconstitutional, without jurisdiction, illegal, and liable to be declared as such.

G. That, without prejudice to the above, it is most respectfully and most humbly submitted that if the interpretation of the relevant Respondents is accepted that the relevant provisions of the two Impugned Ordinances curtail the tenure of four years of the Respondent No. 6 to two years, then the relevant provisions of the two Impugned Ordinances would be violative of Articles 4, 9, 10A and 14, Constitution, 1973 because, firstly, any person specific discriminatory law would not be considered as fulfilling the foundational criterion of Rule of Law, as incorporated in Article 4 because to be treated in accordance with law cannot include arbitrary and discriminatory laws. Secondly, any person specific discriminatory law would also be a violation of the dignity of the individual as guaranteed under Article 14 as any person specific law would destroy the dignity of individuals. Thirdly, the security of tenure of the Respondent No. 6 has been retrospectively curtailed to his detriment but no due process as guaranteed under Article 10A was provided. Fourthly, it is settled law that the right to education is guaranteed under Article 9 and one of the essential requirements of a productive and effective higher education system is the autonomy of such institutions safeguarded by the security of tenure of such persons against governmental and political assault. Thus, in view of the aforementioned reasons, the relevant provisions of the two Impugned Ordinances are violative of Articles 4, 9, 10A and 14, Constitution, 1973. Therefore, Section 6(5) and (5A), along with its Explanation, as amended by the First and Second Impugned Ordinances is unconstitutional, without jurisdiction, illegal, and liable to be declared as such.



H. That it is most respectfully and most humbly submitted that the Petitioner seeks indulgence of this Honourable Court to raise further grounds at the time of the hearing of this present Petition.

**PRAYER**

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment, and orders, in the following terms:

- (a) Declare that Notification No.1/82/2006-E-6, dated: 26.03.2021 (**‘Annex A-2’**) and Notification No.1/82/2006-E-6, dated: 05.04.2021 (**‘Annex A-3’**) are unconstitutional, without jurisdiction, malafide, illegal and to be set aside.
- (b) Declare that the Section 2 of Ordinance No. IX of 2021, dated 26-3-2021 (**‘Annex A’**), and Section 2 of Ordinance X of 2021, dated 7-4-2021 (**‘Annex A-1’**) are unconstitutional, without jurisdiction and of no legal effect.

**Or As Alternative to Prayer Clause “B”, The Following Prayer Clause**

**“C”:**

- (c) Declare that Section 2 of Ordinance No. IX of 2021, dated 26-3-2021 (**‘Annex A’**), and Section 2 of Ordinance No. X of 2021, dated 7-4-2021 (**‘Annex A-1’**) do not apply to the tenure Chairperson post of four years of the Respondent No. 6 (‘Dr. Tariq Banuri’) and as a consequence, the Notification No.1/82/2006-E-6, dated: 26.03.2021 (**‘Annex A-2’**) and Notification No.1/82/2006-E-6, dated: 05.04.2021 (**‘Annex A-3’**) are without jurisdiction, malafide, illegal and liable to be set aside.

(d) Direct the Respondents No. 2 to 5 to restore the Respondent No. 6 ('Dr. Tariq Banuri') to his tenure post of four years as Chairperson of the Respondent No. 5 ('HEC') with immediate effect.

(e) Permanently restrain the Respondents No. 2 to 5 from again removing the Respondent No. 6 ('Dr. Tariq Banuri') from his tenure post of four years as Chairperson of the Respondent No. 5 ('HEC') during his tenure of four years ending on 29-5-2022 (plus the entire time period during which the Respondent No. 6 was illegally removed) and also permanently restrain the Respondents No. 2 to 5 from appointing any other person as Chairperson of the Respondent No. 5 ('HEC') during the tenure of the Respondent No. 6 ending on 29-5-2022 (plus the entire time period during which the Respondent No. 6 was illegally removed).

(f) Grant such further, additional or alternative relief, as this Honourable Court may deem fit and proper.

Petitioner No.1

Petitioner No.2

Petitioner No.3

Petitioner No.4 and Attorney of the Petitioners No. 6 to 15

Petitioner No. 5

Through Counsel

Faisal Siddiqi  
Advocate Supreme Court

**1<sup>st</sup> Certificate**

It is certified as per instructions that this is the first Writ Petition on the subject by the Petitioners challenging, inter alia, the Notification dated: 26.03.2021 and Notification dated: 05.04.2021 in relation to removal of the Respondent No. 6 (“Tariq Banuri”) and that no Civil Petition or Appeal on the subject has been filed or pending before the Honourable Supreme Court.

**2<sup>nd</sup> Certificate**

Certified that this Petition has arisen from violation and non-fulfilment of obligations under Articles 4, 9, 10-A, 19 & 25 of the Constitution and violation of HEC Ordinance, 2002, and that no other adequate and efficacious remedy is available to the Petitioners.

ADVOCATE