Form No: HCJD/C-121

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

(1) I.C.A No. 75 of 2021

Dr. Tasleem Akhtar and others

Versus

Secretary, Ministry of National Health Services Regulations and Coordination, etc.

(2) I.C.A No. 398 of 2020

Mrs. Shakila Begum and others

Versus

Secretary, Ministry of National Health Services Regulations and Coordination, etc.

APPELLANTS BY:	Mr. Omer Farouk Adam, Advocate
RESPONDENTS BY:	Mr. Farrukh Shahzad Dall, Assistant Attorney General. Malik Zafar Iqbal Awan, Advocate for respondent No.5. Malik Amjad Hussain, AAO, NIH. Mr. M. Yousaf, Assistant, NIH. Mr. Amjad Khan, AD Legal M/o NHS.
DATE OF HEARING:	06-04-2022.

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BABAR SATTAR, J.- The appellants in above appeals have impugned the judgment passed in Writ Petitions No. 2463 and 3220 of 2019 by the learned Judge-in-Chambers dated 20.11.2020, wherein the Court decided not to issue directions to the respondents to make pension payments to the appellants but left the matter to the Secretary of National Health Services Regulations and Coordination **("Ministry")** to consider the grievance of the appellants and

determine if the Federal Government could find means to come to their rescue and afford them pensionary benefits.

2. Learned counsel for the appellants took the Court through the organizational history of Pakistan Medical Research Council **("PMRC")** since 1963 and up until the most recent amalgamation of the PMRC into National Institute of Health pursuant to the National Institute of Health (Re-Organization) Act, 2021 **("Act of 2021").** He contended that the facts in the instant matter are not denied. The appellants are retired employees of the PMRC, who were promised pensionary benefits pursuant to the Pakistan Medical Research Council (Pension) Rules, 1984 **("Pension Rules")**. Such pensionary benefits continued to be afforded to them up until March, 2019, when the Ministry issued letter dated 11.03.2019 directing PMRC to withhold payments of pension, commutation and medical charges of approximately 183 pensioners who have retired from the service of the PMRC. The Pension Rules were enacted by the Ministry in consultation with the Finance Division and were published in the Gazette on 05.02.1986. PMRC became a part of Pakistan Health Research Council **(PHRC)** which was created pursuant to section 3 of Pakistan Health Research Council Act, 2016 **("PHRC Act").** The PHRC Act provided in section 20 that officers and employees of PMRC would be transferred and absorbed into PHRC. The Act did not alter the terms and conditions of service of such employees. The PHRC Act was succeeded by the National Institute of Health (Re-organization) Ordinance, 2020, which was subsequently

transformed into the Act of 2021. The said Act provided in section 28 that persons in the employment of PHRC shall stand transferred to National Institute of Health (NIH) and shall become employees of NIH. And the terms and conditions of employment for such employees would not be less favorable in financial terms than the terms and conditions afforded to them prior to the commencement of the Act of 2021. He submitted that in view of section 28 of the act of 2021, the appellants have had statutory protection afforded to the terms and conditions of service pursuant to which they served PMRC. He further submitted that under section 33(4)(a) of the Act of 2021 all liabilities and obligations of PHRC were transferred to and assumed by NIH, which included the liabilities and obligations that PMRC (and its successor PHRC) owe to the appellants as retired employees of the PMRC and PHRC. He submitted that the appellants had a fundamental right to continue to be afforded pensionary benefits as promised to them by the Pension Rules and suspension of such pensionary benefits was in breach of their fundamental rights guaranteed by Article 9 of the Constitution. He further submitted that the impugned letter dated 11.03.2019 had also been issued in breach of principles of natural justice as the appellants had legitimate expectancy to be granted the benefits promised to them under the Pension Rules and such benefits could not be withheld in an arbitrary manner without affording the appellants an opportunity to be heard. He contended that the appellants were retired Government servants who had served the state

of Pakistan with commitment and in their old age they had now been left to fend for themselves at a time when they were retired citizens.

3. Learned Deputy Attorney General submitted that the Pension Rules did not have any statutory backing as they were issued by the Ministry and not in exercise of any authority flowing from a statute and the enforcement of such Rules was not amenable to the constitutional jurisdiction of the High Court. He submitted that the Pension Rules had been approved by the Finance Division subject to the condition that the pension fund created under the Pension Rules would be self-sustaining and would not create any fiscal liability for the Federal Government. He submitted that PHRC and PMRC were autonomous bodies, which were responsible for the management of the pension fund. The pension fund, however, was mismanaged and got depleted over time and after its depletion, the PMRC and PHRC continued to provide pensionary benefits to retired employees by misusing the non-development budget of PHRC. And when this aspect of the matter came to the attention of the auditors and the Ministry, the Ministry directed that the payment of pensionary benefits under the Pension Rules be suspended. The said order suspending the provision of pensionary benefits therefore suffered from no infirmity, as had been appreciated by the learned Judge-in-Chambers and the appeals were therefore without merit.

4. The questions that arise for our consideration in these appeals include the following:

(i) Was the challenge to the legality of letter issued by the Ministry dated 11.03.2019 suspending grant of pensionary benefits to the appellants amenable to exercise of judicial review by this Court in its constitutional jurisdiction?

(ii) Do the appellants have a right to payment of pensionary benefits in accordance with the Pension Rules, and do they have legitimate expectancy that the grant of such benefits shall not be suspended or disrupted?

5. The Ministry of Health, Labour and Social Welfare passed a resolution dated 17.03.1962 (SRO 332(K)/62) ordering the reconstituting of PMRC, which was originally constituted pursuant to Health Division Resolution dated 20.01.1953. The resolution of 1962 stated that the PMRC would have a Chairman nominated by the Health Division and other members appointed in a manner prescribed in the resolution. It further provided that PMRC, with the approval of the government, would be authorized to frame byelaws for carrying out its business. The PMRC hence created by the resolution was a part of the Ministry of Health, Labour and Social Welfare and was not a body politic or legal person having a legal identity separate or independent of the Health Division. As a body created through a resolution of the Health Division, PMRC was a subset of the Health Division. By resolution dated 14.07.1985, which was published in the official Gazette on 07.08.1985, PMRC was reconstituted by the Ministry of Science and Technology. This resolution provided in clause 3 that PMRC would be bound by the directives and instructions issued by the Federal Government.

For purposes of management the highest echelon created by the resolution of 1985 was a Board which was presided by the Minister of Science and Technology and comprised other members, a majority of whom were government employees, including Federal and Provincial Secretaries. The resolution also provided in clause 19 that the Federal Government, by notification in the official Gazette, may make rules for carrying out the purposes of the resolution. The status of the counsel, therefore, remained that of being a subset of the Ministry of Science and Technology pursuant to the resolution of 1985.

6. Perusal of the provisions of the resolution of 1985 establishes that the PMRC was not just a subset of the Ministry of Science and Technology, it also remained under the control of the Federal Government due to the manner in which the management structure was setup with the Federal Government being in control of the manner in which appointments were to be made as well as by virtue of retaining the authority to change the management structure in exercise of its authority to reconstitute the PMRC and amend and restate the provisions of the resolution of 1985. Clause 13 of resolution of 1985 provided that the Federal Government would provide funds to the PMRC for discharge of its functions and the funds of PMRC consisted of grants by the Federal Government or Provincial Governments and any income from other sources subject to the conditions. Clause 13 explicitly provided that "*funds of the council shall be maintained and operated in accordance with the directions of*

the Federal Government in this behalf". Clause 14 provided that PMRC was to submit its budget to the Federal Government for approval and the accounts of the PMRC would to be maintained as prescribed by the Federal Government and were to be audited by the Federal Government. Clause 15 of the resolution of 1985 allowed the PMRC to invest funds in securities of the Federal Government or Provincial Governments or in a security enumerated under section 20 of Trust Act, 1882.

7. On 19.12.1985, the Ministry of Science and Technology promulgated the Pension Rules, which were denominated as Pakistan Medical Research Council (Pension) Rules, 1984, but were promulgated on 19.12.1985 after the resolution of 1985. The Pension Rules were given effect from 01.06.1982, but were published under the authority of the Federal Government in the official Gazette on 05.02.1986. Rules 5 of the Pension Rules provided for a pension fund which was put together by transferring the accumulated balances of employees' contribution to the CP Fund and prescribed the criteria pursuant to which employees would qualify to be granted pensionary benefits. The Pension Rules were purportedly enacted in exercise of powers assumed by the Federal Government pursuant to clause 19 of the resolution of 1985 for carrying out the purposes of resolution through which the PMRC had been reconstituted.

8. The question of whether or not the appellants are entitled to the grant of pensionary benefits under the Pension Rules is not disputed before us. The question is not whether

the appellants are entitled to continuing provision of pensionary benefits on ground of their eligibility under the Pension Rules. The question is whether the promise made by the Federal Government to the appellants pursuant to the Pension Rules, to afford them pensionary benefits if they meet the prescribed criteria in the Pension Rules, creates a right in favour of the appellants that is enforceable as a matter of law.

9. Before we revert to the answer the questions framed in para-4 above, let us continue to trace the evolutionary history of PMRC and terms and conditions prescribed for employees of the PMRC. By notification dated 15.06.1994, issued by the Ministry of Science and Technology (which was gazetted under the authority of the Federal Government on 17.08.1994), the Federal Government enacted Pakistan Medical Research Council Employees (Service) Regulations, 1994 (**"Service Regulations"**) in exercise of authority under the resolution of 1985. Rule 29 of the Rules provided that *"employees of council shall be entitled to such retirement benefits as prescribed by the council with the approval of the Federal Government"*. The next major development in the evolutionary history of the PMRC was the promulgation of the Pakistan Health Research Council Act, 2016. The purpose of the Act was to reconstitute and reorganize the PMRC and was done by section 3 of the PHRC Act. Section 5 of the Act created a Board for overall control and superintendence of PHRC to be headed by Minister for Health. It comprised seventeen members in total, the dominant majority of whom

were government employees and included Secretaries of the Health Division, Finance Division and the Planning and Development Division of the Federal Government. The Board was vested with the authority to approve the budget of the newly constituted PHRC as well as appoint officers and employees. The statute created an Executive Committee, which was headed by the Secretary of Ministry of Health Division and was also largely populated by employees of the Federal Government, including representatives of Ministry of Planning and Development and Finance Division. This Executive Committee was to execute the administrative, financial and research activities of the PHRC. The Executive Director of PHRC was to be the Chief Executive Officer and was to be appointed by the Federal Government pursuant to section 14 of PHRC Act. Section 16 provided for the Medical Research Fund and the sources inflow to such fund, included aid, grants or other form of assistance by the Federal Government. Section 20 of PHRC Act provided that officers and employees of the PMRC, who were appointed on regular basis, would stand transferred and become employees of PHRC. Section 22 of PHRC Act endowed the Federal Government with the authority to make rules for purposes of carrying out the purpose of this Act, including rules to regulate the financial and administrative matters related to the Council. We have not been informed that the Federal Government in exercise of its authority under section 22 framed any rules.

10. Then came the National Institute of Health (Reorganization) Ordinance, 2020, which was succeeded by the National Institute of Health (Re-Organization) Act, 2021. Section 3 of the Act of 2021 created the National Institute of Health (NIH) as an autonomous body. Pursuant to section 6 of the Act of 2021, NIH is administered by a Board of Governors comprising nine members headed by the Secretary, Ministry of National Health Services Regulations and Coordination. Its members, other than ex-officio members, are appointed by the Federal Government on the recommendations of a Search and Nomination Committee constituted by the Federal Government under section 5 of the Act. The Board is vested with powers to frame policies for the financial and administrative management of NIH under section 7 of the Act. The NIH is to be headed by a Chief Executive Officer who is appointed by the Federal Government under section 10 of the Act, on the recommendation of the Board. Section 22 creates the position of Chief Financial Officer, who is also to be appointed by the Federal Government on the recommendation of the Board. Section 22(2) provides that the candidate selected by the Board for the position of Chief Financial Officer is to be approved by a committee comprising of Secretary Cabinet Division, Secretary Finance Division and Secretary Economic Affairs Division. The Chief Financial officer under section 22(4) is endowed with the duty to maintain the National Health Fund under the direction of the Board. The National Health Fund has been created by section 20 of the Act which

makes the Federal Government responsible for establishing such fund to provide for the operations and functions of NIH and its institutes and centers. Section 26 of the Act binds the Board of NIH to act in accordance with policies, directives and instructions issued by the Federal Government to NIH. Section 28(1) provides for transfer of existing employees of PHRC to NIH in the following terms:

> ***28. Transfer of existing employees of the National Institute of Health and the Pakistan Research Council to the NIH.-*** *(1) Notwithstanding anything to the contrary in any contract or agreement or in the conditions of service every person in the service of the National Institute of Health and the Pakistan Health Research Council immediately, before the commencement of this Act shall stand transferred to the NIH and become an employee of the NIH on such terms and conditions as may be prescribed by the Board*
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> *Provided that such terms and conditions shall not be less favorable in financial terms than the terms and conditions admissible to them immediately before the commencement of this Act.*

Section 33(2) repealed the PHRC Act, 2016 and provides in section 33(4)(a) that *"all debts, liabilities and obligations of whatever kind of the National Institute of Health and the Pakistan Health Research Council shall be transferred to and vest in the NIH."*

11. What emerges from the above organizational history is the following:

(i) The PMRC was not incorporated as a legal entity or a legal person and remained a subset of the Ministry of Health and successor ministries who oversaw the affairs of PMRC as provided under

the resolution of 1962. By virtue of being a body created by the resolution of a Division of the Federal Government, employees of PMRC remained employees of the Federal Government.

(ii) The PMRC was not an autonomous or independent body but remained a body which was discharging functions in connection with the affairs of the state, being a subset of Ministry of Health and later Ministry of Science and Technology, was controlled and managed under the supervision of the Federal Government and was funded by the Federal Government.

(iii) The Federal Government through the Ministry of Science and Technology prescribed rules regulating the terms and conditions of service of the employees of the PMRC by Pakistan Medical Research Council Employees (Service) Regulations, 1994, which were published in the Official Gazette on 17.08.1994, and provided for pensionary benefits under the Pension Rules which were also published in the Official Gazette. Those who were employed by PMRC as regular employees remained the employees of the PMRC up until the promulgation of the PHRC Act, when they were transferred and became employees of PHRC in 2016 due to the statutory intervention. It was under the PHRC Act that the PMRC was transformed into PHRC and was granted the status of a body politic and PMRC consequently acquired legal personality independent to that of the Federal Government. The Federal Government, however, retained control of overall management and supervision of PHRC, retained the power to issue binding directions to PHRC, and remained under an

obligation to provide funds for the operation of PHRC.

(iv) The PHRC Act was repealed and replaced by the Act of 2021 under which the PHRC was subsumed by NIH, which too remains under the control of the Federal Government by virtue of Federal Government's retaining ultimate control over the appointments made in NIH, by virtue of its powers to issue binding directions to NIH and by virtue of its obligation to fund NIH.

(v) The Act of 2021 affords statutory protection to the terms and conditions of service of employees of PHRC, including the erstwhile employees of PMRC. The terms and conditions of service of PMRC employees were provided in the Service Regulations and the Pension Rules and which were never recalled or repealed up until the promulgation of PHRC Act, which transferred the employees of the PMRC to PHRC pursuant to section 20 of PHRC Act and subsequently to NIH under section 28(1) of the Act of 2021. This section also afforded a statutory protection to the terms and conditions of service afforded to such employees, and by virtue of section 33(4)(a) of the Act of 2021, the NIH assumes the liabilities and obligations of PHRC.

12. A reading of Service Regulations, the Pension Rules together with section 20 of the PHRC Act and sections 28 and 33 of the Act of 2021, provides statutory protection to the terms and conditions of service that were afforded to the employees of PMRC by the Federal Government and the pensionary benefits promised and afforded to the employees of PMRC under the Pension Rules.

13. The argument of the Federal Government that the Pension Rules were approved by the Ministry of Finance subject to the condition that the pension fund created under rule 5 of the Pension Rules was to be self-sustaining is not backed by any documentary evidence. Respondent No.1 had constituted an inquiry committee to delve into the transfer of funds from the non-developmental budget to meeting the pension obligation of former employees. The inquiry committee in its report, while observing that it was the position of the Finance Division that the draft of the Pension Rules was approved by the Ministry of Finance subject to the condition that the pension fund was to be self-sustainable, recorded that no documents or minutes were provided by the Finance Division to the inquiry committee to substantiate such position of the Finance Division. It also appears from the reading of inquiry report dated 23.09.2019 that respondent No.1 had misconceived that providing an explanation for promulgation of the Pension Rules and meeting the pensionary needs of retired employees was an obligation of PMRC alone. We have already detailed above that PMRC had no legal personality independent of the Federal Government and it was the Federal Government that enacted the Service Regulations and the Pension Rules as well as the resolution of 1985. The respondents have also failed to convince this Court that the pension fund was established and structured to function as a self-sustainable fund. The PMRC was established primarily to undertake and promote scientific research in various disciplines of medical sciences, as well as to

disseminate information on scientific matters and to advise the Federal and Provincial Governments on scientific matters. The functions and powers of PMRC as enumerated in the resolution of 1985 suggest that it was not setup as a profit making enterprise.

14. It is common knowledge that research and development requires investment and it is only after R & D investment leading to scientific discoveries capable of being utilized for commercial purposes that R & D investments pay their due and begin generating revenue. Neither the resolution of 1985 nor the PHRC Act and the Act of 2021 reflect that the rationale behind the creation of the PMRC, PHRC or NIH was to generate revenue. It is therefore absurd for the Federal Government to argue that the pension fund created pursuant to rule 5 of the Pension Rules was designed as a self-sustaining fund. Rule 5 of the Pension Rules stated that the pension fund was to be created by transfer of accumulated balances of employees' contribution to the CP Fund. In other words, the seed money for the pension fund came from the contributions of the employees themselves. As the PMRC itself was funded by the Federal Government there is no basis to argue that the pension fund would miraculously have become a self-sustaining fund to defray the pensionary obligations towards retired employees of PMRC.

15. The argument that pensionary benefits are not to be afforded to the appellants neither has any documentary basis nor is supported by common sense. The Federal Government had setup PMRC. The Federal Government was responsible to

provide for salaries and expenses required in relation to the employees of PMRC. And it was the Federal Government that enacted the Pension Rules and provided for the creation of the pension fund and retained overall control over the management of PMRC and consequently had the liability for provision of pensionary benefits as well as for the management of the pension fund all along up until 2016, when the PMRC was succeeded by PHRC under the PHRC Act. There is therefore no basis for the respondents to argue that the Federal Government was not obliged to uphold its promises and representations to the erstwhile employees of PMRC, including the pensionary benefits due to them under the Pension Rules up until 2016. Under the PHRC Act Federal Government had the power to frame rules regulating the financial and administrative matters of PHRC, which was the successor of PMRC. Neither did the Federal Government frame any rules nor did it repeal the Service Regulations and the Pension Rules that it had farmed to regulate the terms and conditions of service, and the benefits and entitlements afforded to employees of the PMRC.

16. Let us reiterate here that as the PMRC had no independent legal personality up until 2016, the Federal Government cannot wipe its hands clean of the liabilities and obligations in relation to the employees of the PMRC by setting up an argument that any obligations and liabilities towards the erstwhile employees of PMRC are the business of the PMRC and not that of the Federal Government. The legislature by virtue of provisions of the Act of 2021 endowed

NIH with the obligation to assume liabilities and discharge obligations of the PHRC, which was the successor of PMRC as has already been detailed above. The Act of 2021, has therefore provided a statutory basis to the terms and conditions afforded to the employees of PMRC and PHRC as well as a statutory basis for the obligation of NIH to discharge the liabilities that were previously owed by the PHRC, and before it, the PMRC. The Act of 2021 also endowed the Federal Government with the obligation to establish a National Health Fund and provide for the operation and functions of the NIH. In other words under provisions of the Act of 2021 not only have the terms and conditions of employment of employees of PMRC and PHRC been protected, but NIH has also been obliged to discharge liabilities and obligations toward such retired employees of PMRC and PHRC. Further, the Federal Government has been given the responsibility to fund the National Health Fund for purposes of the operation and functioning of NIH, which includes the discharge of liabilities and obligations towards the employees of the PMRC and PHRC.

17. Rule 3 of the Rules of Business, 1973, provides for allocation business amongst various Divisions of the Federal Government. Rule 12 then provides that in relation to any matter that directly or indirectly affects the finances of the Federation, the Finance Division must be consulted. It is not denied that Ministry of Health consulted the Finance Division prior to the enactment of the Pension Rules, which were then published in the official Gazette.

18. Let us consider here whether the provisions of Pension Rules can be deemed to be enforceable on the basis that the Finance Division granted provisional approval to the draft of the Pension Rules and the Pension Rules as published were not in accordance with the conditions imposed and therefore not enforceable. The Rules of Business have been framed in exercise of the rule-making authority vested in the Federal Government by the Constitution. The Rules of Business, 1973, as backed by the Constitution are meant for the internal management of the Federal Government and its Divisions and do not bind or create consequences for third parties.

19. It was held by the Apex Court in ***Muhammad Bachal Memon Vs. Syed Tanveer Hussain Shah (2015 PLC(CS) 767)***, that *"a legal instrument such as the Rules of Business can only relate to the allocation and transaction of the Government's business."* In ***Federation of Pakistan Vs. Dewan Petroleum (PLD 2012 SC 189***) the august Supreme Court while interpreting rule 14 of the Rules of Business, 1973 held that *"a simple reading of Article l00(3) of the Constitution, makes it abundantly clear that obtaining the opinion of the Attorney General for Pakistan at the instance of Ministry of Justice, Law and Parliamentary Affairs is an internal arrangement within the government functionaries for the purpose of their collaborated working, having no binding effect thereof in favour of a third party unless so choosers by the Federal Government or the concerned Ministry."* The Rules of Business being a product of delegated legislation

meant for the internal functioning of the Federal Government cannot create substantive rights and obligations for citizens of Pakistan, or penal consequences for such citizens for the failure of the government functionaries to abide by procedural requirements of such rules. It was held by the learned Sindh High Court in ***(Abdul Haq and others Vs. Province of Sindh) (PLD 2000 Karachi 224)*** that *"rules of Business do not enlarge or, enhance the jurisdiction and scope of authority of executive/public functionaries but, merely regulate the exercise of already existing authority and jurisdiction as are conferred by the Constitution and statute law enacted thereunder."*

20. It is not the case of the Federal government that Service Regulations and the Pension Rules were never promulgated by a Division of the Federal Government. It is also not the case of the Federal Government that in promulgating the Pension Rules the concerned Division did not consult with the Finance Division. The case of the Federal Government is that the Pension Rules, as promulgated, did not appropriately reflect the intent of the Finance Division while granting its approval to the promulgation of such Rules. Such argument cannot be countenanced. The employees of PMRC, who by definition were employees of the Federal Government, cannot be deprived of the rights promised to them under the Pension Rules published in 1986, on the basis that at the relevant time the functionaries within the Finance Division and the Health Division did not appropriately reflect the consensus between those two Divisions in the text that

formed part of the Pension Rules. There was no occasion for employees to know that the promises made to them under the Pension Rules in lieu of the services that they were asked to provide, did not aptly reflect the intent of the Federal Government. The Rules were published and were neither objected to by the Finance Division nor have been repealed or recalled by the Federal Government till date. Section 20A of the General Clauses Act, 1877, now requires that all rules, orders, regulations and circulars of the Federal Government that have the effect of law are to be published in the Official Gazette. The purpose of such requirement is for those affected by such laws, regulations and orders to be aware of their rights and obligations. It does not behoove the state and the Federal Government to make a promise and publish it through the official Gazette only to try and resile from such promise on the basis that at the relevant time the draftsman did not appropriately reflect the government's intent in the rules so published.

21. Another aspect of this matter is that there is a presumption of legality attached to actions of public functionaries. It is now settled that when a person discharges authority on behalf of a juristic entity, those dealing with such entity are not to be adversely affected by any irregularity in the internal management of such juristic entity. This principle of indoor management has been applied to statutory bodies and public sectors corporations. It was observed by Lord Denning in a judgment of the Court of Appeal of United Kingdom in ***Falmouth Boat Construction Co. Ltd. V.***

Howell ***(1950 1 All ER 538)*** *(*where he found ship-repairers to be not guilty of any illegality while abiding by the directions of officer-in-charge) that, *"in my judgment, there is a principle of law which protects them from such an injustice. It is a principle of particular importance in these days when the officers of government departments are given much authority by orders and circulars which are not available to the public. The principle is: whenever government officers, in their dealings with a subject, take on themselves to assume authority in a matter with which he is concerned, the subject is entitled to rely on their having the authority which they assume. He does not know and cannot be expected to know the limits of their authority and he ought not to suffer if they exceed it. That was the principle which I applied in Robertson v. Minister of Pensions (i), and it is applicable in this case also. It was not canvassed in Jackson, Stanfield & Sons v. Bitterworth (2), and that case is therefore no obstacle to its adoption."* In ***Messrs Trade and Industry Publications Limited Vs. Sind Employees Social Security Institutions, Karachi*** ***(1987 PLC 658),*** the learned Sindh High Court also applied the doctrine of indoor management to a statutory body while relying on another judgment of a learned Division Bench of Sindh High Court in ***P.E.C.H.S Vs. Anwar Sultana and others*** ***(PLD 1969 Karachi 474)****,* wherein the question was whether or not the official of the institution was acting under duly delegated authority, and the actions of the official were saved on the basis of the doctrine of indoor management.

22. We do not wish to render any definitive finding with regard to the application of the principle of indoor management when it comes to officials of Federal Government. We will, however, observe that the application of such doctrine of indoor management is not excluded when it comes to the actions of public functionaries. The logic of the rule is attracted because a citizen has no basis to know or confirm that the internal rules or procedures pursuant to which public functionaries are required to act have been complied with while public functionaries acts in discharge of authority that flows from the Federal Government. And consequently the citizens cannot be held liable for any procedural irregularities committed by public functionaries in discharge of his functions. We will therefore only observe that unless an order that the citizen relies on is absolutely devoid of authority coram non judice or suffers from a jurisdictional defect, the non-compliance with internal procedure cannot be setup as a defense by a public authority to defeat the rights and entitlements of citizens. Thus, where citizens bring a claim against the state on the basis of the doctrine of legitimate expectancy, the court will approach with skepticism any argument setup by the Federal Government stating that the rights are to be denied because they were promised in a manner that was not fully compliant with the internal procedural requirements of the Federal Government.

23. Let us now consider the doctrine of legitimate expectancy as a basis for the appellants' case, independent of the argument that rights due to them under the Pension Rules

are now protected by the provision of the Act of 2021. The doctrine of legitimate expectancy is rooted in fairness. Just as a person is estopped from resiling from a promise in the realm of private law, an administrative authority is required to not frustrate the legitimate expectation of those dealing with it on the basis that permission to do so would be unfair and constitute an abuse of power. The doctrine of legitimate expectation has been summarized in Halsbury's Laws of England (Fifth Edition Para 649 PP 575) as follows:

> *"**Legitimate Expectations**: a person may have a legitimate expectation of being treated in a certain way by an administrative authority even though there is no other legal basis upon which he could claim such treatment. The expectation may arise either from a representation or promise made by the authority including, an implied representation, or from consistent past practice. In all instances the expectation arises by reason of the conduct of the decision-maker, and his protected by the courts on the basis that principles of fairness, predictability and certainty should not be disregarded.*
>
> *The existence of a legitimate expectation may have a number of different consequences; it may give standing to seek permission to apply for judicial review, it may mean that the authority ought not to act so as to defeat the consequences of the expectation without some overriding reason of public policy to justify its doing so, or it may mean that, if the authority proposes to act contrary to the legitimate expectation, it must afford the person either an opportunity to make representations on the matter, or the benefit of some other requirement of procedural fairness. A legitimate expectation may cease to exist*

either because its significance has come to natural end or because of action on the part of the decision-maker.

In appropriate circumstances the existence of a legitimate expectation may require a public body to confer a substantive, as opposed to a procedural, benefit. In such cases the courts will not permit the public body to resile from the presentation if to do so would amount to an abuse of power."

It was observed by Professor HWR Wade in Administrative Law (6th Edition PP 424) that, *"the courts not expect government departments to honor their publish statement or else to treat the citizen with the fullest personal considerations. Unfairness in the form of unreasonableness here comes close to unfairness in the form of violation of natural justice and the doctrine of legitimate expectation cannot take on in both contexts*." In ***Breen Vs. Amalgamated Engineering Union*** **(*1971(2) QB 175*)** it was observed that *"a man who has some right or interest or some legitimate expectation, of which it would not be fair to be tried without a hearing, or reasons given, then he should be afforded him accordingly"* In **A.G of *Hong Kong Vs NG Yuen SHIU* *[1983]2 All ER 346***, the Privy Council held that "*the public authority is bound by its undertakings as to the procedures it will follow provided that they do not conflict with its duty.*" In ***R. Vs. Secretary of State for Home Department, Ex-parte Ruddock*** ***[1987]2 All ER 518,*** it was held that "*doctrine of legitimate expectation in essence imposes a duty to act fairly*."

24. The jurisprudence produced in relation to the legitimate expectancy can fill volumes. But what is now settled is that a legitimate expectation can arise from conduct (i.e. past practice), administrative authority or a representation made by such authority. The consequences of such expectancy are that the authority must not defeat the legitimate expectation without overriding reasons rooted in public policy. And where an action is to be taken by the administrative authority that will defeat the legitimate expectation of those dealing with the public authority, the change of policy is to be carried out fairly, after affording those affected with an opportunity to make a representation in accordance with the principles of natural justice. And further the administrative authority must document the over-riding public purpose that has caused a change of policy that trumps the legitimate expectancy created by past conduct or representations by the administrative authorities. It is also settled that actions in breach of the principle of legitimate expectancy provides standing to those adversely affected by the actions of the administrative authority to seek judicial review of such action.

25. The august Supreme Court in ***Chairman, Federal Board of Revenue, Islamabad and another Vs. Mrs. Naureen Ahmed Tarar and others*** ***(2020 PLC(CS) 152)*** cited with the approval a judgment of UK House of Lords in the case of ***Council of Civil Service Unions and others v. Minister for the Civil Service*** ***[1984]3 All ER 935****,* wherein it was held that, *"to qualify as a subject for judicial review the*

decision must have consequences which affect some person… either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been given an opportunity to comment or… advancing reasons for contending that they should not be withdrawn." The august Supreme Court then held that *"this rule of fairness and non-arbitrariness is recognized in our jurisprudence to mean that an advantage or benefit derived from a competent legal dispensation, departmental practice or established procedure that has been extended to and enjoyed by a person may legitimately be expected to remain available unless notice or opportunity to defend or adjust his position is given to that person."*

26. The case of the appellant is also based on doctrine of locus poenitentiae. It was held by the august Supreme Court in ***Pakistan through Secretary Ministry of Finance Vs. Muhammad Himayatullah Farukhi*** ***(PLD 1969 SC 407)*** that, *"the authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights."* The law laid down by the august Supreme Court in ***Muhammad Himayatullah Farukhi*** remains good law.

27. What is not contested before us is that the Federal Government promulgated the Pension Rules and continued to afford pensionary benefits to retired employees of PMRC and PHRC up until 2019 in accordance with the provisions of the Pension Rules. The pension fund that had come into existence pursuant to rule 5 of the Pension Rules was partly funded by the CP fund contributed by the employees. Many employees of the PMRC who had accepted employment with the PMRC on the basis of the representation made by the Federal Government through the PMRC promising the employees' rights and benefits as prescribed in the Service Regulations and the Pension Rules and such promises and representations were upheld by the Federal Government as part of a consistent practice up until 2019. Consequently, even in the event that we had come to the conclusion that the Pension Rules were not protected pursuant to sections 28 and 33 of the Act of 2021, the appellants would still have the legitimate expectancy that pensionary benefits promised to them by the Federal Government pursuant to the Pension Rules and afforded to them up until 2019 would continue to be afforded to them. In the event that the Federal Government had a change of heart and decided that it would no longer afford such pensionary benefits to the employees of PMRC and PHRC, the Federal Government was under an obligation to afford those affected by such change of policy, the right to a hearing and would then need to pass a reasoned order explaining the overriding public purpose that required a change of policy. This the Federal Government has not done

and consequently the appellants also have a right to impugn the letters suspending the grant of pensionary benefits on the basis of principles of natural justice rooted in the legitimate expectancy as well as Article 10-A of the Constitution.

28. The Federal Government could not take a decision adverse to the interests of the appellants without affording the affectees of such decision the right to representation and without documenting reasons for change of its policy which reasons would obviously be amenable to judicial review. It was held in ***Anisa Rehman Vs. P.I.A.C*** ***(1994 SCMR 2232)*** that breach of the right of interest of justice *"can be equated with the violation of a provision of law warranting pressing into service Constitutional jurisdiction under Article 199 of the Constitution, which the High Court failed to exercise. The fact that there are no statutory service rules in respondent No. 1 Corporation and its relationship with its employees is of that Master and Servant will not negate the application of the above Maxim audi alteram partem".* The same principle was reiterated by the august Supreme Court in ***Civil Aviation Authority Vs. Javed Ahmed*** ***(2009 SCMR 956)*** and ***Pakistan Defence Officers' Housing Authority Vs. Lt. Col. Syed Jawaid Ahmed*** ***(2013 SCMR 1707)***. The decisions rendered in breach of principles of natural justice and the guarantees of Article 10-A of the Constitution create a right for the affected citizens to approach the High Court in its constitutional jurisdiction. And where question does not involve factual controversy the High Court is within its authority to issue a writ to the authority functioning in

connection with the affairs of the state to act in accordance with law.

29. We are also guided by the dicta of the Apex Court in ***Mrs. M.N. Arshad Vs. Miss Naeema Khan*** ***(1990 PLD 612 SC)***. In the said case the reappointment of the Headmistress in Islamabad College for Boys came before the Court in relation to the enforceability of Islamabad Model School and Colleges (Service) Rules, 1984, framed by the Board of Governors of the academic institute which was not a corporation or body corporate and consequently had no statutory backing. It was held by the august Supreme Court that *"even departmental instructions become enforceable in service matters if they have been continuously and consistently acted upon by the department concerned. The Board after having framed the above rules, cannot plead that it can violate the same with immunity."*

30. Let us reiterate that the right to pension is not a bounty or gratuity doled out by the Government at its whim. It was held in ***Pakistan Telecommunication Employees Trust (PTET) Vs. Muhammad Arif*** ***(2015 SCMR 1472)*** that *"pension is a part of a civil servant's retirement benefit and is not bounty or an ex-gratia payment but a right acquired in consideration of his past service which was a vested right with legitimate expectation.* Likewise, in ***Secretary, Government of Punjab, Finance Department Vs. M. Ismail Tayer*** ***(2015 PLC(CS) 296***) the august Supreme Court reiterated the law laid down in ***Government of N.W.F.P. Vs. Muhammad Said Khan*** ***(PLD***

1973 SC 514), wherein it was observed that *"it must now be taken as well-settled that a person who enters Government service has also something to look forward after his retirement, to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well-settled that pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."*

31. The right to a pension is an earned right and is not a bounty to be granted or withheld by the Government at its whim. The Pension Rules prescribed eligibility criteria for employees to qualify for pensionary benefits. It is not contested that the appellants meet such criteria and were afforded pensionary benefits in accordance with the prescriptions in the Pension Rules up until 2019. It is also not contested that the Pension Rules were published and gazetted by the Federal Government and the Federal Government continued to act in accordance provision of the Pension Rules up until 2019. The only question then is whether the appellants can seek enforcement of rights they claim in relation to the pensionary benefits under Article 199 of the Constitution and whether they are entitled to such pensionary benefits. The answers to both questions are in the affirmative. The appellants have a right to impugn the letters suspending their pensionary benefits for such letters having been issued in breach of principles of natural justice, their rights

guaranteed under Article 10A of the Constitution and in breach of the doctrine of legitimate expectancy.

32. The appellants have a right to seek judicial review of the actions of the Federal Government where such actions are in breach of the doctrine of legitimate expectancy and locus poenitentiae under Article 199(1)(a)(i) of the Constitution. Even where an action for judicial review is brought by an aggrieved party whose claim to the pensionary right is not backed by statutory rules, the impugned order would be amenable to the jurisdiction of the High Court under Article 199(1)(a)(i) to the extent that the aggrieved party can establish a legitimate expectation from the government to abide by its representations and promises. In the instant case, it is not denied that the Federal Government did promise pensionary benefits to the appellants pursuant to the Pension Rules and the appellants continued to discharge their obligations in relying on such representations up until the time that they retired and their pensionary rights under Pension Rules became vested and were granted to them in accordance with the terms of the Pensions Rules.

33. We have determined above that the Pension Rules continued to remain in the field as declaration issued by the Federal Government, which were duly published in the official Gazette and such resolution through which the Pension Rules were enacted was never repealed or recalled. And the Federal Government continued to uphold its promises to those employed to serve the PMRC. The PMRC then became PHRC under provisions of the PHRC Act, which was then subsumed

by NIH under the Act of 2021. Pursuant to the Act of 2021 the obligations and liabilities of PMRC were assumed by the NIH and the terms and conditions of employees of the PMRC, and subsequently PHRC, were protected under section 28 of the Act of 2021. Consequently appellants have a statutory claim that the Federal Government is acting in breach of sections 28 and 33 of the Act of 2021.

34. We have also found that the appellants have a claim under Article 199(1)(c) of Constitution which empowers the High Court to give directions to any authority, including the Federal Government which the court deems appropriate for purposes of enforcement of fundamental rights guaranteed by the Constitution. The right of senior citizens and retired employees to be granted pensionary benefits that have been earned by virtue of services rendered while such citizen was in his/her prime and able to discharge services is a vested right that forms a part of right to life guaranteed under Article 9 of the Constitution (in view of the law laid down by the august Supreme Court in ***Ms. Shehla Zia v. WAPDA*** ***(PLD 1994 SC 693)***). Once the court comes to the conclusion that a citizen has the right to claim pensionary benefits, denial of the same also falls foul of right to dignity guaranteed under Article 14 of the Constitution.

35. The civility of a polity can be gauged by the manner in which it treats the vulnerable segment of the society. Senior citizens who were past their prime and have their best years behind them form a part of the vulnerable segment of the society. It is by virtue of the services rendered during

their productive years that they have a right to be taken care of in old age through provision of pensionary benefits where they meet the criteria for provision of such benefits in the promises made to them by their employers. The Federal Government cannot turn back and claim that it expected a pension fund to be self-sustaining. Merely because the pension fund has dwindled due to poor investment choices, the Federal Government cannot declare that it will no longer honor its representations and promises to extend pensionary benefits to senior citizens. The right of a retired employee to receive pensionary benefits cannot be confused with the inability of the Federal Government, or an administrative authority that form part of the Federal Government, to pay pensionary benefits due to mismanagement of a pension fund.

36. Pension funds can become self-sustaining if they are endowed with the required funds calculated to meet future pensionary needs and are intelligently managed to make sufficient returns to meet future obligations as they become due. But the obligation to structure the pension fund and administer and manage it in a manner that it does not produce any shortfall lies with the Federal Government as employer and not with the employees who are beneficiary of such fund. The argument of the Federal Government that proceeds of the pension funds might have been mismanaged undermining the ability of the Federal Government to pay pensionary benefits out of whatever sums were earmarked for such purpose is misconceived. The Burden of malfeasance of employees of the Federal Government responsible for

managing the pension fund cannot be transferred to the shoulders of the beneficiaries of such fund. We therefore find that the Federal Government remains under obligation to honor and discharge liabilities and obligations due to the appellants under provisions of the Pension Rules, which obligations have been assumed by NIH under section 33 of the Act of 2021 and are to be funded by the Federal Government under section 21 of the Act of 2021.

37. For the above mentioned reasons, we **allow** the appeals and set aside letter issued by respondent No.1 dated 11.03.2019 for being illegal, for having been issued in breach of the principles of legitimate expectancy, natural justice and adversely affecting vested rights of the appellants. We further direct that respondents No. 1 and 4 on behalf of the Federal Government will assess the amount due to pensioners since their benefits were suspended in 2019, which will be made available to NIH to discharge the liabilities and obligations due to the appellants and other retired employees in view of provisions of Pension Rules. Such funds shall be made available to NIH within a period of 60-days. We also direct the Federal Government to undertake an assessment of the future financial obligations in relation to the retired employees of PMRC, who are now employees of NIH and create appropriate administrative and management structures in exercise of authority under section 29 read together with 26 of the Act of 2021 to ensure that the pension related obligations to be discharged by NIH do not remain unfunded. Let respondents No.1 and 4 on behalf of the Federal Government file a

compliance report with the Deputy Registrar (Judicial) of this Court stating that the directions have been complied with by or before the expiry of the 60-day period.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(BABAR SATTAR)
JUDGE

Announced in the open Court on **25.10.2022**.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Approved for reporting.

**Saeed.*