**JUDGMENT SHEET**
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**
**JUDICIAL DEPARTMENT.**

**Writ Petition No.535 of 2022**

**Pakistan Services Limited**

Versus

**Full Bench, Nationa Industrial Relations Commission and 03 others**

| | | |
|---|---|---|
| Petitioners by | : | Syed Naeem Bukhari and Mr. Muhammad Imad Khan, Advocates for the petitioners in W.P. Nos. 535 of 2022 and 536 of 2022 as well as for respondent No.5 in W.Ps. Nos. 1892 of 2022 and 1853 of 2022. |
| Respondents by | : | Hafiz Arfat Ahmed Ch., Ms. Kashifa Niaz Awan, Mr. Tariq Zaman Ch., Advocates for respondent No.3 in W.P. No.535 of 2022 as well as for respondent No.4 in W.P. No.536 of 2022.<br><br>Mr. Abdul Hafeez Amjad, Advocate for the petitioners in W.Ps Nos.1892 of 2022 and 1853 of 2022 as well as for respondents No.4 in W.P. No.535 of 2022 as well as for respondent No.5 in W.P. No.536 of 2022.<br><br>Mr. Nasir Aman Sandhu, representative for the petitioners in W.Ps. No.1853 of 2022 and 1892 of 2022. |
| Date of Hearing | : | 10.08.2022 |

**ARBAB MUHAMMAD TAHIR, J.:-** By reason of this common judgment, I shall propose to dispose of the captioned writ petition as well as writ petitions Nos. 536 of 2022, 1892 of 2022 and 1853 of 2022 since the question of law involved in all these petitions is almost identical, and since all these petitions entail certain common features and so also between the same parties.

**W.P. No.535 of 2022.**

**2.** By means of writ petition No.535 of 2022 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"),** the petitioner, Pakistan Services Limited ("hereinafter referred to as the **"petitioner-company")** has

called in question the validity and legality of the order dated 02.02.2022, passed by the learned Full Bench of the National Industrial Relations Commission (hereinafter referred to as the **"Commission")** dismissing the petitioner-company's appeal under Section 58 of the Industrial Relations Act, 2012 (hereinafter referred to as **"the Act"**) against the order dated 25.04.2018 passed by the learned Single Member of the Commission. Through the said order dated 25.04.2018, the learned Single Member of the Commission dismissed the petitioner-company's petition filed under Section 60 read with Sections 9, 11 and 57 of the Act.

**W.P. No.536 of 2022.**

**3.** Whereas, through writ petition No. 536 of 2022 under Article 199 of the Constitution, the petitioner-company seeks the annulment of the order dated 02.02.2022, passed by the learned Full Bench of the Commission dismissing its appeal under Section 58 of the Act against (i) the order dated 15.07.2021 passed by the learned Single Member of the Commission, thereby appointing an Authorized Officer to conduct the referendum proceedings, and (ii) the order dated 30.07.2021, whereby the Authorized Officer dismissed the petitioner-company's application for deferment of the referendum proceedings in the establishment of Pearl Continental Hotels (hereinafter referred to as **"PC Hotels"**). Through the said order dated 15.07.2021, the learned Single Member of the Commission appointed Mr. Muhammad Shafique, Private Secretary to the Chairman of the Commission, Islamabad as the **'Authorized Officer'** under Section 19(12) of the Act with the mandate to conduct the referendum proceedings for determination of the Collective Bargaining Agent (hereinafter referred to as the **"CBA"**) in the establishments of PC Hotels. Similarly through order dated 30.07.2021, the Authorized Officer turned down the

petitioner-company's application seeking the referendum proceedings to be deferred.

**W.P. No.1892 of 2022.**

**4.** Likewise, through writ petition No.1892 of 2022, the petitioner, Pearl Continental Hotels Staff Union Pakistan (hereinafter referred to as **"Staff Union"**) has called in question the validity of the order dated 02.02.2022, passed by the learned Full Bench of the Commission dismissing its appeal under Section 58 of the Act against the order dated 30.07.2021, whereby the Authorized Officer had dismissed the petitioner-company's application (not the Staff Union's application) for deferment of the referendum proceedings in the establishments of PC Hotels.

**W.P. No.1853 of 2022.**

**5.** Likewise, through writ petition No.1853 of 2022, the Staff Union has questioned the validity of the order dated 02.02.2022 passed by the learned Full Bench of the Commission dismissing its appeal under Section 58 of the 2012 Act against the order dated 17.08.2021, passed by the Authorized Officer. Vide said order dated 17.08.2021, the Authorized Officer decided the following issues:-

> *"i. Whether the dismissed/terminated employees (Workers) can be included in the voter list to cost votes in the referendum?*
> *ii. Whether the employees (Workers) employed in Pakistan Services Limited (PSL) can be included in the voters list to cost votes in the referendum?"*

**FACTS OF WRIT PETITION NO.535 OF 2022**

**6.** The facts as gleaned out from the record are to the effect that the petitioner-company is a Public Listed Company engaged in various trades and businesses and employees almost 49 persons in total in its business; that it has set up Hotels in different cities of the Country *viz* Lahore, Karachi, Rawalpindi, Bhurban, Peshawar and Muzaffarabad; that it

has no PC Hotel in Islamabad, but its Head Office is located at Islamabad Capital Territory (hereinafter referred to as **"ICT"**); that the petitioner-company is an ***"Establishment"*** as defined under Section 2(x) and an **"Industry"** as defined under Section 2(xvii) of the Act; that the petitioner-company is involved and undertakes various businesses, which include but not limited to setting up of Hotels in various cities of the Country; that in the year 2015, the Pearl Continental National Labour Union (i.e. respondent No.3 in writ petition No.535 of 2022 and shall hereinafter be referred to as the **"Labour Union**") applied for its registration as an Industry-wise Trade Union to the Registrar of Trade Unions (hereinafter referred to as the **"RTU");** that the RTU registered the said union on 17.12.2015; that the Staff Union (i.e. respondent No.4 in writ petition No.535 of 2022) also applied for its registration as an Industry-wise Trade Union; that on 17.12.2015, the Joint Registrar of Trade Unions accorded registration to the Staff Union. Feeling aggrieved by the decision regarding registrations of the Labour Union and Staff Union, the petitioner-company filed a petition under Section 11 of the Act seeking the cancellation of the registration certificates issued to the said Unions. The said petition stood dismissed by the RTU vide order dated 30.04.2018. Being dissatisfied with the said order dated 30.04.2018, the petitioner-company subjected the same to a challenge before this Court in writ petition No.2495 of 2018, titled Pakistan Services Ltd. Vs. Registrar Trade Unions and others. The said writ petition was disposed of by this Court through judgment dated 06.07.2021.

**7.** Additionally, in the year 2018, the petitioner-company yet again filed a petition under Sections 9, 11, 57 and 60 of the Act against holding of referendum in the establishment of the petitioner-company. The said petition was dismissed by the learned Single Member of the

Commission on 25.04.2018, which was assailed in an appeal under Section 58 of the Act before the learned Full Bench of the Commission, which appeal did not find favour with the petitioner-company. Hence, the present writ petition.

**FACTS OF WRIT PETITION NO.536 OF 2022.**

**8.** The facts in brief of this petition are that the Labour Union and Staff Union were registered as Industry-wise Trade Unions by the RTU and Joint Registrar on 17.12.2015 and 19.12.2016, respectively.

**9.** It is noteworthy to mention here that the photocopies of the Staff Union's registration certificate bearing No.32/2016 annexed at page-62 of writ petition No.535 of 2022 as well as at page-28 of writ petition No. 536 of 2022 are illegible copies and the better copy annexed subsequent thereto, shows the date of the Staff Union's registration as "26.12.2016" and "19.12.2016", respectively.

**10.** The Deputy Registrar of the Commission commenced the proceedings for determination of the CBA for all Hotels on the application of the Labour Union. The Staff Union also moved a petition under Section 62 of the Act seeking for the two Collective Bargaining Units (hereinafter referred to as the **"CBUs"**) to be certified in the establishments of PC Hotels located at Lahore and Karachi and also sought the referendum proceedings to be stayed. The referendum proceedings were subsequently stayed. However, vide order dated 19.12.2017, the order staying the referendum proceedings, was recalled. The petitioner-company filed an appeal before the learned Full Bench of the Commission. Staff Union also filed an appeal against the said order. Through order dated 10.05.2018, the learned Full Bench of the Commission dismissed the appeals filed by the petitioner-company as well as the Staff Union against the order dated 19.12.2017. Feeling

dissatisfied with this order dated 10.05.2018, the petitioner-company invoked the constitutional jurisdiction of the Hon'ble High Court of Sindh and the Hon'ble High Court through its judgment dated 27.04.2021 passed in CP No.D-4674 of 2018, dismissed the said appeal. The said judgment has been assailed in CPLA No.3497 of 2021 before the August Supreme Court, which is reportedly still pending adjudication. The said judgment is to have not been suspended by the August Supreme Court hence, the same holds the field.

**FACTS OF WRIT PETITIONs NO.1892 OF 2022 and 1853 of 2022.**

**11**. The facts of these two writ petitions are almost similar, which are to the effect that an application under Section 19(2) of the Act for determination of the CBA in the establishment of PC Hotels was filed by the Labour Union. The proceedings pursuant to the said application ensued. The petitioner-company contested the said application since it had already initiated the proceedings for cancellation of the Labour Union as well as Staff Union's registration. The Staff Union also filed a petition under Section 62 of the Act for determination of two CBUs in the establishment of PC Hotels. The said petition is said to be still pending and the learned forum below is yet to decide the said application. Initially, the RTU authorized an Officer for conducting Secret Ballot for determination of the CBA, but later on the learned Single Member of the Commission took up the matter himself and appointed Private Secretary to the Chairman, who conducted the Secret Balloting and through order dated 30.07.2021 dismissed the petitioner-company's petition. Being aggrieved by the said order dated 30.07.2021, the petitioner-company preferred an appeal before the learned Full Bench of the Commission and the learned Full Bench dismissed the said appeal by directing the Authorized Officer to complete the

process of Secret Ballot at the earliest in accordance with the law. Hence these writ petitions.

**ARGUMENTS ADVANCED BY SYED NAEEM BUKHARI, LEARNED ASC APPEARING ON BEHALF OF THE PETITIONER-COMPANY.**

**12.** Contended that the petitioner-company undertakes various businesses which include but not limited to setting up of Hotels in different parts of the Country located in Lahore, Karachi, Rawalpindi, Bhurban, Peshawar, Muzaffarabad. The Hotels set up by the petitioner-company are "establishments" and an "industry" as defined in the Provincial Industrial Relations Laws enacted by the Provinces concerned. None of the said Hotels are governed by the provisions of the Act, the application whereof is restricted only to the ICT. The petitioner-company could become a "Trans-Provincial Establishment" only if the Federal establishment or an industry exists in ICT and has connection with a Provincial establishment. The jurisdiction and power to register a **'Trade Union'** as an **'Industry-wise Trade Union'** defined in Section 2(xxxi) of the Act vests exclusively in the Commission and not the RTU. Learned Full Bench of the Commission failed to decide the matter judiciously and correctly. The Commission cannot confer its power regarding registration of a Trade Union into Industry-wise Trade Union on the RTU. The RTU invaded the power of the Commission by registering the said two Unions unlawfully. Under the provisions of the Act, the Registrar appointed under Section 4 of the Act has no power to register Industry-wise Trade Unions, which function and power are exclusively vested in the Commission itself. The Commission has no power or authority to add to the jurisdiction, powers and functions of the RTU through a Regulation. As per Section 54(b) of the Act, the power to register an Industry-wise Trade Union as defined in Section 2(xviii) of the Act

vested in the Commission. The essential pre-requisite for registration of an Industry-wise Trade Union is that all of the members of an industry ought to be workmen engaged as employees in such an industry with which the trade Union is concerned. The petitioner-company is not a trans-provincial establishment. No referendum can be ordered amongst Industry-Wise Trade Unions, which have been registered unlawfully and without jurisdiction by the RTU. Without including the employees of the petitioner-company in the industry, the concept of an Industry-wise Trade Union between independent entities is not remotely attracted. In the erstwhile Industrial Relations Ordinance, 1969, Industrial Relations Ordinance 2002 and Industrial Relations Act, 2008, the function to register an Industry-wise Trade Unions was with the Commission itself and not the RTU. The registrations as Industry-wise Trade Unions were procured/maneuvered by the said Unions in gross contravention of the provisions of the Act thus, their registration as Industry-wise Trade Unions is ***"void-ab-initio"*** and liable to be set aside as such.

**13.** He further argued that the registration to the said Unions had been granted without notice to the petitioner-company and the RTU did not apply his mind and did not pass a speaking order while granting registration. It was necessary to serve notice to all PC Hotels before granting registration to the said Unions. Learned Full Bench of the Commission fell into error by heavily relying on the judgment dated 06.07.2021 passed by this Court in writ petition No.2495 of 2018, which according to the learned counsel, is ***"per incuriam"*** and contrary to the other pronouncements of this Court as well as the Hon'ble Supreme Court. The judgment of this Court relied upon by the learned Full Bench, being *per incuriam,* misinterprets the *vires* of Regulation 10 of the National Industrial Relations Commission (Procedure & Functions) Regulations, 2016 (hereinafter be referred to as

**"the Regulations of 2016"**). The impugned order passed by the learned Full Bench of the Commission is not sustainable in any sense of the term. The learned Full Bench of the Commission erroneously upheld the order dated 25.04.2018 passed by the learned Single Member of the Commission which order, according to the learned counsel, on the face of it, is illegal and unlawful. It is the requirement of the law that besides having membership in two provinces, some workers must be from ICT so as to give effect to the definition of the Trans-Provincial Establishment. The registration of an Industry-wise Trade Union pertains to the establishments which have presence in ICT as well as in more than one province. The petitioner-company's Hotels are not **"Trans-Provincial Establishments"** or a **"Group of Establishments"** in ICT thus, the registration of the Labour Union and the Staff Union as Industry-wise Trade Unions under the Act, claiming presence in Provinces, and not in ICT, is not permissible. The learned RTU while ignoring the basic definition of an "Industry" in the Act erroneously held that there was no provision in the Act which necessarily provided for a membership in the ICT and further concluding that the petitioner-company has no ***"locus-standi"*** to file the cancellation applications. The RTU dismissed the petitioner-company's applications seeking the cancellation of the Labour and Staff Unions' registration in a cursory and hasty manner.

**14.** Moreover, it was further argued that a Trade Union can be transformed into an Industry-Wise Trade Union in an establishment only if such an establishment has an existence in ICT and has presence in more than one province. The Authorized Officer commenced the proceedings for determination of the CBA for all PC Hotels. Staff Union with a claimed membership of 30 workers only, also moved a case under Section 62 of the Act praying for two CBUs in the establishments/PC Hotels at Lahore, Rawalpindi and Karachi.

The petitioner-company filed a petition under Section 60 read with Sections 57, 9 and 11 of the Act before the Commission for enforcement of its fundamental rights guaranteed to it under the law. The law itself, from its very inception, restricted the functions and powers of the RTU appointed under Section 4 of the Act to register a Trade Union only. The exclusive jurisdiction in respect of the Industry-wise Trade Union is bestowed on the Commission in terms of Section 54(b), (c) and (i) of the Act. The jurisdiction of the Commission *qua* Industry-wise Trade Union is not a new innovation at all, but has been there in all previous labour legislations, concluded the learned counsel for the petitioner-company. Learned counsel for the petitioner company prayed for writ petitions No.535 of 2022 and 536 of 2022 to be allowed in light of the relief sought therein and for writ petitions Nos. 1892 of 2022 and 1853 of 2022 to be dismissed with costs. In order to supplement his submission, learned counsel relied upon the judgments reported as ***PLD 1978 Karachi 67, 1982 PLC 843, 2007 PLC 366, PLD 1997 SC 351, PLD 2009 SC 879, 2010 SCMR 1162, 2008 PLC 36, 2004 PLC 354, 1988 PLC 286, and 2004 PLC 354.***

**ARGUMENTS ADVANCED BY HAFIZ ARFAT AHMED CH., LEARNED ASC APPEARING ON BEHALF OF THE LABOUR UNION.**

**15.** Contended that the petitioner-company has set up PC Hotels in different parts of the Country i.e. Lahore, Karachi, Rawalpindi, Peshawar, Muzaffarabad, and Bhurban. Although there is no PC Hotel of the petitioner-company in Islamabad, but nevertheless its Head Office is located at Islamabad. All PC Hotels in the Country are being run and controlled by the petitioner-company. The petitioner-company is a Trans-Provincial Establishment as defined in Section 2(xxxii) of the Act. Under the provisions of the Act, the workers of an establishment such as the petitioner-company

can form a Trade Union as well as an Industry-wise Trade Union. The registration of a Trade Union can only be cancelled in terms of Section 11 of the Act. Since through the alleged illegal registration, the Labour Union is supporting the case of the petitioner-company's management, therefore, the Labour Union can be termed as a **'pocket union'** of the petitioner-company. In the year 2017, the Labor Union filed a case for determination of the new CBA in the establishment of PC Hotels. The said application is still pending and the petitioner-company stood succeeded in protracting the proceedings in the said case. The registration granted by the RTU to the Labour Union is such that the petitioner-company does not have any *locus standi* to object to the same. The registration of a Trade Union is a matter between the Registrar and the Trade Union and the employer is not a party to the proceedings nor does any provision of the Act authorize the employer to challenge the registration of a Trade Union before any forum. Even otherwise the registration of the Labour Union is a past and closed transaction and the objections taken by the petitioner-company with respect to the same have already been dispelled by the RTU.

**16.** Next it was argued that the Labour Union has lawfully been registered. A registered Trade Union / Industry-wise Trade Union could become beneficial for the workmen in a particular establishment only if it is certified as CBA. Under the garb of the cancellation of Labour Union's registration, the petitioner-company also wants the referendum proceedings not to take place. Without referendum, no Trade Union could be certified as the CBA. Normally the Courts of Constitutional Causes do not interfere in the concurrent judgments and/or orders passed by the *fora* below of competent jurisdiction, provided there is no patent error in such judgments/orders. The writ petitions filed by the petitioner-company and the Staff Union are writs of

**"*Certiorari*"** and this Court has to exercise its supervisory jurisdiction not the appellate jurisdiction. The petitioner-company has in fact challenged the concurrent judgments/orders of the learned *fora* below, but regrettably it failed to show any jurisdictional error in the impugned judgments/orders of the learned *fora* below. It is well settled principle of law that while issuing a writ of Certiorari, a High Court acts in exercise of its supervisory jurisdiction and not appellate jurisdiction.

**17.** Furthermore, it was argued that the law laid down by this Court in the judgment dated 21.01.2020 passed by this Court in writ petition No.2188/2017, titled Chevron Pakistan Lubricants (Pvt.) Limited Vs. Federation of Pakistan, etc. is to be applied **"prospectively"** and not **"retrospectively"**. The reliance of the petitioner-company on Chevron's case *(supra)* is nothing but just a misconception. Learned counsel for Labour Union prayed that the captioned writ petition as well as writ petitions No.536 of 2022, 1892 of 2022, 1853 of 2022 to be dismissed. In order to supplement his arguments, he placed reliance on the judgments reported ***2006 SCMR 1163, PLD 1987 SC 145, 2001 SCMR 1161, PLD 2013 SC 829, 1998 PLC 500, 1986 PLC 533, 1998 PLC 122, 2007 PLC 521, 2016 PLC (CS) 565, 2014 SCMR 535, 2019 SCMR 1657, 2019 SCMR 919, 2020 SCMR 260, 2022 CLC 269.***

**ARGUMENTS ADVANCED BY MR. ABDUL HAFEEZ AMJAD, LEARNED ASC APPEARING ON BEHALF OF THE STAFF UNION IN WRIT PETITIONS NO.1853 OF 2022 AND 1892 OF 2022.**

**18.** The arguments advanced by Syed Naeem Bukhari, learned counsel for the petitioner-company in writ petitions Nos. 535 and 536 of 2022 were adopted by Mr. Abdul Hafeez Amjad, Advocate inasmuch as that the RTU was not vested

with the jurisdiction to entertain the applications for registration of the Labour Union and Staff Union. During the course of his arguments, he has not just supported the stance of the petitioner-company before this Court but also before the learned Full Bench of the Commission. The relevant portion whereof is reproduced herein below:-

> *"The learned counsel (Mr. Abdul Hafeez Amjad) for the respondent No.2 i.e. Pearl Continentals Staff Union at the very outset has contended that* ***all the Industry-wise trade unions which have been registered by the Registrar are against the provision of IRA 2012 and he did not support the impugned order****, although has not filed any appeal against the impugned order……* ***The learned counsel further contended that the respondent No.2 union to whom he is representing has been registered in violation of law and cannot be considered as legally registered trade union.****"*
> **(Underlining is mine for emphasis).**

**19.** He further added that a registered Trade Union and Industry-wise Trade Union are under obligation to have constitutions duly approved by the RTU and in case the constitution is in contravention of the basic law, the RTU can refuse to grant recognition to such Constitution. The Staff Union is bound to follow its Constitution. The Staff Union's Constitution confirms the fact that the membership of the Union extends to the PC Hotels and the petitioner-company. There is no legal justification for the Commission to decline the Staff Union's membership to the workmen employed in the petitioner-company's establishments. The impugned orders are not sustainable in the eye of law. The Authorized Officer has no legal authority to deprive the members of the registered Union from their rights of vote. The Staff Union and Labour Union were registered with titles **"Pearl Continental Hotels"** however, membership of the Unions can neither be restricted nor conditionalized for particular part of the establishment since this issue has not been dealt with by the Authorized Officer in the order dated 17.08.2021 hence, the

same is of no legal consequence. Concluded the learned counsel for Staff Union.

**20.** In writ petitions No. 535 of 2022 and 536 of 2022, The Vakalatnama of Mr. Abdul Hafeez Amjad, Advocate is not on the record. But from the above excerpt of the impugned judgment, it is manifest that apparently Mr. Abdul Hafeez Amjad, Advocate has been representing respondent No. 4 (i.e. Staff Union) in the captioned writ petition as well as respondent No. 5 (i.e. Staff Union) in writ petition No. 536 of 2022. Writ petitions No. 1853 of 2022 and 1892 of 2022 filed by the Staff Union shows that the said Union is being represented by Mr. Abdul Hafeez Amjad, Advocate.

**21**. Heard the learned counsel for the parties and perused the available record with their valuable assistance.

**22.** The following are the foremost questions that need determination by this Court:-

I. *Whether the petitioner-company is a "Trans-Provincial Establishment" as defined under Section 2(xxxii) of the Act.*
II. *Whether the RTU was vested with the jurisdiction to adjudicate upon the applications seeking registration as Industry-wise Trade Unions filed by the Labour Union and Staff Union.*

**23.** The primary grievance voiced in all these writ petitions is to the effect that the RTU and Joint Registrar of Trade Unions were bereft of the jurisdiction to entertain the Labour Union and Staff Union's applications seeking their respective registrations as **"Industry-Wise Trade Unions",** and that the exclusive power to register a **"Trade Union"** as an "Industry-Wise Trade Union" was vested in the Commission itself and not the RTU.

**24.** Perusal of the record reflects that Labour Union and Staff Union decided to form themselves into a Federation of Trade Unions under the provisions of the Act. Apparently, in the year 2015, the Labour Union applied to the RTU for its registration as an "Industry-wise Trade Union". The RTU through order dated 17.12.2015, granted registration to the said Union in the establishment of PC Hotels under the provisions of the Act and issued certificate of registration bearing No.26/2015. Similarly, the Staff Union also applied to the RTU for its registration as an Industry-Wise Trade Union, which registration was accorded on 26.12.2016 vide registration certificate No.32/2016. It is an admitted fact that both the said Unions were registered as "Industry-Wise Trade Unions" in the establishments of PC Hotels.

**25.** Feeling aggrieved by the order of the RTU *qua* registration of the Labour Union and the Staff Union, the petitioner-company filed separate petitions under Section 11 of the Act before the RTU seeking the cancellation of the said Unions' registrations. The grounds agitated by the petitioner-company were:-

*(i) That the petitioner-company is an "establishment" as well as an "industry" as defined under Sections 2(x) and (xvii) of the Act, respectively,*
*(ii) That the petitioner-company has rights which are guaranteed under the provisos of the Act,*
*(i) that the petitioner-company is involved in undertaking various businesses including setting up of Hotels throughout Pakistan,*
*(ii) that the Hotels set up by the petitioner-company are "branches" and "Independent Establishments", thus are separate entities inter alia for the purposes of the Act having distinct administration, accounts, employments, separates terms and conditions of its employees' service,*
*(iii) that the Hotels set up by the petitioner-company are within Provinces and are not Inter-Provincial Establishments;*

*(iv)that the Hotels on their own are not "Trans-Provincial Establishments" and*

*(v) That the Labour Union and Staff Union got themselves registered as "Industry-wise Trade Unions" without giving notice to the existing Unions of all the Establishments in the PC Hotels."*

**26.** The RTU vide order dated 30.04.2018 dismissed the said petitions by holding that the petitioner-company is a "Trans-Provincial Establishment" as had been held so by the Hon'ble Sindh High Court in the case titled ***"Pakistan Services Limited Vs. Full Bench, National Industrial Relations Commission and others (2006 PLC 288).***

**27.** At the first instance, I would like to deal with the question as to whether the petitioner-company comes within the terms of **"Trans-Provincial Establishment"** as defined under Section 2(xxxii) of the Act. It would be apt to reproduce Section 2(xxxii) of the Act, which reads as follows:-

> ***"2(xxxii) "trans-provincial" means any establishment, group of establishments, industry, having its branches in more than one province.***

**28.** The bare reading of the said Section makes it abundantly clear that any "Establishment" or a "Group of Establishments" and/or an "Industry" which has Branches of its business in more than one **Province,** forms part of a "Trans-Provincial Establishment". Per learned counsel, ***"the petitioner-company undertakes various businesses which include but not limited to setting up of Hotels by the name and style of "PC Hotels" in various cities of the Country which include Lahore, Karachi, Rawalpindi, Bhurban, Peshawar, and Muzaffarabad).*** Admittedly, running of a Hotel requires the services of workmen and such workers are either employed by the Hotel itself or through service providers for the purposes of carrying on business activities. An "Establishment" includes any office, firm,

factory, company, shop or enterprise, which employs workmen directly or through a contractor. An "Establishment" has been defined in Section 2 sub-section (x) of the Act. For ease of reference, the said Section is reproduced herein below:-

> ***2(x) "Establishment"*** *means* ***any office, firm, factory, society, undertaking, company, shop or enterprise, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches in the Islamabad Capital Territory or falling in more than one province, whether situated in the same place or in different places*** *and except in Section 62 includes a collective bargaining unit, if any, constituted by any establishment or group of establishments"*
>
> **(Underlining is mine for emphasis)**

**29.** From perusal of the said provision of the law, it is manifest that PC Hotels in Pakistan come within the definition of an "Establishment". The petitioner-company employs workmen for the purposes of carrying out its business activities in all of its Branches which exist in almost all the **Provinces** except the ICT. Thus, the petitioner-company is an "Establishment" as has been defined under Section 2(x) *(ibid).*

**30.** It is a matter of record that the petitioner-company has not established any PC Hotel at Islamabad, but there is no denial to the fact that PC Hotels' Head Office is located in ICT (i.e. the petitioner-company). The PC Hotels set up by the petitioner-company in other Provinces are providing services. Therefore, it comes within the term of an "Industry" as defined under Section 2(xvii) of the Act. The said Section is reproduced as under for ease of reference:-

> *"2(xvii) "industry"* ***includes any business, trade,*** *calling, employment or occupation for production of goods*

> *or* ***provisions of services in the Islamabad Capital Territory and falling in more than province****, and excluding those set up exclusively for charitable purposes.*

**31.** Moreover, under the provisions of the Act, the workers of an "Establishment" and/or an "Industry" such as the petitioner-company, can form themselves into a Federation of Trade Union, provided compliance with the provisions of the Act and the Rules made thereunder is shown in letter and spirit. A Trade Union is defined in Section 2(xxxi) of the Act. For the sake of reference, the said Section is reproduced as under:-

> *2.(xxxi)* ***"trade union" means any combination of workmen or employers formed primarily for the purpose of regulating the relations between workmen and employers, or workmen and workmen or employers and employers,*** *or for imposing restrictive conditions on the conduct of any trade or business, and includes a federation of two or more trade unions;*

**32.** A Trade Union is an important component in the establishment of a company/industry. It works for the welfare of the workers/employees and liaises with the employer so that the working relationship between the two remains cordial and pleasant. A Trade Union is primarily formed for the purposes of regulating the relationship between workmen and employers, or workmen and workmen or employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes a federation of two or more Trade Unions.

**33.** Likewise, an **"Industry-wise Trade Union"** is defined in Section 2(xviii) of the Act. The said Section reads as follows:-

> *2(xviii)* ***"Industry-wise Trade Union" means a trade union having its membership in more than one province in a group of establishments owned by one employer;***

**34.** An “Industry-Wise Trade Union” thus means that a “Trade Union” which has its membership in more than one Province in a group of establishments owned and controlled by one employer. Learned counsel for the petitioner-company has emphasized that the Hotels set up by the petitioner-company are **“Branches”** and **“Independent Establishments**" and thus are separate entities *inter alia* for the purposes of the Act having distinct administration, accounts, employments, separate terms and conditions of its employees’ service. Per learned counsel, the PC Hotels are although set up by the petitioner-company but nevertheless they are different entities, controlled and managed by their own independent administrations. If this argument of the learned counsel for the petitioner-company is accepted, then it gives rise to a question that why is it the petitioner-company which is aggrieved by the decision regarding the registration of the Labour Union and the Staff Union in the establishments of PC Hotels located in Karachi and Lahore.

**35.** On the one hand, the petitioner-company creates contiguity with PC Hotels by objecting to the registration of the said Unions by the RTU, but simultaneously it dissociates itself from said PC Hotels, claiming them to be entirely “Independent Entities”, so to speak. Moreover, if the petitioner-company disowns PC Hotels then why these PC Hotels (which according to the learned counsel for petitioner-company, are distinct entities), were not in the proceedings before the learned RTU and the Commission. Had the registration of the said two Unions in the establishments of the said Hotels been an issue for PC Hotels, the said Hotels could have resorted to the legal course available to them under the law for the cancellation of the said Unions’ registration in their respective establishments. But

incidentally the registration of the said Unions was not an issue for PC Hotels at all and it is the petitioner-company, whose interests were put at stack, to say the least. If at all, it is presumed that PC Hotels throughout the Country are "Independent Entities" and are being supervised and controlled by their own independent administrations, then why is it the petitioner-company which came forward to contest/dispute the registration of the said two Unions in the establishment of the PC Hotels. Why the PC Hotels, in whose establishments the said Unions were registered, are shying away from pursuing the legal remedy and showing unyielding adamant attitude towards the said alleged registrations and have not laid a challenge to the same? These are the questions which still beg answers.

**36.** Perusal of the record reflects that throughout the proceedings before the learned *fora* below, it was the petitioner-company which resisted the registration of the said two Unions on the premise that the RTU does not have the jurisdiction to entertain the registration applications filed by the said two Unions. As discussed above, astonishingly, the petitioner-company on the one hand detaches itself from PC Hotels terming them to be distinct/independent entities, but on the other, it is disputing the registrations of the said two Unions in the establishments of PC Hotels meaning thereby the petitioner-company, indeed, in a clandestine manner, acknowledges the ownership of PC Hotels across the Country. At no material stage, did PC Hotels, in whose establishments the said Unions were registered, come forward to challenge the said registrations. Thus, it can safely be held that the petitioner-company is the owner and operator of a chain of Hotels which are known as "PC Hotels" located at Karachi, Lahore, Rawalpindi, Peshawar, Bhurban and Muzaffarabad, and therefore, the petitioner-company has many Branches of

PC Hotels in more than one province therefore, it is striving to preserve the interests of PC Hotels.

**37.** Even otherwise, in paragraph-6 of the impugned order dated 02.02.2022, the learned Full Bench of the Commission records an admission to the effect that the "***learned counsel for PC Hotels during the hearing of a case, had categorically admitted that PC hotels are being run by PSL*** (i.e. the petitioner-company). For the sake of reference, the relevant portion of the impugned order dated 02.02.2022 is reproduced herein below:-

> *"6.... The then Registrar Trade Unions (Mr. Baqir Ali Rana) vide order dated 17.12.2015 whiel according registration of the respondent No.3 (Pearl Continental Hotesl National Labour Union) in para-11 of the judgment has observed* ***that the counsel for the P.C. Hotel Rawalpindi during hearing of a case has recorded his statement to the effect that P.C. Hotels throughout the Country are being run and controlled by Pakistan Services Ltd. which is a trans-provincial establishment and the chain of P.C. Hotels are owned and operated by Pakistan Services Ltd.*** *The relevant part of the order referred above is reproduced herein below:-*
>
> *"It is notable that previously the P.C. Hotels Employees Union as is evident from the certified copy placed on record by the applicant union that a case No.4A(30)/2010 was filed by it against the management of P.c. Hotels Rawalpindi on 07.01.2012.* ***Ijaz Janjua learned counsel for the management of P.C. Hotel Rawalpindi got recorded his statement to the effect that P.C. hotels throughout the country are being run and controlled by Pakistan Services Ltd which is a trans-provincial establishment and as such COMMISSION has got the jurisdiction in the matter. Learned counsel appearing on behalf of the P.C. hotels Employees Union also agreed to this statement of the learned counsel for the management of P.C. Hotel Rawalpindi*** *and accordingly the case was returned. It is pertinent to mention here that another Case No.9(01)/2013 was filed by P.C. Hotel Workers Union against Pakistan Services Ltd and others and* ***as per certified copy of the reply statement filed by the respondent Pakistan Services Ltd, it was categorically stated by the respondent that Pakistan Services Ltd is a trans-provincial establishment and P.C. Hotels are being operated by it in various cities of the***

> ***country,*** *as such the COMMISSION has got the jurisdiction in the matter…"*
> ***(Underlining is mine for emphasis).***

**38.** Additionally, in this Court's order dated 12.08.2021 passed in writ petition No.2877/2021, titled ***Pearl Continental Hotels Staff Union Pakistan Vs. Full Bench of National Industrial Relations Commission and others,*** the contentions of the learned counsel for the petitioner in the very said petition were recorded to the following effect:-

> ***"2. Learned counsel for the petitioner submitted that the ownership of the Pearl Continental Hotels in Pakistan vests in P.S.L.; that in all the hotels, the same nature of services are provided."***
> ***(Emphasis added).***

**39.** It is well settled that presumption of truth and correctness is attached to the judicial proceedings. In this regard, guidance may be sought from the law laid down in the case of ***Waqar Jalal Ansari Vs. National Bank of Pakistan and others (2008 SCMR 1611),*** wherein, the august Supreme Court has *inter alia* held as under:-

> *"It may be noted* ***that presumption of correctness in favour of judicial proceedings and credibility is attached to the proceedings before judicial forum****".*

**40.** In the case of ***Fayyaz Hussain Vs. Akbar Hussain and others (2004 SCMR 964),*** it was *inter alia* held as under:-

> *"****There is always a presumption of correctness in favour of judicial proceedings and credibility is attached to the proceedings before a judicial forum****. Strong and unimpeachable evidence is required to rebut the presumption which is badly lacking in the case in hand."*

**41**. In the case of ***Abdullah Vs. Shaukat (2001 SCMR 60),*** the august Supreme Court has held that the

genuineness of the judicial record cannot be sacrificed at the altar of expediency of a litigant. Similarly in the case of ***Muhammad Nasrullah Khan Vs. Shaukat Ali and others (2021 CLC 1798),*** it was held by the Hon'ble Lahore High Court that presumption of truth is attached to the judicial record.

**42.** Therefore, strong presumption of correctness and sanctity is attached to the aforesaid orders of the learned *fora* below. The said orders thus, cannot be held to be erroneous. Hence, the role of the petitioner-company to run PC Hotels in cities across the Country cannot be ruled out. Suffice it to say that the petitioner-company is indeed a "Trans-Provincial Establishment".

**43.** Now turning to the core issue involved in the writ petitions i.e. whether the orders passed by the learned Full Bench as well as the learned Single Member of the Commission maintaining the orders of the RTU *qua* registrations of the Labour Union and Staff Union, suffer from any material irregularity, procedural impropriety and/or illegality calling for interference by this Court in its Constitutional jurisdiction. Through the petitions at hand, the jurisdiction of this Court has been invoked by the petitioners under Article 199 of the Constitution. These writ petitions are in the nature of ***"Certiorari"***. Article 199 (1) (a) (ii) of the Constitution relates to the writ of *"Certiorari"*. For the sake of reference, it would be apt to reproduce the same, which reads as follows:-

> ***199. Jurisdiction of High Court. (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law-***
> ***(a) on the application of any aggrieved party, make an order--***

*(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or*
***(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or***

***(b) on the application of any person, make an order—***

*(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or*
*(ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or*

***(c) on the application of any aggrieved person,*** *make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.*
**(Underlining is mine for emphasis)**

**44.** It is crystal clear from reading of the aforesaid Article that through a writ of *'Certiorari'*, a High Court is, on the one hand, vested with the exclusive powers to correct the errors/omissions committed by the Courts inferior to the High Court and/or the Tribunals but on the other hand, it is also empowered to annul the acts or the proceedings taken by the inferior bodies without any lawful authority or jurisdiction. It is also well settled that a writ of *"Certiorari"* is only available to quash a decision for an apparent error of law. It is to be said for the purposes of correcting errors of

jurisdiction committed by the inferior Court or Tribunal, which acted without and/or in excess of its jurisdiction. It goes without saying that the orders of *"Certiorari"* are issued by the High Court and are directed to the Judge or a Presiding Officer of an inferior Tribunal to bring the proceedings in a cause of matter pending before such a Tribunal into the High Court to be dealt with in accordance with the law. Suffice it to say that the writs of *"Certiorari"* can be issued in proceedings either they are civil in nature of criminal. A High Court issuing a writ of *"Certiorari"* acts in the exercise of the supervisory powers and not an appellate jurisdiction. Reference in this regard may be made to the law laid down in the cases of ***Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28), Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919), President, All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260) and Tausif Ahmad Vs. Mst. Shaista Malik and others (2022 CLC 269).***

**45.** The main characteristic of the writ of *"Certiorari"* is to correct the patent errors in the orders/judgments of the Courts/Tribunal inferior to the High Court. In order to explain it in a clear term, it may well be said that a writ of *"Certiorari"* can be issued in the following circumstances:-

> ***(i) when an inferior Court or tribunal acts without jurisdiction or in excess of it or fails to exercise it.***
>
> *(ii) when the Court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.*
>
> ***(iii) if there is an error apparent on the face of the record.***
>
> **(underlining is mine for emphasis)**

**46**. Law with respect to the writ of "*Certiorari"* has been

laid down in the case of ***Rahim Shah Vs. The Chief Election Commissioner of Pakistan and another (PLD 1973 Supreme Court 24),*** wherein, the august Supreme Court while outlining the scope and nature of the writ of *"Certiorari"* has held in the following terms:-

> *"It may be further observed that although the conditions for grant of certiorari which obtain in English Courts do not apply to High Courts in Pakistan at the same time the extent of this constitutional jurisdiction cannot be enlarged to an appeal on facts, or questions of law. An appeal is a creation of statute and if no appeal is provided by the Legislature the determination of a tribunal of exclusive jurisdiction is final.* ***The scope of interference in the High Court is, therefore, limited to the inquiry whether the tribunal has in doing the act or undertaking the proceedings acted in accordance with law. If the answer be in the affirmative the High Court will stay its hands and will not substitute its own findings for the findings recorded by the tribunal****. Cases of no evidence, bad faith, misdirection or failure to follow judicial procedure, etc. are treated as acts done without lawful authority and vitiate the act done or proceedings undertaken by the tribunal on this ground. Where the High Court is of opinion that there is no evidence proper to be considered by the inferior tribunal in support of some point material to the conviction or order, certiorari will be granted."*

**47.** Likewise, in the case of ***Bashir Ahmad Khan Vs. Additional Sessions Judge and others (2020 MLD 42),*** it was observed as under:-

> *"****The person invoking the Constitutional jurisdiction under the above Article seeking issuance of writ of certiorari, by way of setting aside the order, has to show that the order, under challenge, violates the condition mentioned in the above provisions of the Constitution, that the authority/court/tribunal was denuded of jurisdiction whatsoever to*** pass the order or that the order impugned is unsustainable on account of being result of extremely, improper exercise of jurisdiction or has clearly been passed in violation of any provisions of law or is product of excess or failure of jurisdiction, by the tribunal or that some principle of law laid down by the superior courts, which under Article 189 of the*

> *Constitution is binding on the subordinate courts has been violated.* ***The scope of interference by the High Court is, therefore, limited to the inquiry whether the tribunal has in doing the act or undertaking the proceedings acted in accordance with law. If the answer be in the affirmative the High Court will stay its hands and will not substitute its own findings for the findings recorded by the tribunal. Cases of no evidence, had faith, misdirection or failure to follow judicial procedure, etc. are treated as acts done without lawful authority and vitiate the act done or proceedings undertaken by the Tribunal on this ground."***

**48.** Law to the said effect has also been laid down in the case titled ***"Auqaf Department through Chief Administrator Auqaf, Punjab, Lahore Vs. Secretary, Ministry Of Religious Zakat, Ushar and Minorities Affairs Government of Pakistan, Islamabad and 3 others" (2009 SCMR 210).*** The relevant portion whereof reads as under: -

> *...The High Court has competently dismissed the writ petition as findings recorded by the respondent/authorities being based on appreciation of evidence could not be interfered with by the High Court in exercise of "extraordinary" constitutional jurisdiction and in regard to finding of fact recorded by the respondent* ***writ of "certiorari" could only be issued, if in recording such findings, the respondent had acted on evidence which was legally inadmissible or had refused to accept admissible evidence or if the findings were not supported by any evidence at all. If in such cases error would amount to error of law.*** *Even otherwise, where there are factual controversies, this Court would also not interfere with the concurrent findings of facts recorded by the lower fora. The impugned order having not suffered from any such infirmity or illegality calling for interference by this Court.*

**49.** As a consequence to the above, it can be held that a High Court is empowered to interfere in the cases of excess of the jurisdiction, whether the person exceeding jurisdiction is a Court, a judicial or a *quasi*-judicial forum or a purely

Executive or Administrative Tribunal or an Officer, provided that such body, authority or officer is performing functions in connection with the affairs of the Federation and/or a Province or a Local Authority. The law on the subject is well settled that a writ of "Certiorari" cannot be used as a substitute of an appeal or a revision as its scope is limited and circumscribed to the eventualities noted hereinabove.

**50.** Now looking into the impugned orders of the learned Full Bench as well as the learned Member of the Commission in the perspective of the writ of "Certiorari". The pivotal question that begs to be answered is that after this Court having conclusively interpreting Sections 11 and 54 of the Act in the Chevron's case (supra), the registration of an "Industry-Wise Trade Union" by the RTU and/or the Joint Registrar of Trade Unions is to be set-aside on account of it being illegal and without lawful authority. It would be advantageous to go through the relevant extracts of the said judgment, which are as under:-

> *"7. A plain reading of the above noted provisions shows that the legislature has unambiguously intended to treat a "trade union" and "industry-wise trade union" as distinct entities. They have been defined separately and the definition of a "trade union" does not include "industry-wise trade union". **The power of the Registrar in the context of granting registration to an entity under the Act of 2012 has been explicitly restricted to a "trade union". The Commission however has concurrent jurisdiction. The powers of the Registrar described under the Act of 2012, by no stretch of the imagination can be extended to registration of "industry-wise trade union", which has been treated as a distinct entity. The power to grant registration to the latter category of union has been expressly provided under clause (b) of section 54 and it exclusively vests in the Commission.** The learned counsel for the respondents has argued that since the provisions of the Act of 2012 do not contemplate cancellation of a registered "industry-wise trade union",*

> *therefore, as a corollary the power shall deem to vest in the Registrar under section 11 of the Act of 2012. This argument if accepted, would amount to reading in the statute something that the legislature has not provided therein.* ***The power of cancellation provided under section 11 of the Act of 2012 is unambiguously confined to a "trade union", which definitely does not include "industry-wise trade union".*** *Seeking guidance from the provisions of the General Clauses Act, 1897, it would be apt to observe that the power to issue an order or notification conferred under a statute includes the power to add to, amend, vary or rescind such instrument.* ***The power to cancel registration of an "industry-wise trade union" thus vests in the Commission and not the Registrar. The power and jurisdiction to consider an application seeking registration of an "industry-wise trade union" thus exclusively vests in the Commission under the Act of 2012 and not the Registrar.***
>
> *8. For the above reasons,* ***the Registrar was not vested with jurisdiction under the Act of 2012 to consider, process or grant registration under the category of "industry-wise trade union"*** *and consequently this petition is allowed and the impugned order, dated 01-04-2019, is hereby set aside. The application filed by the respondents for seeking registration in the category of "industry-wise trade union" shall be treated as pending before the learned Commission. The learned Commission after affording an opportunity of hearing to the parties is expected to decide and dispose-of the application pursuant to powers conferred under section 54(b) of the Act of 2012."*
>
> **(Underlining is mine for emphasis)**

**51.** The fact of the matter which remains undisputed is that the orders for the registration of the Labour Union and Staff Union were passed by the RTU and not by the Commission. Primarily, the RTU accepted the applications for registration as Industry-Wise Trade Unions filed by the said two Unions based on Regulation No. 10 of the National Industrial Relations Commission (Procedure and Functions) Regulations, 2016 (hereinafter referred to as **"the Regulations of 2016"**). It would be advantageous to reproduce the said Regulations herein below:-

> *"10.Procedure for Registration: -- For the registration of an industry wise trade union, an officers association, a federation of such trade unions and a federation at the national level, the Registrar of Trade Unions, shall, subject to the provisions of this Chapter, follow the procedure as laid down in the Act for the registration of a trade union or, as the case may be, a federation of the trade unions, provided that, if an application for registration is made by a trade union, or an industry-wise trade union or a federation at the national level which has previously been registered by the Registrar of Provincial Labour department, the applicant shall submit with the application, a copy of the certificate of registration issued to it."*

**52.** It is manifest from bare reading of the said Regulation empowering the RTU to entertain applications seeking the registration of a "Trade Union" to that of an "Industry-Wise Trade Union". The record reveals that the registration certificates in respect of the said two Unions were issued prior to the judgment of this Court in the Chevron's case *(supra)*. Prior to the said judgment, the registrations *qua* Industry-wise Trade Unions were being granted by the RTU and not the Commission, but after the pronouncement of the judgment by this Court in the Chevron's case (supra), the power to register a "Trade Union" as an "Industry-wise Trade Union" was bestowed upon the Commission itself. In this regard, through SRO/Notification dated 27.01.2021, the Commission in exercise of the powers conferred by Sub-section 1 of Section 66 of the Act amended the Regulations of 2016 to the extent of procedure providing for registration of Industry-wise Trade Union in the ICT and Trans-Provincial Establishments and inserted Regulation 10-A in the said Regulations. For the sake of reference, Regulation 10-A of the Regulations of 2016 is reproduced herein below:-

> *"10A.* ***The Benches of the Commission shall, in relation to industry-wise trade unions, federations of such trade unions, and cases referred to the***

> ***Commission, perform such functions and exercise such powers as are performed and exercised by a Registrar Trade Unions in relation to Trade Unions, and, for this purpose, any reference in the Industrial Relations Act, 2012 or in these Regulations to a "Registrar Trade Union" shall be deemed to be a reference to the appropriate Bench of the Commission to which such functions are assigned."***
> **(Underling is mine for emphasis).**

**53.** It is only when that the judgment in the case of Chevron (above) was given by this Court, the said amendment in the Regulations of 2016 took place. Subsequent to the insertion of Regulation 10A in the Regulations of 2016, the powers to entertain applications seeking registration as an "Industry-Wise Trade Union" vested in the Commission and the RTU lacked such power and jurisdiction. Therefore, it is my view that the orders *qua* registration of the said two Unions by the RTU prior to the judgment of this Court in Chevron's case *(supra)* cannot be held to be suffering from any jurisdictional infirmity calling for interference by this Court in its Constitutional jurisdiction.

**54**. Moreover, the Chevron's case judgment *(supra)* had in a very clear term placed an obligation on the Commission that the applications seeking the cancellation and registration of "Industry-wise Trade Unions" henceforth ought to be considered by the Commission itself and not by the RTU. Now, in such a scenario, if the law, which has been laid down by this Court in Chevron's case judgment *(supra)* is to be effectuated retrospectively then it would open a Pandora Box and give rise to unnecessary litigation with respect to the registrations of the Trade Unions that had already taken place prior to the Chevron's case judgment and also render all the previous registrations of "Industry-Wise Trade Unions" that had already been granted prior to the said judgment, to be

redundant. It is my view that retrospectively to the said judgment of this Court cannot be attributed. Given the fact that the judgment passed in the Chevron's case *(supra)* is a "well-reasoned judgment" and "withstands the test of constitutional validity" and indeed lays down the correct and harmonious interpretation of the Act, but nonetheless the same cannot be given a retrospective effect. It is also my view that the judgments/verdicts delivered by the Court of Law cannot be given a retrospective effect unless otherwise held in such judgments/verdicts by the Court concerned. In holding so, I am fortified by the law laid down by the August Supreme Court in the case titled ***Pir Bakhsh presented by his legal heirs and others Vs. The Chairman, Allotment Committee and others (PLD 1987 SC 145),*** wherein it was held as follows:-

> *"---**Fact that Supreme Court in an appeal against the judgment of High Court set aside same judgment in another writ petition would not reopen concluded rights of the parties under decision of High Court against which no appeal was filed** nor could appellants who were respondents in writ petition avail the benefit of law laid down by the Supreme Court under Art. 189, Constitution of Pakistan (1973)-**Judgment in appeal was operative as from the date it was announced and it did not have the effect of re-opening the rights of the parties** concluded finally under the High Court judgment-Authority of law laid down by Supreme Court under Art. 189 being prospective, decision of High Court nonetheless stood overruled on same question of law but that will not affect rights of parties already determined by High Court."*
> **(Underlining is mine for emphasis)**

**55.** In the case titled ***Hussain Badshah and another Vs. Akhtar Zaman and another and connected matters (PLD 1969 SC 407 & PLD 2000 SC 869)***, the august Supreme Court has held as follows:-

> *"It may be observed that **the declaration to the effect that all appointments made under the earlier policy are illegal, void and without lawful authority is***

> ***difficult to sustain being against the law as the judgment, dated 12-5-2000 would operate prospectively and not retrospectively adversely affecting the rights already accrued to the teachers appointed before the declaration of law by Full Bench of the High Court****. Admittedly, appointments made prior to the said judgment were neither inherently illegal nor ultra vires the law. These appointees were amongst the candidates who qualified from Elementary Y.T.C. Colleges of N.-W.F.P., Allama Iqbal Open University, Islamabad and other Institutions on merits and* ***having regard to the qualifications obtained by such persons. Many of the appellants were even not party to the writ petitions before the High Court, therefore, their vested rights cannot be lightly disturbed to their disadvantage. Their case is protected by the doctrine of past and closed transaction, which cannot be reopened."***
>
> *6. Having held above,* ***we declare that the appointments made prior to the Full Bench judgment shall remain intact and would not be affected by the judgment of the High Court as, in the eye of law, these are past and closed transactions."***
> **(Underlining is mine for emphasis)**

**56.** Similarly in the case titled ***Mst. Attiyya Bibi Khana and others Vs. Federation of Pakistan through Secretary of Education ( Ministry of Education), Civil Secretariat, Islamabad and others (2001 SCMR 1161)***, the same principle was laid down by the August Supreme Court in the following terms:-

> ***"Strictly speaking, judgment would be operative from the date of announcement and would have no retroactive legal implications."***
> **(Underlining is mine for emphasis)**

**57.** Even otherwise, the matter has been set at rest in the judgment dated 06.07.2021 passed by this Court in writ petition No.2495 of 2018, titled ***Pakistan Services Limited Versus Registrar Trade Unions and others,*** whereby this Court had very authoritatively and commendably held as

under:-

> *17.* ***If the law laid down in Chevron's case is to be given retrospective effect it would put at naught all registrations of industry-wise trade unions made by the R.T.U. prior to the said judgment. This eventuality cannot be countenanced. The judgment in Chevron's case is to be given prospective effect****. In the case of* ***Pir Bakhsh Vs. Chairman, Allotment Committee (PLD 1987 SC 145), the Hon'ble Supreme Court held inter alia that "the fact that the law laid down by this Court is prospective also cannot be doubted."*** *Furthermore, in the case of* ***Muhammad Yousuf Vs. Chief Settlement and Rehabilitation Commissioner (PLD 1968 S.C. 101),*** *it has been held as follows:-*
>
> > *"This judgment was delivered on the 2nd November 1964, and its consequence was that as from that date all Courts subordinate to the Supreme Court and all executive and quasi-judicial authorities were obliged by virtue of the Constitution to apply the rule as laid down by the Supreme Court in cases coming up before them for decision. It did not have, and it cannot be contended that it had, the effect of altering the law as from the commencement of the Act so as to render void of its own force all relevant orders of the Settlement authorities on bhvcxr of the High Court made in the light of the earlier interpretation which was that the exercise of the delegated power was subject to the provisions in Chapter VI of the Act."*
>
> *18. Additionally, in the case of Sardar Ali Vs. Muhammad Ali (PLD 1988 SC 287), it was held as follows:-*
>
> > *"The law is well settled that where the rights of the parties have been judicially determined with reference to the terms of a law in force at the time of the adjudication, the finality of such a judgment will not be affected merely because the law on the basis of which that decision was rendered has subsequently been altered unless a provision is expressly made in the changed or modified law destroying the finality of the aforesaid judgment."*

**58**. Furthermore, in paragraph-20 of the said judgment, it has been held as follows:-

> *20. Since in the judgment in Chevron's case, it has been held in no uncertain terms that the power to cancel registration of an industry-wise trade union vests in the*

> *N.I.R.C. and not in the R.T.U., the petitioner is at liberty to pursue its appeal before the learned Full Bench, N.I.R.C. against the order dated 25.04.2018 passed by the learned Member, N.I.R.C. dismissing the petitioner's application inter alia under Section 11 of the I.R.A.* ***Since the impugned order dated 30.04.2018 was passed by the R.T.U prior to the judgment in Chevron's case, I am not inclined to set it aside but observe that it shall not operate to the petitioner's prejudice in the proceedings in the petitioner's pending appeal before the learned Full Bench, N.I.R.C.*** *This petition stands disposed of in the above terms."*

**59.** This Court finds itself in complete agreement with the conclusion reached at in the said judgment dated 06.07.2021 passed in PSL's case *(supra)* inasmuch as that the judgment in the Chevron's case (*supra*) cannot be given a retrospective effect since it would amount to adversely affecting the rights already accrued to the Trade Unions that had already been registered before the declaration of the law in the Chevron's case *(surpa)*.

**60.** Now adverting to the petitioners' grievance *qua* conducting of the referendum proceedings and cancellation of the Labour and Staff Unions' registration. Suffice it to say that the matter with respect to the cancellation of a Trade Union's registration has been set at rest by the judgment of the August Supreme Court in the case titled ***Essa Cement Industries Workers' Union Vs. Registrar of Trade Unions, Hyderabad Region and 4 others (1998 SCMR 1964)*** wherein, the August Supreme Court has conclusively held that ***"the matter of registration is one between a Trade Union applying for the registration and the Registrar and others including the employer has no concern in the matter. It has further been held that the employer cannot claim any locus standi to challenge the decision of the Registrar merely on the ground that no opportunity of hearing was provided to it or an objection***

***raised by it before the Registrar was not considered before such decision."***

**61.** Moreover, in the case titled ***Well's Employees Union (Lever Brothers Now Uni-Lever Brothers) Vs. Registrar of Trade Unions, District Kasur and 2 others (2007 PLC 521)***, it was held as follows:-

> ***"---Employer and even a Trade Union had no locus standi to maintain a grievance petition merely because objection raised by it had not been attended to by the Registrar or the employer or a Trade Union had not been associated with the process of registration---One Trade Union could not be an aggrieved party by registration of another union because. such action would not violate any of the rights guaranteed to it by Industrial Relations Ordinance, 2002---Once a Trade Union had been registered it was its legal obligation to apply for determination of Collective Bargaining Agent under S.20(2) of Industrial .Relations Ordinance, 2002***
>
> ***within two months of its registration and it was in the referendum that real strength and real test of the members of membership was to be judged."***
> **(Emphasis supplied)**

**62.** Similarly, in the case titled ***State Bank of Pakistan Vs. National Industrial Relations Commission, Islamabad and others (2016 PLC 185 Islamabad),*** it was observed as under:-

> ***"7. It is an established principle that in matters pertaining to registration of Trade Union and by analogy to Federation of Trade Unions the employer, i.e. the petitioners in the instant case, has no locus standi to challenge the process and therefore, are not aggrieved persons within the meaning of word as provided in Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.*** *In this behalf the case law relied upon the learned counsel for respondents Nos.3 and 4 is instructive. In case titled Essa Cement Industries Workers Union v. Registrar of Trade .Unions (1998 PLC 500) the Hon'ble Supreme Court of Pakistan held as follows:*

> ***"However, the Registrar is not duty-bound to seek assistance either of the employer or such unions. Such question came up for determination before the High Court of Sindh in Bata Shoe Co. (Pakistan) Ltd. v. Registrar, Trade Unions of Sindh (PLD 1978 Kar. 567), where it was observed in this regard:***
>
> ***"In other words, there is no room for any challenge by an employer who may consider itself affected by the decision of the Registrar in favour of a Trade Union. It follows, therefore, that the law does not contemplate any notice to the employer and no grievance can be made if the Registrar or the Appellate Court does not hear the employer. "***

**63.** Law with respect to the same preposition has also been laid down in the cases reported as ***1998 PLC 500, PLD 1978 Karachi 567, 1992 PLC 23, 1986 PLC 533, 1998 PLC 122.***

**64.** Learned counsel for the Labour Union has emphasized that normally the Courts of Constitutional Causes do not interfere in the concurrent judgments and/or orders passed by the inferior Courts of competent jurisdiction. True, the Courts of Constitutional Causes apply a restraint while interfering with concurrent judgments and orders of the lower Courts/Tribunals only when such judgments/orders are well reasoned and based on correct appreciation of the law on the subject. It is my view that the concurrent judgments and orders passed by any lower Court or Tribunal are not open to an exception. Such judgments and orders may well be interfered with by the High Court despite them having to be concurrent in nature, provided a patent and obvious error or oversight on the part of Court in any order or decision may be reviewed sanguine to the renowned legal maxim ***"actus curiae neminem gravabit"*** which is indeed a well-settled enunciation and articulation of the law meaning that no man should suffer because of the fault or omission on the part of the Court or delay in the procedure.

**65.** The High Court is under an obligation to reverse the wrong done to a party by the act of the inferior Court or Tribunal which is an elementary doctrine and tenet to the system of the administration of justice beyond doubt that no person should suffer because of the delay in procedure or due to the fault on the Court's part. This is a ***"de rigueur"*** sense of duty in the administration of justice that the Court and/or the Tribunal as the case may be, should become conscious and cognizant that as a consequence of their mistake, nobody should become victim of injustice and in the event of any injustice or harm suffered by mistake of the Court, it should be remedied by making necessary correction forthwith.

**THE PETITIONERS' GRIEVANCE WITH REGARD TO THE REFERENDUM PROCEEDINGS.**

**66.** Apparently, this is the second round of litigation in which the petitioner-company and Staff Union have questioned the determination of the CBA in the establishments of PC Hotels and conducting of referendum proceedings. ***Section 54(c) of the Act*** deals with matters regarding the determination of the CBA, whereas, Section 62 of the Act talks about the determination of the CBU. The said Section reads as under:-

> ***62. Determination, etc., of collective bargaining unit.****—(1) Where the Commission, on an application made in this behalf, by a trade union of Workmen or a federation of such trade unions, or on a reference made by the Federal Government, after holding such inquiry as it deems fit, is satisfied that for safeguarding the interest of the workmen employed in an establishment or group of establishments belonging to the same employer and the same industry, in relation to collective bargaining, it is necessary, just and feasible to determine one or more collective bargaining units of such workmen in such establishment or group, it may, having regard to the distribution of workers, existing boundaries of the components of such establishment, or group, facilities of*

*communication, general convenience, sameness or similarity of economic activity and other cognate factors,—*

*(a) …*

*(b) ….*

*(c) ….*

*Provided further that,* ***after the receipt of a reference for determination of a collective bargaining unit, the Commission may stop or prohibit the proceedings to determine collective bargaining agent under Section 19 for any establishment or group of establishments which is likely to be affected by a decision under this section"***

**67.** According to the *proviso* to Section 62 of the Act, the Commission may stop or prohibit the proceedings for determination of the CBA in terms of Section 19 of the Act apprehending to be likely affected by the decision under the said Section on the basis of the reference made by the Federal Government in this regard and not on the application of a Trade Union. It thus implies that merely on the basis of the applications submitted by the Staff Union as well as the petitioner-company in this behalf, the proceedings regarding determination of the CBA before the RTU cannot be stayed. Holding of referendum and determination of CBA or CBU are the guaranteed rights of the workers to form an association and CBA. The determination of the CBA/CBU amongst the Trade Unions is within the competence of the RTU.

**68.** As discussed above, that apart from objecting to the registration of the said Unions by the RTU, the petitioner-company also assailed the holding of the referendum for determination of the CBA. Initially, the process for determination of the CBA was taken up by the RTU, but subsequent to the judgment in the Chevron's case, the same was entrusted to the Commission. Through order dated 15.07.2021, the learned Single Member of the Commission

appointed Authorized Officer under Section 19(2) of the Act with the mandate to conduct the proceedings regarding the referendum so that the CBA in the establishment of PC Hotels could be determined. Pursuant to the said order, the Authorized Officer initiated the proceedings for such purpose. The process for determination of the CBA was commenced as far back as 2017 which process is reportedly still pending ever since 2017. The said process ought to have been completed not beyond a period of thirty days as enumerated in Section 19(2) of the Act. The said Section reads in the following manner:-

> ***19. Collective bargaining agent.—(1)*** *Where there is only one registered trade union in an establishment or a group of establishments, that trade union shall if it has as its members not less than one-third of the total number of workmen employed in such establishment or group of establishments, upon an application made in this behalf be certified by the Registrar in the prescribed manner to be the collective bargaining agent for such establishment or group of establishments.*
>
> ***(2) Where there are more registered trade unions than one in an establishment or a group of establishments, the Registrar shall upon an application made in this behalf by any registered trade union of an establishment or group of establishments, hold within fifteen days from the making of the application, a secret ballot to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment or group:***
>
> *Provided that the Registrar may, in the case of a large establishment having its branches in more than one town, hold the secret ballot within thirty days from the making of the application:*
>
> *Provided further that the Registrar shall not entertain any application under this sub-section in respect of an establishment or group of establishments, consisting of, or including, a seasonal factory within the meaning of Section 4 of the Factories Act, 1934 (XXV of 1934), unless such application is made during the month in which the number of workmen employed in such factory in a year is usually the maximum."*

**69.** Perusal of Sub-section (2) of Section 19 of the Act shows that where there are more than one registered Trade Union in an establishment or a group of establishments, the RTU upon an application filed a registered Trade Union, hold within a period of 15 days a Secret Ballot so as to determine as to which of the Trade Union is to be certified as the CBA for the establishment or a group of establishments. Additionally, Section 54(c) of the Act prescribes the Commission's functions, which includes to ***"determine the CBAs amongst the Trade Unions and Industry-wise Trade Unions in the ICT and Trans-Provincial and federation of such Trade Unions".*** The Act exclusively provides for the jurisdiction of the Commission to determine CBA. The petitioner-company, as discussed above, is a Trans-Provincial Establishment as defined in Section 2(xxxii) of the Act. This Court in the case titled ***Air League of PIAC Employees Vs. The Member Commission and others (2017 PLC 115)*** had substantially discussed the RTU as well as the Commission's role *qua* determination of the CBA/CBUs. For ease of reference, the relevant portion whereof reads as follows:-

> *"9.* ***The powers vested in the Commission under section 54(c) in the context of determining a collective bargaining agent are expansive and independent of the jurisdiction vested in a Registrar or a Joint Registrar, as the case may be. The Commission, therefore, is empowered to initiate proceedings and pass such orders as it may deem fit, requiring either a Registrar or a Joint Registrar to perform functions provided under section 19 of the Act of 2012.*** *In some of the cases the Commission, pursuant to powers vested under section 54(c), has directed to proceed under section 19.* ***The exercise of powers by the Commission under section 54(c) are lawful and valid and do not suffer from any legal infirmity.***
>
> *10. In all these cases* ***the initiation of proceedings relating to the determination of a collective***

> ***bargaining agent either by the Commission or the Joint Registrar do not suffer from lack of jurisdiction and are in consonance with the Act of 2012. The Commission or the Joint Registrar, as the case may be, are empowered to proceed and complete the process in the manner provided under the Act of 2012 for determining a collective bargaining agent from amongst the Trade Unions.*** *It is noted that an order passed by the Joint Registrar is appealable under the Act of 2012."*
> **(Emphasis supplied)**

**70.** In sequel to what has been discussed above, this Courts reaches to the conclusion that the petitioners have remained unable to persuade this Court to issue a writ of *Certiorari* so as to annul the impugned orders passed by the learned Full Bench as well as the learned Single Member of the Commission being patently illegal or perverse, calling for any interference by this Court in the Constitutional jurisdiction. It is beyond any shadow of doubt that both the learned *fora* below have exercised their jurisdiction within the prescribed parameters of law (i.e. the Act) and no illegality or irregularity is apparent on the record justifying interference by this Court.

**71.** For the foregoing reasons, all the writ petitions as detailed in Para-1 above of this judgment, being devoid of any merits, are ***dismissed.*** The parties to bear their own costs.

**(ARBAB MUHAMMAD TAHIR)**
**JUDGE**

Announced in an open Court on 12.09.2022.

**JUDGE**

ISLAMABAD | 12.09.2022
APPROVED FOR REPORTING.

**//Kamran//**