ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

(JUDICIAL DEPARTMENT)

Writ petition no.242/2025

FBR through its Chairman and others
versus
President of Pakistan, and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
1	22.01.2025	Hafiz Ahsan Ahmad Khokhar, advocate for the petitioners

This writ petition assails the impugned order dated 16.08.2024, by which the President's Secretariat dismissed the representation filed by the Federal Board of Revenue (FBR) against the findings/recommendations of the Federal Tax Ombudsman (FTO) dated 10.05.2024, by which the FTO found maladministration in FBR denying the 25% tax rebate to the complaining headmasters, principals, senior headmasters, and headmistresses, of elementary and secondary schools, which they claimed was admissible to them under clause (2) of Part III of the Second Schedule to the Income Tax Ordinance, 2001. The FBR's stance was that they did not qualify as "full-time teacher or researcher" for the purposes of the said clause (2) by dint of performing the duties of headmasters and principals. The FTO's order also found that such rebate was extended to the headmasters and principals of Federal Government schools and also in KPK, and that no valid ground for maintaining such discrimination was demonstrated by the tax authorities.

2 On the representation before the President, the department took a fair and honest stance in answering the question posed by the President's Secretariat's officer, that the complainants continued to perform the teaching functions notwithstanding their promotions as headmasters in the respective schools. The President's Secretariat therefore upheld the FTO's order.

3 The foremost ground taken in this petition by the FBR rests on section 9(2)(b) of the Federal Tax Ombudsman Ordinance, 2000, which reads as follows:

> 9(2) The Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which-
>
> …

> (b) relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation. (emphasis supplied)

4 FBR's learned counsel's submission is that, since the matter related to assessment of income and interpretation of tax laws, therefore the jurisdiction of the FTO stood excluded by virtue of section 9(2)(b). I am afraid this submission rests on an incorrect interpretation of the said provision.

5 The last phrase in section 9(2)(b) - *in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation* - is, in syntactical terms, a 'qualifier' or a 'modifier'. Learned counsel urges that this qualifier phrase applies only to the last antecedent, namely, 'classification or valuation' appearing just before it. This is not correct. The correct syntactical canon of interpretation is the 'Series-Qualifier Canon', which entails that, in a parallel construction of nouns or verbs in a series, a prepositive or postpositive modifier or qualifier applies to the entire series[1]. The words 'assessment', 'determination', 'interpretation', 'classification', and 'valuation', are all nouns in a parallel series construction in section 9(2)(b). The postpositive qualifier phrase towards the end of section 9(2)(b) will apply to all the nouns in that sub-section, which would entail that, for the FTO's jurisdiction to be ousted, there must be an appealable, revisable, or reviewable order of the tax authorities in place relating to 'assessment', 'determination', 'interpretation', 'classification', and 'valuation'. Although this canon has its limitations, not applying this canon to the case at hand will lead to an absurd reading of section 9(2)(b), and it is another canon of construction of statutes that they cannot be read to absurdity[2]. If the series-qualifier canon is not applied, section 9(2)(b) would read that the appealable, revisable, or reviewable order qualification applied only for 'valuation', the last referent in the subsection. Why would the Legislature limit the qualifier phrase to valuation only, and exclude its application to other antecedent nouns, is not discernible by any logical reasoning or syntactical analysis, and none was proffered by the

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[1] For an example of how the US Supreme Court applied this canon, see *Facebook, Inc. v. Duguid, 141 S. Ct. 1163, 1169 (2021)* or visit https://www.youtube.com/watch?v=65HCWnsLoPw

[2] Pakistan through Secretary Finance vs Messrs Lucky Cement, 2007 SCMR 1367

learned counsel either. Therefore, the qualifier phrase relates back to the entire sub-clause and not just to the last noun only. If learned counsel's submission was accepted, then the office of the FTO might as well be closed down, because then each and every matter pertaining to income or wealth would stand excluded from the jurisdiction of the FTO. I therefore conclude that, for the FTO's jurisdiction to be excluded pursuant to section 9(2)(b), the matter must be appealable, revisable, or reviewable, for which, ex-facie, an order (or deemed order) of the tax authorities should exist. It is a matter of record that there was no order of the tax authorities existent in the instant case against which such remedies could be availed, and therefore section 9(2)(b) did not apply.

6 The next submission by the learned counsel was that the expression "full time", in clause (2) of Part III of the Second Schedule to the Income Tax Ordinance must be interpreted to mean that such teacher should not be performing any additional duties. He rests this argument on Circular no.6 of 2013, dated 19.07.2013, issued by the FBR explaining FBR's reading of various amendments made to the Income Tax Ordinance vide Finance Act, 2013. The explanation of clause (2) aforesaid was given in Circular no.6, and is juxtaposed with the text of clause (2) as follows:

Clause (2) of Part III of the Second Schedule to the Income Tax Ordinance	Circular no.6 - Amendments in Second Schedule
(2) The tax payable by a full time teacher or a researcher, employed in a non profit education or research institution duly recognized by Higher Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including government research institution, shall be reduced by an amount equal to (25)% of tax payable on his income from salary. Provided that this clause shall not apply to teacher of medical profession who derive income from private medical practice or who receive share of consideration received from patients.	In Second Schedule to the Income Tax Ordinance, 2001, some of the amendments made are as follows: … (d) In Part-III in clause (2) reduction in tax liability of the tax payable on income from salary equal to 75% has been reduced to 40% in the case of: (i) a full time teacher employed in a non profit educational institution duly recognized by Higher Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including government training institutions. (ii) a full time researcher employed in a research institution duly recognized by Higher Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including government research institution.

	(iii) It is further clarified that a full time teacher means a person employed purely for teaching and not performing any administrative or managerial jobs e.g. principals, headmasters, directors, vice-chancellors, chairmen, controllers etc. Similarly a full time researcher means a person purely employed for research job only in a research institution and such institution is purely performing research activities.

7 Para (d)(iii) of Circular no.13 introduces an explanation which is not there in the text of clause (2) itself, and rests on an interpretation that is unwarranted by the text of the statutory language of clause (2). I do not see how such a limitation could be read into clause (2) by the FBR. It is another settled canon of construction of concessionary or exemption provisions in a taxing statute that, where a taxpayer fell within the exemption, he cannot be denied that exemption based on a supposed intention to the contrary of the Legislature, which, if it were intended, would have been expressed in so many words in the provision itself [3]. To accept counsel's argument would mean that the Legislature intended that the rebate would be denied to those teachers who were more hardworking and who were able to perform additional functions such as that of a headmaster, and that the Legislature intended to reward inefficient teachers but intended to withhold that reward from efficient teachers who got promoted to headmasters and principals. Again, irrationality and absurdity is not to be attributed to the Legislature. The expression 'full time teacher or researcher' in clause (2) can rationally and logically mean only that such a person must be employed on a full time basis and his employment terms designate him so. It is a matter of record that the complainants are employed full time in the teaching cadre by the Provincial Government. Their employment letters do not designate them as part time employees. Being the employees of the Provincial Government in teaching cadre, they are admittedly full time employees of the Provincial Government. This is so recorded in the FTO's order as follows:

[3] Oxford University Press vs Commissioner of Income Tax Companies Zone-I Karachi (2019 SCMR 235)

> All the principals and headmasters are included in the teaching cadre and the posting orders clearly mention that the principals and headmasters are from teaching cadre and according to the departmental job descriptions, teaching the classes is mandatory for the school heads besides the administrative and financial job responsibilities.

8 Learned counsel has cited judgments to assert that the jurisdiction of FTO was excluded in similar circumstances. In the first judgment titled *Messrs Gas Master CNG Station vs Federation of Pakistan* (2019 PTD 2025), there was a refund claim and penalty order which was found to be appealable under the FTO Ordinance 2001 and, therefore, the Court found the FTO's jurisdiction to be excluded in that case. The next citation by the learned counsel is *Shakeel Ahmed Kasana and others vs Federal Tax Ombudsman* (2024 PTD 1), which has completely different facts, in that the FTO had ordered to hold inspection of the offices of the Commissioner Inland Revenue at Karachi in terms of section 17 on complaint of malpractices with corrupt motives in the discharge of his duties, without giving him any opportunity of being heard. These facts by no means make the ratio of that case applicable to the instant case.

9 The next submission by the learned counsel was that, vide order dated 31.05.2017, the President's Secretariat had in the past held in a similar matter that the jurisdiction of FTO was excluded under section 9(2)(b). The said order is distinguishable in that it rested solely on Circular no.13 of 2016 (supra) without analysing its consistency with the statutory text of clause (2), which has been found incorrect per para 7 above. Further, the principle of *stare decisis* does not apply to *quasi-judicial* orders such as that passed by the President's Secretariat. If a previous order of the President's Secretariat proceeded on an erroneous interpretation of the law, it cannot constitute a binding precedent for the President's Secretariat in subsequent proceedings. The instant impugned order of the President's Secretariat in my humble view applies the correct interpretation of section 9(2)(b) due to the absence of any order by the department that was appealable, reviewable, or revisable, within the hierarchy of the department.

10 The final submission was that the denial of rebate did not constitute maladministration for the purposes of the FTO Ordinance 2001. The word 'maladministration' evokes a negative connotation, but it is merely a

shorthand label to describe compendiously what acts or omissions will fall within the FTO's jurisdiction to handle. Perhaps a less infelicitous expression would have been more palatable. But it needs reminding that no negative connotation reflecting on the officers or the department necessarily flows by this term, as defined in the FTO Ordinance. To the extent relevant for our case, the label 'maladministration' is defined in section 2(3) of the FTO Ordinance as follows:

> 2(3) "maladministration" includes -
> (i) … act of omission or commission which-
> (a) is contrary to law … or is a departure from established practice …, unless it is bona fide and for valid reasons…
> (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory;
> (c) is based on irrelevant grounds…

The misinterpretation of clause (2), and its denial to the complainants, while leaving it admissible to headmasters and principals in Federal and KPK schools, fell squarely within the aforesaid definition.

11 I do not find any grounds justifying any interference by this Court in the concurrent orders impugned herein, and this petition is therefore **dismissed** *in limine*.

(Sardar Ejaz Ishaq Khan)
Judge

Asjid

Approved for reporting.