Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD (JUDICIAL DEPARTMENT)

W.P. No. 1341-2025

Abual Hasnat Muhammad Zulqarnain & 22 others

Versus

Muhammad Shabbir & 2 others

Petitioners by	:	Mr Muhammad Nazir Jawad, ASC Mr Zahid Asif Ch., ASC
Respondents by	:	Mr Ayyaz Shaukat, Advocate General, ICT Mr Rashid Hafeez, Additional Attorney General Mr Usman Rasool Ghuman, Assistant Attorney General Mr Asad Iqbal Siddiqui, Advocate for respondent No.1 Malik Abdul Rehman, Advocate for respondent No.2 Mr Abdul Rahim Bhatti, ASC – Amicus Curiae
Dates of Hearing	:	02.05.2025

Arbab Muhammad Tahir, J.-

> *"Jurisdiction acts as a bulwark against arbitrariness. It ensures that power is exercised within the legal framework. Courts must remain vigilant not to transgress the boundaries assigned by statute. Any decision made without jurisdiction, howsoever just in outcome, is a betrayal of the rule of law."*
>
> *(Anonymous)*

The petitioners are judicial officers serving in the Islamabad District Judiciary. Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter the *"Constitution"*) they have impugned order, dated 21.03.2025, passed by the learned

Islamabad Subordinate Judiciary Service Tribunal (hereinafter the *"Tribunal"*).

FACTS

2. Before delving into the facts and circumstances of the case and addressing the questions of law emerged therefrom, it is made clear that this Court is mindful of the alternate remedy of review available to petitioners under the relevant law, however, since the impugned order has resulted into a breakdown of the applicable legal system, leaving 2016-Act unworkable and petitioners without a forum for redressal of their grievances by way of filing a review, it is only for this reason that the matter is being examined under the extra ordinary constitutional jurisdiction of the High Court. Briefly, the relevant facts are as under.-

3. The respondent No.1-Muhammad Shabbir, who is member of the Islamabad Judicial Service had filed a service appeal i.e. Judicial Service Appeal No.03/2016 before the learned Tribunal established under the Islamabad Subordinate Judiciary Service Tribunal Act, 2016 (hereinafter *"2016-Act"*). The grievance of respondent No.1 before the learned Tribunal was that the absorption of *Mr Shahrukh Arjumand* in the Islamabad District Judiciary and his further promotion to the post of Additional District and Sessions Judge had adversely affected his seniority rights, hence the same be declared as illegal and that he be promoted as Additional District and Sessions Judge with all back benefits. On 13.03.2025, the said judicial service appeal was heard by the learned Tribunal comprised of Hon'ble Mr Justice Tariq Mehmood Jehangiri, J. (Chairman), Hon'ble Mr Justice Babar Sattar, J. (Member) and Hon'ble Mr Justice Sardar Ejaz Ishaq Khan, J. (Member), which shall hereinafter be referred to as *"erstwhile Tribunal"*) and the judgment was reserved on the same day.

4. While the judgment was reserved; in the meanwhile, the Ministry of Law and Justice, pursuant to recommendations of the Hon'ble Chief Justice of this Court, with the approval of the President, issued notification dated 18.03.2025 in terms of section 3 of the 2016-Act, whereby the Tribunal was reconstituted with the composition (i) Hon'ble Mr Justice Khadim Hussain Soomro, J. (Chairman), (ii) Hon'ble Mr Justice Muhammad Azam Khan, J. (Member) and (iii) Hon'ble Mr Justice Inaam Ameen Minhas, J. (Member), which shall hereinafter be referred to as *"reconstituted Tribunal"*.

5. The learned Tribunal announced the short order on 21.03.2025, detailed reasons whereof have also been placed on record through CMA No.1594/2025. The erstwhile Tribunal through the impugned order, partially allowed the appeal; set aside the notification of reconstitution of the Tribunal dated 18.03.2025; passed an order of repatriation of all judicial officers working on deputation in the Islamabad District Judiciary including respondent No.1 (*in the judicial service appeal*) who stood absorbed in the year 2012 and rules 9 and 30 of the Islamabad Judicial Service Rules, 2011 (hereinafter *"2011-Rules"*) were declared to be read down being in conflict with the provisions of Islamabad High Court Act, 2010 (hereinafter "IHC Act").

ARGUMENTS

6. *Mr Muhammad Nazir Jawad*, ASC for the petitioners has argued that; the impugned order has been passed without lawful authority and jurisdiction; that the authority of the learned Tribunal was questionable after issuance of the notification dated 18.03.2025; that the Tribunal should not have acted as judge in its own cause; that the Notification, dated 18.03.2025 issued by the President was not under challenge before the learned Tribunal; that the learned Tribunal cannot be deemed to be a Tribunal under

Article 212 of the Constitution; that the petitioners are not in the service of Pakistan within the meaning of Article 240 of the Constitution; that the learned Tribunal is not vested with power to hold the provisions of any law/rules as ultra vires; that the learned Tribunal is a quasi-judicial forum; that the petitioners have been rendered remediless; that the petitioners have no other option except to file the instant petition; reliance has been placed on the judgments titled *"Petrosin Corporation Pvt. Ltd. and others v. OGDC through Managing Director"* (PLD 2011 SC 235), *"The State v. Asif Adil and others"* (1997 SCMR 209), *"Mst. Fehmida Khatoon v. Additional Deputy Commissioner (Consoli Dation), Lahore and another"* (PLD 1975 Lahore 942), *"Federal Government Employees Housing Authority through Director General, Islamabad v. Ednan Syed and others"* (PLD 2025 SC 11), *"Syed Muhammad Ali Bokhari v. Federation of Pakistan through Secretary, Ministry of Law and Justice and 3 others"* (PLD 2025 Islamabad 48), *"Jameel Qadir and another v. Government of Balochistan, Local Government, Rural Development and Agrovilles Department, Quetta through Secretary and others"* (2023 SCMR 1919); *"Pakistan Transport Company Ltd. v. Walayat Khan through Legal Heirs"* (2002 SCMR 1470), *"Chief Secretary, Government of Punjab, Lahore and others v. Mrs Shamim Usman"* (2021 PLC (CS) 1595), *"Hafsa Habib Qureshi and others v. Amir Hamza and others"* (PLD 2024 SC 780), and *"Agha Inam-ur-Rehman Khan v. Registrar, Lahore High Court, Lahore"* (2013 SCMR 109). In addition he has referred to the proceedings conducted by the Hon'ble Supreme Court in Constitutional Petition No.40/2018 titled "Islamabad Bar Association through its President v. Federation of Pakistan through its President and others" and submitted that judicial officers from other Provinces were posted in Islamabad District Judiciary as a result of efforts made by the Bar.

7. *Mr Zahid Asif Chaudhry, ASC* for petitioners further argued that the petitioners were condemned unheard; that nothing relating to the petitioners was impugned before the Tribunal; that the petitioners were not party to the proceedings before the learned Tribunal; that the petitioners' right under Article 4 and 10A of the Constitution have been violated; that the jurisdiction of the learned Tribunal was limited to confirming, setting aside, varying or modifying the order under appeal; that the learned Tribunal proceeded beyond the scope of section 6(1) of the Islamabad Subordinate Judiciary Service Tribunal Act, 2016 (hereinafter *"2016-Act"*); that the learned Tribunal is not vested with power to proceed *suo motu*; that the President vide Notification, dated 18.03.2025 had reconstituted the learned Tribunal; that the remedy of review provided under section 7 of the 2016-Act is an independent remedy available to the petitioners; that the said remedy was rendered infructous by recording observations as to its efficacy by the learned Tribunal; that the learned Tribunal while exercising powers under the 2016-Act does not act as a High Court; reliance has been placed on the judgments titled *"Said Zaman Khan and others v. Federation of Pakistan through Secretary Ministry of Defence and others" (2017 SCMR 1249), "District Bar Association, Rawalpindi and others v. Federation of Pakistan and others" (PLD 2015 SC 401), "Chief Justice of Pakistan Iftikahr Muhammad Chaudhry v. President of Pakistan through Secretary and others" (PLD 2010 SC 61), "Muhammad Safeer and others v. Muhammad Azam and others" (PLD 2024 SC 838), "Rana Muhammad Naveed and another v. Federation of Pakistan through Secretary M/o Defence" (2013 SCMR 596), "Ex. Col. Muhammad Azad Minhas and another v. Federation of Pakistan through Secretary Ministry of Defence and others" (PLD 2024 SC 235), "Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others" (2022 SCMR 92),*

"Attaullah Khan v. Ali Azam Afridi and others" (2021 SCMR 1979), "Faqir Muhammad v. Khursheed Bibi and others" (2024 SCMR 107), "Nazar Muhammad v. The State" (2011 SCMR 1487), "Justice Syed Mazahar Ali Akbar Naqvi, Judge Supreme Court of Pakistan and others v. Federation of Pakistan through Secretary Ministry of Law and Justice, Islamabad and others" (2024 SCMR 599), "Mst. Sattan and others v. Group Captain Mansoor Hussain, Officer Commanding P.A.F. Station Sargodha Cantt" (PLD 1962 (W.P.) Lahore 151), "Messrs Fridsons Ltd. Karachi and another v. Government of Pakistan, through its Secretary and another" (PLD 1961 SC 537), "Abdul Rehman Khan Kanju and others v. Election Commission of Pakistan through Secretary, Islamabad and others" (2024 SCMR 1902), "Syed Muhammad Ali Bokhari v. Federation of Pakistan through Secretary, Ministry of Law and Justice and 3 others" (PLD 2025 Islamabad 48), "Jameel Qadir and another v. Government of Balochistan, Local Government, Rural Development and Agrovilles Department, Quetta through Secretary and others" (2023 SCMR 1919), "Pakistan Transport Company Ltd. v. Walayat Khan through Legal Heirs" (2002 SCMR 1470), and "Federal Government Employees Housing Authority through Director General, Islamabad v. Ednan Syed and others" (PLD 2025 SC 11).

8. On the other hand, *Mr Ayyaz Shaukat*, learned Advocate General, ICT also opposed the impugned order/judgment and has argued that; the reconstituted Tribunal was validly notified in accordance with law; the erstwhile Tribunal could not have exercised suo motu jurisdiction in matters which were not impugned before it; the necessary parties i.e. the borrowing and lending departments never passed any order for repatriation of the judicial officers serving on deputation nor were they afforded an opportunity of hearing; that the right of fair trial and due process of the petitioners have been violated; that the learned Tribunal was

bereft of the jurisdiction to adjudicate upon validity of notification dated 18.03.2025; the learned Tribunal is deemed as civil court within the section 6(2) of 2016-Act; that even if it is assumed that the learned Tribunal had heard the matter, then before rendering the impugned judgment it was required to put the affected parties on notice under rules 15 and 19 of the Islamabad Subordinate Judiciary Service Tribunal Rules, 2017 (hereinafter *"2017-Rules"*); that under rule 15 of the 2017-Rules, no additional ground could be urged in support of any ground or objections not set-forth in memorandum of appeal before the Tribunal, except with its leave; that learned Chairman and Members of the Tribunal were cognizant of the fact of reconstitution of the Tribunal and could have laid their hands off the matter; that instant petition is maintainable to the extent of examining the jurisdictional defects and illegalities committed in proceedings; that impugned order is void and coram non-judice; the learned Tribunal was not vested with power to adjudicate vires of law and the notification issued thereunder and this function should have been left for adjudication by a court of competent jurisdiction; vires of law cannot be adjudicated even in a reference or appeal by this Court, except under Article 199 of the Constitution; reliance has been placed on the judgments titled *"Dr Seema Irfan and others v. Federation of Pakistan and others" (PLD 2019 Sindh 516), "Muhammad Swaleh v. United Grain Fodder Agencies" (PLD 1964 SC 97), "PESCO, WAPDA House through Chief Executive v. Ishfaq Khan and others" (2021 SCMR 637), "Conforce Ltd. v. Syed Ali Shah" (PLD 1977 SC 599), "Land Acquisition Collector, Nowshera and others v. Sarfraz Khan and others" (PLD 2001 SC 514), "Izhar Alam Farooqi v. Sheikh Abdul Sattar Lasi (2008 SCMR 240), "Abdul Majeed Khan v. Maheen Begam" (2014 SCMR 1524), "Abdul Bari v. Government of Pakistan and others" (PLD 1981 Karachi 290), "Pakistan Telecommunication Authority v. Federation of*

Pakistan" (2020 PTD 1683), "Pakistan Oilfields Limited v. Federation of Pakistan" (2020 PTD 110), "Commissioner Inland Revenue v. Jahangir Khan Tareen" (2020 SCMR 92), "Pakistan Tobacco Company v. Federation of Pakistan" (2022 PTD 1574), "Standard Printing Press v. Sind Employees Social Security Institution" (1988 SCMR 91).

9. *Mr Rashid Hafeez*, learned Additional Attorney General, while opposing the impugned order/judgment has argued that; the provisions of 2016-Act empower the President to appoint Chairman and Members of the Tribunal upon recommendation of the Chief Justice of this Court; that the Hon'ble Chief Justice of this Court had initiated the process and duly forwarded names for reconstitution of the Tribunal; that the provisions of the 2016-Act are unambiguous; the judgment relied upon by the learned Tribunal i.e. *"Chaudhary Muhammad Akram vs. Registrar Islamabad High Court"* (PLD 2016 SC 961), has been overruled by the principles and law laid down by the Hon'ble Supreme Court in *"Gul Taiz Khan Marwat v. The Registrar, Peshawar High Court"* (PLD 2021 SC 391); the Tribunal was validly constituted vide notification dated 18.03.2025; adjudication upon the notification dated 18.03.2025 which was not the subject matter of the appeal amounted to judicial overreach; the power of the Tribunal under the 2016-Act are not at par with those vested in this Court under Article 199 of the Constitution; the learned Tribunal could not have rendered the provisions of section 7 of 2016-Act as redundant.

10. *Mr Asad Iqbal Siddiqui*, AHC for respondent No.1 (*Mr Muhammad Shabbir who was appellant before the Tribunal*), has submitted that respondent No.1 who was the appellant before the learned Tribunal, had withdrawn his claim in respect of the prayers clauses (i) and (ii) and had pressed his claim in clause (iii) i.e. promotion with back benefits; that

the impugned judgment does not speak of clause (iii) of the prayer sought by respondent No.1; that no relief has been granted to respondent No.1 in the impugned judgment.

11. *Mr Abdul Rahim Bhatti*, ASC, learned amicus curiae has argued that condemning the petitioners unheard is violation of the right of petitioners guaranteed under Article 10A of the Constitution; that the learned Tribunal was not vested with *suo motu* powers as the same amounts to overreach; that the jurisdiction of the learned Tribunal is limited to issues germane to the terms and conditions of service including the disciplinary matters. While responding to the question whether the Tribunal is deemed as tribunal under Article 212 of the Constitution and a remedy of appeal against any order passed by the Tribunal is available under Article 212(3) of the Constitution, he submitted that the Tribunal has been constituted under Article 212 of the Constitution barring the jurisdiction of this Court in relation to matter committed to the said forum as that judicial officers are deemed to be in the service of Pakistan, for the purposes of Article 212(1)(a) of the Constitution.

12. Heard. Record perused.

OPINION OF THE COURT

i. Jurisdiction.

13. This Court will first advert to the question of jurisdiction and its extent in relation to the instant petition. *Mr Abdul Rahim Bhatti*, ASC – learned amicus curiae has argued that the petitioners are in the service of Pakistan within the meaning of Article 212(1)(a) of the Constitution and the bar contained under sub article (2) thereof is attracted to the instant proceedings. To address the argument of the learned amicus curiae, it is highlighted that the Islamabad Judicial

Service has been constituted under Rule 3 of the 2011-Rules. The 2011-Rules have been framed by this Court under Article 203 of the Constitution read with section 6 of the IHC Act. It is not an Occupational Group or Service constituted by the Federal Government under the Civil Servants Act, 1973 or the rules framed thereunder. The question whether the petitioners shall be deemed to be in the 'service of Pakistan' for the purposes of Article 212 read with Article 240 as defined in Article 260(1) of the Constitution so as to attract the bar contained under Article 212(2) of the Constitution in relation to the instant petition, is required to be addressed at the first instance. For the sake of convenience it would be advantageous to reproduce the relevant provisions of the Constitution.-

> *"**175**(3). The Judiciary shall be separated progressively from the Executive within fourteen years from the commencing day."*
>
> *"**203**. Each High Court shall supervise and control all courts subordinate to it."*

Relevant provisions of the Constitution defining the expression *"service of Pakistan".-*

> *"**212.** (1) Notwithstanding anything hereinbefore contained the appropriate Legislature may by Act provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of—*
>
> *(a) matters relating to the terms and conditions of persons **who are or have been in the service of Pakistan**, including disciplinary matters;"*
>
> *"**240.** Subject to the Constitution, the appointments to and the conditions of service of persons in the service of Pakistan shall be determined–*
>
> *(a) in the case of the services of the Federation, posts in connection with the affairs of the Federation and All-Pakistan Services, by or under Act of Majlis-e-Shoora (Parliament); and*

> *(b) in the case of the services of a Province and posts in connection with the affairs of a Province, by or under Act of the Provincial Assembly.*
>
> *Explanation.–In this Article, ''All-Pakistan Service'' means a service common to the Federation and the Provinces, which was in existence immediately before the commencing day or which may be created by Act of Majlis-e-Shoora (Parliament)."*
>
> ***"260.*** *(1) In the Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say,–*
>
> *"service of Pakistan" means any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and* ***any other service declared to be a service of Pakistan by or under Act of Majlis-e- Shoora (Parliament) or of a Provincial Assembly****, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary or Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister or member of a House or a Provincial Assembly;"*
>
> **(underlined and highlighted to add emphasis)**

It would also be advantageous to reproduce section 2(b) of the Civil Servants Act, 1973 (hereinafter the "1973-Act")

> ***2(b)*** *"civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include—*
>
> *(i) a person who is on deputation to the Federation from any Province or other authority;*
>
> *(ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or*

> *(iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (XXV of 1934), or the Workmen's Compensation Act, 1923 (VIII of 1923);*

14. In the case titled *"Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others"* (PLD 2006 SC 602) the Hon'ble Supreme Court had examined the expression "service of Pakistan" used in Articles 212 and 240 as defined in Article 260(1) of the Constitution in the context of section 2-A of the Service Tribunals Act, 1973 (hereinafter "STA 1973"). It is worth-mentioning here that section 2-A was inserted in the STA 1973 through Service Tribunals (Amendment) Act, 1997, whereby the service under any authority, corporation, body or organization established by or under a Federal law or which is owned or controlled by the Federal Government or in which the Federal Government has a controlling share or interest was declared to be the service of Pakistan and every person holding a post under such authority, corporation, body or organization was deemed to be a civil servant for the purposes of STA 1973. The Hon'ble Supreme Court in Muhammad Mubeen-us-Salam case, supra, examined in the precedent law, relevant provisions of the Constitution and the law and held as follow.-

> *"68. The ratio decidendi of the judgments, discussed above, lays down following two basic propositions, for the purpose of ascertaining as to whether a person is in the service of Pakistan:--*
>
> *(a) A declaration must exist that he shall be deemed to be in the in service of Pakistan.*
>
> *(b) Such person must hold a post or office in connection with the affairs of the Federation or of a Province and includes in all Pakistan Service."*
>
> *(emphasis supplied)*

15. It was also observed with clarity that the expressions "civil servant" and "service of Pakistan" were not synonymous as the expression "service of Pakistan" would include civil servants, but the vice versa is not true. In the referred case, the Hon'ble Supreme Court held section 2-A of the STA, 1973 as partially ultra vires of Articles 240 and 260 of the Constitution, to the extent of the category of employees, whose terms and conditions of service have not been determined by the Federal Legislature as by a deeming clause they cannot be treated civil servants as defined under section 2(1)(b) of the CSA, 1973 and they are not engaged in the affairs of the Federation.

16. It may be noted that the expression "service of Pakistan" ostensibly gives an impression that every person drawing salary from public exchequer is included in its ambit and this Court would also have assumed the same meaning, however, it is significant that the framers of the Constitution have restricted its application to a predefined class/category of persons/service and have left it to the Majlis-e-Shoora (Parliament) to extend its application through an Act of Parliament, to any other class/category of persons/service. Even the Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary or Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the Prime Minister, Adviser to the Prime Minister, Special Assistant to a Chief Minister, Adviser to a Chief Minister or member of a House or a Provincial Assembly, are key and important constitutional offices, yet they have specifically been excluded from the definition/ expression "service of Pakistan" under Article 260(1) of the Constitution.

17. The Islamabad Judicial Service is not a service, post or office in connection with the affairs of the Federation or of a Province, or included in the All-Pakistan Service or service in the Armed Forces (*as defined in section 2(b) of CSA, 1973*). A bare perusal of the provisions of IHC Act and the 2011-Rules would reveal that Islamabad Judicial Service has not been specifically declared to be the service of Pakistan as required under Article 260(1) of the Constitution. Article 240 of the Constitution opens with the words "subject to the Constitution" as compared to Article 203 which gives exclusive power to the High Court to supervise and control all courts subordinate to it. Judiciary is not a branch of the executive as envisaged under Article 175(3) of the Constitution, thus the latter bereft of powers to interference with its affairs.

18. The crux of the above discussion is that the petitioners are not in the service of Pakistan within the meaning of Articles 260(1), 240 and 212 of the Constitution, thus the bar contained under Article 212(3) thereof is not attracted to the instant proceedings. The argument that this Bench cannot adjudicate any question arising out of the impugned order on the ground that it would be improper to judicially review the view taken by three peers is also misconceived as if this argument is accepted, it would take away the jurisdiction of the learned Tribunal to adjudicate the question of vires of 2011-Rules, framed by the "High Court" (*consisting the Chief Justice and Judges of the High Court*), larger in number than the members of the learned Tribunal.

ii. Limitation on the power of appellate forum functioning under a statute.

19. In the case titled *"Messrs Standard Printing Press v. Employees' Social Security Institution"* (1998 SCMR 91), the Government of Sindh by a Gazzette notification issued under subsection (3) of section 1 of the Employees' Social Security

Ordinance X of 1965 applied certain specified provisions of the referred Ordinance to the establishment of the appellant, which was a small printing press employing a fluctuating number of workers. Accordingly a notice of demand was served upon M/s Standard Printing Press with the warning of initiating coercive measures. M/s Standard Printing Press filed an appeal under section 59 of the Ordinance ibid challenging the notification and it was argued before the Social Security Court that the same is discriminatory and violative of Article 25 of the Constitution. The appeal was dismissed on the ground that the question raised before the Court was not covered under section 57 of the Ordinance ibid. The matter ultimately went up to the Hon'ble Supreme Court wherein it was ruled as follows.-

> "Finally, there is the question whether the Social Security Court was the appropriate Court and the appellate procedure the appropriate mechanism for getting such a question raised and adjudicated upon. **The exclusive jurisdiction of the Social Security Court under Section 61 extends to hear and decide appeals from decisions of the Institution under Section 57. Section 57 enumerates the subjects on which the Institution is supposed to give a decision.** The vires of a notification issued under subsection (3) of Section 1 of the Ordinance is included neither expressly nor impliedly in it. The residuary clause (f) of Section 57 cannot overreach sweepingly the preceding enumerated clauses as held by this Court in the case of Dr. Mumtaz Ali Taj PLD 1975 SC 450. The right of appeal has been held to be one pertaining to the remedy, and as such not a natural, inherent or vested right. It exists only as a legislative privilege to be granted or withheld as seems best to the law-making body. It is within the power of the legislature to prescribe the cases in which the parties shall be entitled to bring a cause for review, to prescribed the Courts to which causes shall be brought, and to impose such conditions and restrictions as it may deem fit. Merely because an additional appeal on a substantial question of law lies to the High Court does not imply that all questions of law, even

> those which could not be even raised in the lower forums, can for the first time be raised in such final appeal. **Even this final appeal to the High Court is under the statute, the Ordinance, and is controlled and governed by the provisions thereof. The term appeal itself indicates "a re-examination by a higher Tribunal of issue determined in the original trial or at least issues which could have been so determined, and it is a misnomer to call it an appeal where the appellate Tribunal may hear and determine issue which the original Court could not have determined and where such determination has the effect of adjudicating such issues which could not be adjudicated by the original officer or Tribunal"**. Therefore, it is only those questions of law which could legitimately arise in proceedings and could appropriately be subject-matter of adjudication by the Social Security Court which could be brought to the High Court."
>
> *(Emphasis supplied)*

20. It is thus clear from the above that the power of appellate authority while deciding an appeal is no more than the authority which had passed the original order. Its powers are, therefore, controlled and governed by the statutory provisions under which it has been created. The jurisdiction of the appellate forum shall thus remain complaint to the limitations prescribed under the relevant law.

iii. Writ jurisdiction and orders passed without jurisdiction, void or coram non judice.

21. It is settled law that the extra ordinary jurisdiction of this Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court. It is also well settled exposition of law that disputed questions of facts cannot be entertained and adjudicated in writ jurisdiction. Furthermore, the expression "adequate remedy" signifies an effectual, accessible, advantageous and expeditious remedy. In view of the findings of the erstwhile Tribunal as to the illegality of Notification, dated 18.03.2025 of the reconstituted

Tribunal, the remedy of review, which otherwise is an alternate remedy, at the moment, does not seem to be efficacious, as the very existence of the forum of review is under dispute. In the instant case, the learned Tribunal was empowered to confirm, set aside, vary or modify the order appealed against as provided under section 6(1) of 2016-Act coupled with the power to examine of service rules, if assailed. The question of adjudicating the validity or legality of notification, dated 18.03.2025, by the learned Tribunal being an important question of law that requires interpretation of the provisions of 2016-Act, thus the writ petition is maintainable. Reliance is placed on the cases titled *"Messrs Pakistan Oilfields Limited through General Manager v. Federation of Pakistan through Ministry of Finance and 4 others"* (2020 PTD Islamabad 110), *"Messrs Pakistan Telecommunication Authority v. Federation of Pakistan and others"* (2020 PTD Islamabad 1683). A party may maintain a writ before a High Court if it can be established that the order impugned therein is void or *coram non judice*. Reliance is placed on *"Abdul Bari v. Government of Pakistan and 2 others"* (PLD 1981 Karachi 290).

22. In the case of *"Abdul Majeed Khan through L.Rs. v. Ms. Maheen Begum and others"* (2014 SCMR 1524) the Hon'ble Supreme Court held that ***"It is also settled principle that where any orders or judgments passed by any Court or authority who has no jurisdiction or are barred to exercise such jurisdiction, such orders or judgments are deemed to have been passed illegally and in such circumstances the High Courts are justified in exercising its constitutional jurisdiction to rectify the same".***

23. The Hon'ble Supreme Court in the case titled *"Izhar Alam Farooqi, Advocate v. Sheikh Abdul Sattar Lasi and*

others" (2008 SCMR 240) has held that ***"There can be no exception to the principle that an order passed or an act done by a Court or tribunal not competent to entertain the proceedings is without jurisdiction and that it is mandatory for the Court or tribunal as the case may be to attend the question of jurisdiction at the commencement of the proceedings because the jurisdictional defect is not removed by mere conclusion of trial or inquiry and objection to the jurisdiction can be raised at any subsequent stage."***

24. The term '*coram non judice'* is a Latin term which means "not before a judge", typically used to indicate a legal proceedings that is outside the presence of a judge or with improper venue or without jurisdiction. Whereas lack of jurisdiction means lack of power or authority to act in particular manner or to give a particular kind of relief. It refers to a court's total lack of power or authority to entertain a case or to take cognizance. It may be failure to comply with conditions essential for exercise of jurisdiction or that the matter falls outside the territorial limits of a court. In Black's Law Dictionary, Ninth Edition, the term *coram non judice* has been defined as follows.-

> "Coram non judice (kor-em non joo-disee). [Latin "not before a judge] 1. Outside the presence of a judge. 2. Before a judge or court that is not the proper one or that cannot take legal cognizance of the matter".

25. The case of *Shaukat Aziz Siddiqui v. Federation of Pakistan, Secretary Ministry of Law and Justice and another* (PLD 2024 SC 746) is relevant. Justice (R) Shaukat Aziz Siddiqui was the Senior Puisne Judge of this Court, who was proceeded against by the Supreme Judicial Council and was subsequently removed from the office pursuant to its recommendations. He filed a petition before the Hon'ble

Supreme Court under Article 184(3) of the Constitution assailing his removal. Since Article 211 of the Constitution bars the jurisdiction of any court in relation to proceedings before the Council, its report to the President and the removal of a Judge under clause (6) of Article 209 of the Constitution, therefore, objection as to maintainability of the petition was raised before the Hon'ble Supreme Court. The Hon'ble Supreme Court dealt with the objection as follows.-

> *"12. The question of the maintainability of these petitions was raised because Article 211 of the Constitution stipulates that 'removal of a Judge under clause (6) of Article 209 shall not be called in question in Court'. Learned senior counsel Mr. Hamid Khan and learned Mr. Salahuddin Ahmed submitted that in similar cases the Supreme Court had held that the bar contained in Article 211 does not protect acts which are mala fide or coram non judice or were acts taken without jurisdiction, and in such circumstances the Supreme Court has exercised jurisdiction. In this regard reference was made to the cases of Justice Shaukat Siddiqui v. President of Pakistan, Justice Qazi Faez Isa v. President of Pakistan and Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry v. The President of Pakistan, where it was held that:*
>
> > *'102. Having thus looked into the question of jurisdiction of this Court vis-à-vis the Supreme Judicial Council, I would conclude as under:-*
> >
> > *a) that the Supreme Judicial Council which comprises of the Chief Justice of Pakistan (except when the reference be against him) and two most senior Honourable Judges of this Court and two most senior Honourable Chief Justices of the High Courts, is a forum entitled to the highest of respect;*
> > *b) that the said Council, however, cannot be conceded the status of a court;*
> > *c)* ***that the ouster clause of Article 211 of the Constitution would not protect acts which were mala fide or coram non judice or were acts taken without jurisdiction;***

d) that in situations of extraordinary nature, the S.J.C. would be amenable to the jurisdiction of this Court under Article 184 of the Constitution; and

e) ***that the principle of comity among Judges of the Superior Courts is only a rule of propriety and could never be considered an impediment in the way of providing justice to an aggrieved person.'***

13. The United States Supreme Court has defined coram non judice. In the Dynes v. Hoover it held that:

> *'It is only where a court has no jurisdiction over the subject-matter, or, having such jurisdiction, is bound to adopt certain rules in its proceedings, from which it deviates, whereby the proceedings are rendered coram non judice, that an action will lie against the officer who executes its judgment.'*

In Dred Scott v. Sanford the United States Supreme Court held that any action taken beyond what the Constitution and laws have authorized would be coram non judice:

> ***'But as this court is one of limited and special original jurisdiction, its action must be confined to the particular cases, controversies and parties, over which the Constitution and laws have authorized it to act; any proceeding without the limits prescribed is coram non judice and its action a nullity. And whether the want or excess of power is objected by a party, or is apparent to the court, it must surcease its action or proceed extra-judicially.'***

And, in Burham v. Superior Court of California stated that coram non judice was a long standing principle of common law and that absence of lawful judicial authority invalidates judgments:

> *"The proposition that the judgment of a court lacking jurisdiction is void traces back to the English Year Books, see Bowser v. Collins, Y.B.Mich. 22 Edw. IV, f. 30, pl. 11, 145 Eng.Rep. 97 (Ex. Ch. 1482), and was made settled law by Lord Coke in Case of the Marshalsea, 10 Coke Rep. 68b, 77a, 77 Eng. Rep. 1027, 1041 (K.B. 1612). Traditionally that proposition was embodied in the phrase coram non judice,* ***"before a person not a judge"---meaning, in effect, that the proceeding in question was not a judicial proceeding because lawful judicial authority was not present, and could therefore not yield a judgment. American courts invalidated, or denied recognition to, judgments that violated this common-law principle long before the Fourteenth Amendment was adopted.'***
>
> (highlighted and underlined to supply emphasis)

26. The facts of the case titled *"Federation of Pakistan through Secretary Establishment, Islambad v. M. Y. Labib-ur-Rahman and others"* (2021 SCMR 1554), precisely are that the he was a civil servant, who stood retired after attaining the age of superannuation. During service he had been in litigation before the learned Federal Service Tribunal for his promotion. However, after his retirement he filed two constitutional petitions before the learned Lahore High Court seeking his proforma promotion, out of which first was remitted to the departmental authorities and the second was allowed without raising the question of maintainability. The Federation assailed the order of learned Lahore High Court before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the appeal of the Federation on merits, however, to the extent of the objection relating to the bar contained under Article 212 of the Constitution it was observed that ***"As a general principle, the framers of the Constitution while inserting the said provision have ousted the jurisdiction of other***

courts including the High Court under Article 199 of the Constitution. There are certain exceptions depending upon the facts and circumstances on case to case basis because of the reason that the law is not static and the same is growing day by day, therefore, it cannot be said with certainty that in all eventualities the service issues cannot be called in question in Constitutional jurisdiction before the High Court. The Constitutional jurisdiction is always considered as extraordinary, which is to be exercised in extraordinary circumstances if so warranted, hence, the Constitutional jurisdiction cannot be curtailed stricto sensu leaving some room for its application where it is so demanding for safe administration of justice and fair play."

27. An order passed by an authority lacking jurisdiction is a nullity, wholly void and non est in the eyes of law, having been rendered *coram non judice*. Such an order is not merely irregular, but incurably defective, as it emanates from a body that has no legal competence to adjudicate the matter. It offends the fundamental principles of natural justice and the rule of law, which are enshrined in the Constitution. In such cases, the availability of alternate remedies becomes irrelevant, as the defect strikes at the very root of the authority's power to act. The High Court, under Article 199 of the Constitution, not only has the jurisdiction but the constitutional duty to intervene and nullify such patently unlawful orders. The exercise of writ jurisdiction in these circumstances is not discretionary but imperative, to prevent perpetuation of illegality, arbitrariness, and miscarriage of justice. It is well-established in the jurisprudence of the superior courts of Pakistan that where an order is passed without jurisdiction, it is void ab initio and can be struck down at any stage as it has no legal existence.

iv. Reason for assuming jurisdiction in the instant case.

28. As stated above, the only reason that this Court took cognizance of the matter under Article 199 of the Constitution is the breakdown of the applicable legal system as the erstwhile Tribunal has set aside the notification of reconstitution of the reconstituted Tribunal, leaving the petitioners remediless. The word remediless is used because the erstwhile Tribunal stands reconstituted vide the Notification, dated 18.03.2025, whereas, it itself took *suo motu* notice of its reconstitution and through the impugned judgment declared such reconstitution as illegal and consequently, Notification dated 18.03.2025 was set-aside. The erstwhile Tribunal has expressed its view through the impugned judgment that it still exists, whereas, the reconstituted Tribunal deriving authority from the Notification, dated 18.03.2025 may take cognizance of the matters coming before it. For the petitioner, at the moment, virtually no Tribunal exists. Furthermore, it is within the domain of this Court to resolve a potential conflict between statutory forums by interpreting the applicable law. This Court would, therefore, confine the scope of instant petition and adjudicate the matter to an extent so as to enable the petitioners to pursue the remedy of review under section 7 of the 2016-Act.

v. Questions framed while admitting the writ petition

29. This Court while admitting the petition to regular hearing had framed the following questions for consideration.-

i. Whether the petitioners were party to the judicial service appeal and whether they have been condemned unheard?
ii. Whether the learned Tribunal is vested with power to proceed *suo motu*?

iii. Whether the learned Tribunal travelled beyond the scope of section 6(1) of the 2016-Act?
iv. Whether the learned Tribunal was vested with powers to set-aside Notification dated 18.03.2025 issued by the President?
v. Whether the impugned order was passed by a tribunal duly constituted under section 3 of the 2016-Act?
vi. Whether the rights to be dealt with in accordance with law and due process guaranteed under Articles 4 and 10A of the Constitution, include the right of adjudication of rights through validly constituted forums/tribunals?
vii. Whether the learned Tribunal while dealing with a judicial service appeal can act as a High Court?
viii. Whether the learned Tribunal was justified in recording observations in the impugned order regarding the efficacy of remedies of review provided under section 7 of the 2016-Act and that of a writ under Article 199 of the Constitution?
ix. Whether the learned Tribunal is deemed as tribunal constituted under Article 212 of the Constitution?
x. Whether the learned Tribunal is vested with power to adjudicate the question relating to vires of law?
xi. Whether the instant petition is maintainable?

vi. Composite question.

30. Since some of the questions framed above, would require touching merits of the case and keeping in view the jurisdiction of this Court in the instant case, a composite question arises whether the learned Tribunal could have enlarged the scope of its powers under the 2016-Act to a *suo motu* adjudication on a notification under which the same forum has been reconstituted? In order to resolve this question, the provisions of the 2016-Act are required to be examined.

vii. The 2016-Act

31. The 2016-Act has been enacted with the object of providing for the establishment of the Tribunal and for matters connected therewith or ancillary thereto and came into force on 29.01.2016. Sub section (1) of section 3 provides that the President may, subject to subsection (3), by notification in the official Gazette, establish a Service Tribunal for the members of the subordinate judiciary of the Islamabad Capital Territory. Sub section (2) of section 3 provides that the Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of the members of subordinate judiciary including disciplinary matters. Sub section (3) of section 3 provides that the Tribunal shall consist of three judges of the Islamabad High Court nominated by the Chief Justice, the most senior of whom shall be the Chairman. This sub section is followed by a proviso which says that a Judge against whose orders an appeal is preferred shall not be member of the Tribunal. Section 5 makes the final order passed by a departmental authority, whether original or appellate, in respect of any of the terms and conditions including disciplinary matters of the aggrieved member of subordinate judiciary, a precondition to file an appeal before the Tribunal. The period of limitation for filing the appeal is thirty days from the date of communication of order or within six months of the establishment of the Tribunal, whichever is later. Section 6 deals with powers of the Tribunal. Sub section (1) of section 6 provides that the Tribunal may, on appeal, confirm, set aside, vary or modify the order appealed against. Sub section (2) of section 6 provides that the Tribunal, for the purposes of deciding any appeal, be deemed to be a civil court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908. The Tribunal is empowered under section 7 to review its final order, on a

review petition filed by an aggrieved party within thirty days within the prescribed period of limitation upon discovery of new and important of evidence, on account of mistake or error apparent on the fact of record and for any other sufficient cause. Sub section (3) of section 7 empowers the Tribunal to confirm, set aside, vary or modify the judgment or order under review.

32. A combined reading of the 2016-Act would suggest that the jurisdiction of the Tribunal is circumscribed by conditions *(i)* *"filing of an appeal"* by *(ii)* an "aggrieved member" of the Islamabad Judicial Service, *(iii)* against a *"final order"* of the departmental authority *(iv)* in respect of the *"terms and conditions including disciplinary matters"* of his service [*section 5 of 2016-Act*]. Similarly, the power of the Tribunal is limited to *(a)* confirm, *(b)* set aside, *(c)* vary or *(d)* modify the *"order appealed against"* [*section 6 of 2016-Act*].

viii. Suo motu exercise of jurisdiction by the learned Tribunal

33. Article 175(2) of the Constitution provides that no court shall have any jurisdiction save as is or may be conferred on it by the Constitution or under any law. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it cannot be conferred with the consent of the parties. In the case titled *"Federal Government Employees Housing Authority through Director General, Islamabad v. Ednan Syed and others"* (PLD 2025 SC 11) the Hon'ble Supreme Court held that *"It is constitutionally impermissible for the courts to expand and enlarge their jurisdictional domain, which is neither allowed by the Constitution nor by the law"*. The 2016-Act does not empower the learned Tribunal to take suo motu notice of any matter not under challenge before it. For the learned Tribunal to take cognizance of a matter, it is mandatory that a member of the

Islamabad Judicial Service approaches the forum through an appeal, aggrieved by a final order of the authority relating to his terms and conditions of service, including disciplinary matters. Unless the learned Tribunal is expressly vested with *suo motu* powers under the statute, it cannot exercise *suo motu* jurisdiction.

34. It is mentioned in the impugned order that the appeal was heard on 13.03.2025 and the judgment was reserved. The impugned order was announced on 21.03.2025 setting aside the Notification dated 18.03.2025. Between 13.03.2025 and 21.03.2023 no hearing took place before the Tribunal. There is nothing on record to show that Notification, dated 18.03.2025 was impugned before the Tribunal through an appeal by any member of the Islamabad Judicial Service treating the same as a final order of the departmental authority passed in violation of the terms and conditions of service protected under the 2011-Rules.

35. There is no cavil with the proposition that the Tribunal can consider the vires of service rules governing the terms and conditions of service, if assailed before it by an aggrieved employee, in a case that the rules under challenged have been altered to the disadvantage of such an employee. In such an eventuality the rules under challenge are considered as a final order passed by the departmental authority and accordingly adjudicated upon by the Tribunal. Reliance is placed on the cases titled *"Iqan Ahmed Khurram v. Government of Pakistan and others"* (PLD 1980 SC 153) and *"I.A. Shirwani and others v. Government of Pakistan and others"* (1991 SCMR 1041). In *Iqan Ahmed Khurram's* case, the aggrieved persons had filed a constitutional petition before the High Court assailing amendment in the service rules which amendment, as per the petitioners had adversely affected their terms and conditions of service. The High Court refused

to exercise jurisdiction in view of the bar contained under Article 212 of the Constitution. The Hon'ble Supreme Court upheld the order passed by the High Court by observing that ***"We may here point out that a distinction has to be drawn between a case where the eligibility of an officer as to his fitness to hold a particular post or to be promoted to a higher grade under the Rules applicable to him and the Rules which by themselves alter the method of recruitment and promotion. In the former case, proviso (b) to section 4 of the Service Tribunals Act, 1973 will be applicable and no appeal will lie to the Service Tribunal. However, this will not be so in the latter case as the Rules per force alter the method of recruitment and promotion in supersession of the existing Rules which provide a cause of action for the grievance qua the alteration of terms and conditions of service and hence and appeal will lie to the Service Tribunal"***. In *I.A. Shirwani's* case supra, the petitioners were civil servants (*one had retired as Joint Secretary and the other as Additional Judge of the High Court, who stood elevated after serving in the Judicial Branch of the Civil Service of Pakistan*). They had filed a petition under Article 184(3) of the Constitution before the Hon'ble Supreme Court on the ground of discrimination in payment of enhanced pension in violation of Article 25 of the Constitution. The Hon'ble Supreme Court held that petition maintainable as it was filed purely on the ground of discrimination and was subsequently allowed. In the referred judgment, it was observed that ***"We are inclined to hold that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of subsection (1) of section 4 of the Act in order to file an appeal before the Service Tribunal".***

36. It is thus clear from the above, that power of the Tribunal to examine the vires of the service rules is circumscribed by conditions *(i)* the same must have been altered to the detriment of the aggrieved member of the Islamabad Judicial Service and *(ii)* the same have been impugned in an appeal before the learned Tribunal treating the same as a final order of the departmental authority. The Tribunal is not empowered with the general jurisdiction to examine the vires of 'any law' over which it has not been expressly empowered by the governing statute.

37. Furthermore, rule 15 of the Islamabad Subordinate Judiciary Service Tribunal Rules, 2017 bars taking additional grounds or objections, except with the leave of the Tribunal. Similarly, in terms of Rule 19, the learned Tribunal is empowered to add any person as respondent, who has not been impleaded in the appeal as such, but interested in the outcome of the appeal, for which purpose the matter is to be adjourned to a further day with direction to implead such interested person to be impleaded. In the instant case, neither any additional ground or objection was taken with respect to the judicial officers serving on deputation nor leave was granted with respect thereto, nor the petitioners and the borrowing and lending departments were ordered to be impleaded as respondents.

38. The 2016-Act does not empower the learned Tribunal to exercise suo motu jurisdiction and decide any question not assailed before it. The legislature in its wisdom has consciously used the words "aggrieved", "final order", "passed by a departmental authority" and "prefer an appeal" in section 5 of the 2016-Act. These are the preconditions to enable the Tribunal to exercise its jurisdiction under the Act ibid. It is thus implied therein that whenever there is adjudication by the Tribunal, the departmental authority must

have reconsidered its action on a representation of the aggrieved person and also have passed a final order giving a cause of action to such aggrieved person to invoke the jurisdiction of the learned Tribunal. This, however, is not the case where vires of service rules are under challenge considering the same as final order of the departmental authority. The Tribunal then reexamines the whole case on the basis of facts and circumstances that were before the departmental authority and on conclusion of proceedings passes a binding order. The scheme of the 2016-Act does not allow any fresh cause to be agitated directly before the learned Tribunal without first affording an opportunity to the departmental authority to reconsider its action by means of a representation. The learned Tribunal thus lacks the jurisdiction to adjudicate fresh cause not agitated before the departmental authority earlier. Even otherwise the learned Tribunal is not empowered under the 2016-Act to exercise suo motu jurisdiction. The suo motu exercise of jurisdiction by way of determination of the validity/legality of the notification, dated 18.03.2025, was thus not in accordance with the provisions of 2016-Act.

ix. Determining the vires of law by the forum under which it has been established

39. In the above context the judgment of the *Hon'ble Supreme Court in the case of Pir Sabir Shah v. Shad Muhammad Khan, Member Provincial Assembly, N.W.F.P. and another* reported as PLD 1995 SC 66 is relevant. Briefly, one of the question before the Hon'ble Supreme Court in the referred case was relating to the power of Election Commission to adjudicate upon vires of section 8-B of the Political Parties Act, 1962 being in conflict of Article 63 of the Constitution (*as it was then*). It is imperative to highlight that it was argued before the Election Commission that it is competent to determine the vires of section 8-B which dealt with the

disqualification of Member of the National Assembly or Provincial Assemblies on the ground of defection or withdrawal from the political party, however, it refused to exercise jurisdiction in view of the law laid down by the Hon'ble Supreme Court in the case of *Humayun Saifullah Khan v. Federation of Pakistan through Secretary Ministry of Justice and Parliamentary Affairs, Islamabad and 2 others* reported as PLD 1990 SC 599 wherein it was held that the Election Commission had no power to adjudicate the vires of legislative instrument under which the same forum was created and that the High Court was the competent forum for that purpose. The Hon'ble Supreme Court endorsed the view taken by the Election Commission and on conclusion of proceedings itself declared the said provision as ultra vires to the extent of forum only. It was also observed that the High Court is the competent forum where vires of section 8-B of the Act *ibid* can be challenged on other grounds. One of the Hon'ble Members of the Bench of the Hon'ble Supreme Court in *Pir Sabir Shah's* case (*Mr Justice Ajmal Mian, J.*) recorded his own reasons, although a minority view, but are of utmost significance in the context of instance case, wherein it was observed that *"There is distinction between a provision of a statute, which creates a Special Tribunal and a provision of such statute which specifies disputes/matters over which such a Special Tribunal will have jurisdiction.* ***The Special Tribunal so created cannot decide that the provision under which it has been created is ultra vires the Constitution or that its appointment/constitution is defective or invalid****. But, it will have jurisdiction to decide the questions, whether it has jurisdiction over the matter brought before it in terms of the relevant provisions of the statutes or whether the parties against whom the case has been fled are amenable to its jurisdiction"*. In the referred case it was argued before the Hon'ble Supreme Court that under section 5 of the Balochistan

Service Tribunals Act, 1974, the Service Tribunal is deemed as civil court under the Civil Procedure Code for the purpose of the deciding any appeal before it, it will have jurisdiction as any other Civil Court or Tribunal to examine, whether or not a law is void by reason of its conflict with the Fundamental Rights, however, this argument was repelled by observing that the referred argument does not seem to be in consonance with well-established jurisprudential distinction between a Special Tribunal created under a special law and a Civil Court having plenary jurisdiction and ***"Even if I were to accept above contention, a Service Tribunal cannot examine the vires of the relevant provision of the statute under which it has been created".***

x. Exercise of "quo warranto" jurisdiction by the learned Tribunal.

40. There is distinction between examination of vires of service rules, granting relief to an aggrieved member of Islamabad Judicial Service under the relevant law/rules and issuing a writ of quo warranto. The learned Tribunal is creation of the 2016-Act which empowers it to grant the relief to the aggrieved members of Islamabad Judicial Service on an appeal, arising out of a final order of the departmental authority in relation to terms and conditions of service including disciplinary matters. Such power can thus be exercised within the confines and parameters laid down by 2016-Act. In the instant case, besides the 2016-Act, the learned Tribunal was empowered to examine the vires of the 2011-Rules or any other instrument adversely affecting the terms and conditions of the members of Islamabad Judicial Service, that too if assailed before it treating the same as a final order of the departmental authority. This is the essence

of the judgments of the Hon'ble Supreme Court in *I.A. Shirwani* and *Iqan Ahmed Khurram's*, cases supra.

41. The writ of quo warranto is in the nature of setting forth an information before the High Court against a person who claimed and usurped an office, franchise or liberty. The rationality of the writ of quo warranto is to settle the legality of the holder of a statutory or Constitutional office and decide whether he was holding such public office in accordance with law or against the law.

42. Article 199(1)(b)(ii) of the Constitution provides that subject to the Constitution a High Court may if it is satisfied that no other adequate remedy is provided by law, on the application of any person, make an order 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. The power to issue a writ of quo warranto is thus vested in the "High Court" by virtue of the referred provision of the Constitution. Under Article 199(1)(b)(ii) of the Constitution, it is the High Court defined under Article 192 of the Constitution for the Islamabad Capital Territory read with the IHC Act which is empowered to issue a writ of quo warranto and not the Tribunal appointed under the 2016-Act. The Constitution does not envisage any other entity created under a Federal or Provincial law, to share the power vested in a High Court under Article 199(1)(b)(ii) of the Constitution. The learned Chairman and Members of the reconstituted Tribunal were neither members of the Islamabad Judicial Service nor were subject to the 2011-Rules, hence not amenable to the jurisdiction of the Tribunal. While passing of an order of setting aside notification, dated 18.03.2025, the learned Tribunal wrongly exercised the quo warranto jurisdiction of the High Court, which is exclusive in nature and

not bestowed upon the learned Tribunal by the Constitution. The observations and declarations passed by the erstwhile Tribunal in relation to notification, dated 18.03.2025, are therefore, without jurisdiction and of no legal effect.

xi. Principles of fair trial, due process and order passed without affording an opportunity of hearing

43. There is yet another aspect, that the notification dated 18.03.2025 was set aside without affording an opportunity of hearing to the parties concerned, as it was issued on 18.03.2025 after the arguments were heard and judgment was reserved on 13.03.2025 by the learned Tribunal. In this regard the case of *"Federal Government Employees Housing Authority through Director General, Islamabad v. Ednan Syed and others"* (PLD 2025 SC 11) is relevant. Concisely the facts in *Ednan Syed's* case, supra, were that a Division Bench of this Court heard arguments in an Intra Court Appeal on 22.11.2021 and the judgment was reserved. On the same day i.e. 22.11.2021, the learned Attorney General submitted before the Court, a Revised Policy for allotment of plots, dated 02.11.2021. The Division Bench of this Court while dismissing the Intra Court Appeal, held the Revised Policy to be illegal, unconstitutional, void and without jurisdiction, being in derogation of public interest and violative of the constitutionally guaranteed rights of the people at large. In appeal, it was argued before the Hon'ble Supreme Court that as the Revised Policy was submitted before the Division Bench of this Court on the day when the judgment was reserved, neither comments nor reply from the Federal Government or the Federal Government Employees Housing Authority were sought nor the parties were afforded an opportunity of hearing. The Hon'ble Supreme Court while remanding the matter to this Court observed that the High Courts do not have *suo motu* jurisdiction and as such the constitutional scheme never intended to confer such powers

on the High Courts. It was further observed that *"Article 10A of the Constitution requires that everyone is entitled to a fair trial and due process, which includes the basic right to be heard. The principle of 'audi alteram partem' is one of the foundational principles of natural justice. It necessitates the requirement of being heard so that the judicial order reflects the contention of every party before the court. To fulfill the requirements of being heard, it is settled that the relevant party must be issued first a notice and then be allowed a hearing. These two (notice and hearing) are basic pre-requisites, which satisfy the test of being heard as well as fair trial and due process within the ambit of Article 10A of the Constitution".* In the case titled *"Muhammad Yousaf v. Province of Sindh" (2024 SCMR 1689)* it has been held that *"This fundamental principle is consistently and squarely applicable to the proceedings, whether judicial, quasi-judicial or administrative, except where the law specifically and unambiguously excludes its application in the peculiar facts and circumstances of the case."* Similarly, this Court in the case titled *"Mohsin Shah v. Federation of Pakistan"* (2023 PLC (CS) 1467), has held that *"Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 provides a right to fair trial and due process at all forums, which is the fundamental right, as such, any deviation from such principle conclusively vitiates the proceedings, if any."*

44. In the case titled *"New Jubilee Insurance Company v. National Bank of Pakistan" (PLD 1999 SC 1126)* the Hon'ble Supreme Court held that the Right to due process requires that a person shall have notice of proceedings which affect his rights; such person must be given a reasonable opportunity to defend himself; and that tribunal/forum must possess competent jurisdiction. Similarly, in the case titled *"Ishtiaq Ahmed v. Hon'ble Competent Authority" (2016 SCMR 943)* the term "due process" was defined as follows:-

> *"The right of due process is not new to our jurisprudence and finds expression in the provisions of Article 4 of the Constitution. This right has been interpreted by this Court in several pronouncements. The case of New Jubilee Insurance Company v. National Bank of Pakistan (PLD 1999 SC 1126) summarizes the features of that right very aptly. It is held that the right of due process requires that a person shall have notice of proceedings which affect his rights; such person must be given a reasonable opportunity to defend himself; the adjudicatory tribunal or forum must be so constituted as to convey a reasonable assurance of its impartiality and that such tribunal or forum must possess competent jurisdiction."*

45. In the instant case, the Judicial Service Appeal was heard and reserved on 13.03.2025, whereas, the Tribunal was reconstituted on 18.03.2025 and the short order was announced on 21.03.2025, whereas the detailed reasons were released on 29.04.2025. Between 13.03.2025 and 21.03.2025, neither notice was issued to the parties nor was the matter listed for hearing. Even if for the sake of argument it is assumed that the learned Tribunal had *suo motu* taken up the matter relating to notification, dated 18.03.2025, no opportunity was afforded to the Federation, the President and Islamabad High Court to assist the learned Tribunal and defend their case. It may not be out of place to mention here that the 2011-Rules were framed under Article 203 of the Constitution read with section 6 of the IHC Act, thus the question whether section 6 of the IHC Act was the only controlling provision as compared to Article 203 of the Constitution, required interpretation of constitutional law where it was mandatory to issue notice to the learned Attorney General under Order XXVIIA of the Code of Civil Procedure, 1908, which requirement was not complied with before pronouncement of the impugned judgment. Furthermore, the petitioners before this Court were never issued any notice nor afforded an opportunity of hearing. As

the parties were condemned unheard, the right to fair trial and due process guaranteed under Article 10A of the Constitution stand violated.

xii. Redundancy of section 7 of the 2016-Act

46. The erstwhile Tribunal has observed in the impugned judgment that power of review in terms of section 7 of the 2016-Act is very limited and thus suspended the same for a period of 30 days enabling the aggrieved party to avail the remedy of appeal before the Supreme Court. The fundamental principle of judicial propriety requires that a judicial forum confines itself strictly to adjudicating the matter before it based on the merits, without offering speculative comments on the effectiveness, availability, or likelihood of success of future remedies. These observations have virtually rendered the provisions of section 7 of the 2016-Act as redundant.

47. In terms of section 7 of the 2016 Act, the learned Tribunal is empowered to review its final order, on a review petition filed by an aggrieved party within thirty days within the prescribed period of limitation upon discovery of new and important of evidence, on account of mistake or error apparent on the face of record and for any other sufficient cause. Sub section (3) of section 7 empowers the Tribunal to confirm, set aside, vary or modify the judgment or order under review. The power of review of the learned Tribunal are wide enough that it can set aside its final order on account of mistake or error apparent on the face of record and "for any other sufficient cause", besides upon discovery of new and important matter or evidence which, after exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him at the time when the order was passed.

48. It is settled law that redundancy cannot be attributed to the legislature. Reliance is placed on *"Haji Tooti and another v. Federal Board of Revenue, Islamabad and others"* (2023 PTD 1617). The Hon'ble Supreme Court in the case titled *"Collector of Sales Tax and Central Excise (Enforcement) and another v. Messrs Mega Tech (Pvt.) Ltd."* (2005 SCMR 1166) has observed that *"every word used by the Legislature must be given its true meaning and the provisions construed together in a harmonious manner. It would not be legal and proper to apply one provision of law in isolation from the other provision as no surplusages or redundancy can be attributed to the legislative organ of the State".* The learned Tribunal was not justified in recording observations regarding the efficacy of the remedy of review under Section 7 of 2016-Act.

CONCLUSION

49. The above discussion leads this Court to the following conclusions.-

a) The issuance of the writ of quo warranto is the jurisdiction of the High Court under Article 199(1)(b)(ii) of the Constitution, whereas, the jurisdiction of the learned Tribunal is controlled by section 6 of the 2016 Act, which power is limited to confirm, set aside, vary or modify the order appealed against. The erstwhile Tribunal was not empowered to issue a writ in the nature quo warranto to the Chairman and Members of the reconstituted Tribunal, that too without observing the principles of fair trial and due process.

b) The inherent powers of the learned Tribunal are those which have already been codified by the Legislature in the 2016-Act. Similarly, the 2016-Act does not empower the learned Tribunal to assume *suo motu* jurisdiction over matters not in appeal before it.

c) The impugned order, dated 21.03.2025 and detail reasons, passed by the erstwhile Tribunal is, therefore, set-aside only to the extent of setting aside notification dated 18.03.2025.

d) Keeping in view the alternate and efficacious remedy of review provided under section 7 of the 2016-Act, this Court in writ jurisdiction cannot adjudicate the merits of the case, which is within the competence and jurisdiction of the learned Tribunal. Therefore, while placing reliance on the case titled *"Muhammad Akram v. DCO Rahim Yar Khan and others"* (2017 SCMR 56), the instant petition to the extent of questions relating to merits is converted into a review petition under section 7 of the 2016-Act which shall be deemed to be pending before the learned Tribunal. The learned Tribunal may proceed with the matter in accordance with law.

e) Office shall transmit this petition to the learned Tribunal in original after retaining copies thereof for further proceedings.

50. Before parting it is observed that this Court interfered with the matter only to the extent of a question of law relating to the very constitution of the learned Tribunal and the same shall not be construed as opening an avenue of assailing the orders of the said forum on any other ground in writ jurisdiction in future. It is also pertinent to refer to the observations of the Hon'ble Supreme Court in the case titled *"Rana Ameer Raza and another v. Dr Minhaj Ahmed Khan and another"* (2012 SCMR 6) that *"Societies grow and nations progress by strict adherence to rule of law. Judges have nothing to do with shades of public opinion which holders of public offices may represent or with passions of the day which sway public opinion. Task of the Judges is to tenaciously and fiercely uphold and implement the Constitution and the law."*

51. Petition stands allowed in the above terms.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on *29.05.2025*.

JUDGE

Luqman Khan/*