Form No: HCJD/C-121

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No.2402 of 2026

Tahir Hussain and 2 others

Versus

Federation of Pakistan through Secretary, Ministry of Housing & Works and others

PETITIONER BY:	Malik Jawad Khalid, Advocate
RESPONDENTS BY:	Mr. Fahad Khan Tareen, Assistant Attorney General. Hafiz Ahsaan Ahmed Khokhar, Advocate for PIDCL.
DATE OF HEARING:	08.10.2026

AYYAZ SHAUKAT, J:- Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the **"Constitution"**), the petitioners, three former regular employees of National Construction Limited (the **"NCL"**), seek directions to the respondents to release their withheld terminal dues, as promised in their respective termination letters. They also pray that, until such dues are paid, the assets of NCL may not be transferred to Pakistan Infrastructure Development Company Limited (the **"PIDCL"**) or any other entity. Lastly, they seek directions to the respondents to consider their re-employment or absorption in PIDCL or any other organisation functioning under the Ministry of Housing & Works, on the same footing as the top management and other staff of NCL.

2. The facts, briefly stated, are that NCL is a public limited company wholly owned by the Government of Pakistan and functioning under the Ministry of Housing & Works. Petitioner No.1 joined NCL in 2007 and last served as Manager (Legal/Coordination) and Private Secretary to the Managing Director. Petitioner No.2 joined NCL in 1995 and last served as Manager (EDP/Taxation). Petitioner No.3 joined NCL in 1987 and last served as Assistant Private Secretary. NCL had remained without fresh work for

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several years. Its future formed the subject matter of W.P. No.1543 of 2022 and connected petitions, which this Court disposed of on 08.12.2022 by directing the Secretaries of the Ministry of Housing & Works and the Cabinet Division to place the matter before the Federal Government "to decide the fate of NCL as well as its employees and assets".

3. On 20.06.2024, the Cabinet Committee on State-Owned Enterprises decided that NCL would complete its ongoing projects, would not undertake any new project and would thereafter be wound up. The decision was communicated by the Ministry on 29.07.2024. On 25.11.2024, the HR Committee of NCL's Board of Directors decided that 21 of its 49 regular employees, including the petitioners, be laid off. By notices dated 12.12.2024, issued in exercise of the powers conferred under clause 30(b) of the State-Owned Enterprises Ownership and Management Policy, 2023, the services of the petitioners were terminated with effect from 14.01.2025. Letters dated 14.01.2025, issued to petitioners No.1 and 2, enumerated their final dues as comprising encashment of accumulated earned leave, provident fund/gratuity, LFA/R&R and salary up to 14.01.2025. Paragraph 3 of each letter further stipulated that "30 days basic salary per completed year of service under provisions of Clause-53 of NC's Service Rules will be payable subject to winding-up/deregulation of NCL in SECP and on availability of funds".

4. Meanwhile, some employees of NCL had filed W.P. No.1318 of 2024 in respect of the non-payment of their salaries. On 24.02.2025, that petition was disposed of on the strength of a report of the respondents, with the observation that "pending salaries as well as other dues of the petitioners as well as of other employees of NCL will be paid after auction process". NCL has since been amalgamated with PIDCL. The petitioners aver that their dues remain unpaid, that the top management of NCL has been absorbed in PIDCL while they have been left out, and that a representation of the terminated employees addressed to the Prime Minister on 06.03.2026 elicited no response.

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5. Learned counsel for the petitioners contends that the petitioners were regular employees with long and clean service; that the terminations were made on a pick-and-choose basis, without reference to length of service, qualifications or experience; that the Managing Director of NCL and the Chief Executive Officer of PIDCL are the same person; and that the remaining officers and staff of NCL have been placed in PIDCL while the petitioners have been denied the same treatment, in violation of Articles 4 and 25 of the Constitution. He further contends that NCL owns valuable assets, including NC House and a property in Mauve Area, G-9/1, Islamabad, which is rented out to the National Highway Authority for about Rs.3.5 million per month, along with a fleet of vehicles. According to him, the dues of the petitioners, namely Rs.3,675,627/-, Rs.5,175,519/- and Rs.3,929,936/- respectively, could easily have been paid from these assets, but the respondents have disregarded the orders of this Court dated 08.12.2022 and 24.02.2025, and the petitioners, who are of advanced age and have no other source of income, have been left to suffer considerable hardship.

6. Conversely, learned counsel for respondent No.5/PIDCL contends that the petition is not maintainable. He submits that the grievance arising out of the cessation of service of NCL's employees has already been agitated in W.P. No.1318 of 2024, in a miscellaneous application filed therein, and before the National Industrial Relations Commission in Case No.4B(36)/2025, which was dismissed; and that the principles of finality, constructive res judicata and abuse of process are attracted. On merits, he submits that the terminations were the consequence of the Federal Government's decision to "wind up (through scheme of amalgamation under the provisions of SECP) NCL"; that the HR Committee assessed every employee on the basis of qualification, date of superannuation and suitability-cum-fitness; and that its recommendations were approved by the Board of Directors. He further submits that the Scheme of Amalgamation did not provide for automatic transfer of NCL's employees; that the employees retained by NCL were separately assessed by the HR Committee of PIDCL and approved by its Board; and that the Scheme was examined by the concerned Ministries and approved by the Federal Cabinet.

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The petitioners, he submits, had ceased to be employees before the Scheme was approved, and have no vested right to absorption. As to the dues, he submits that the petitioners completed their clearance formalities and received about 90% of their terminal dues, so that the principles of acquiescence and estoppel apply. He, however, states that if any amount is found to remain payable upon reconciliation of the record, it shall be dealt with in accordance with the applicable rules. The payments made to the petitioners are reflected in the comments as follows:

Petitioner No.1 (Tahir Hussain)	Rs.3,184,709/-
Petitioner No.2 (Asif Saeed Dar)	Rs.4,019,322/-
Petitioner No.3 (Kokab Saleem)	Rs.1,936,876/-

7. I have heard learned counsel for the parties and perused the record with their assistance.

8. The petition raises two distinct claims. The first is for absorption in PIDCL or elsewhere. The second is for the unpaid balance of the terminal dues promised in the termination letters. The prayer concerning the assets of NCL is merely ancillary to the second. The two claims rest on different grounds and must be examined separately. Before doing so, it is necessary to advert to the legal status of NCL and of the rules that governed its employees, since the objection to maintainability turns upon them.

9. The service of the petitioners was governed by the National Construction (NC) (Service) Rules, 2023 (the **"NC Service Rules"**). The said Rules were published in the Gazette of Pakistan as S.R.O. 138(I)/2023 dated 08.02.2023. Their preamble, however, discloses their source. It records that NCL is "registered under Section 14 of the Companies Act 2017 (as unlisted company)" and that the rules are made "in pursuance of the Resolution of the Board of Directors i.e. the competent authority dated 13-12-2022". They do not purport to have been made under any statute, and the Companies Act, 2017 confers no power on a company to frame statutory rules for the service of its employees. Publication in the Gazette does not change the character of a document. The relevant test stands enunciated in *Shafique Ahmed Khan and*

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others v. NESCOM through Chairman, Islamabad and others (PLD 2016 SC 377). It was applied by the Hon'ble Supreme Court in *Muhammad Zaman and others v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others* (2017 SCMR 571) in the following terms:

> *"the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory."*

Applying this test, the NC Service Rules are instructions for the internal management of a company, framed by its own Board. There is no parent statute to which they are complementary. They are not statutory rules. The State-Owned Enterprises Ownership and Management Policy, 2023, under which the termination notices were issued, does not alter this position. Though prepared in pursuance of section 4(1) of the State-Owned Enterprises (Governance and Operations) Act, 2023, it does not constitute rules made under section 34 of that Act, and its clause 30 lays down only "guidelines" which State-owned enterprises are to "consider" while developing their HR policies.

10. The legal consequence of this position is well settled. In Pakistan *International Airline Corporation and others v. Tanweer-ur-Rehman and others* (PLD 2010 SC 676), the Hon'ble Supreme Court held:

> *"But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction."*

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The same view was adopted in *Pakistan Telecommunication Co. Ltd. through Chairman v. Iqbal Nasir and others* (PLD 2011 SC 132), in respect of the employees of a company whose services were not governed by statutory rules, as also in *Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed* (2013 SCMR 1707), where a five-member Bench, while summarising the law, held that where conditions of service are not regulated by rules framed under a statute but only by rules or instructions issued for internal use, any violation thereof cannot normally be enforced through writ jurisdiction. The principle was reiterated in *General Manager, Punjab Provincial Cooperative Bank Ltd. and others v. Ghulam Mustafa and others* (2024 SCMR 1458), where the august Supreme Court observed:

> *"Obviously, under the relationship of master and servant, the only available or applicable remedy is the filing of a civil suit in the civil court against actions detrimental to the interest of any such employee."*

11. The non-statutory character of the service rules does not, however, determine whether NCL is amenable to constitutional jurisdiction in respect of its public functions. NCL is wholly owned by the Government of Pakistan. Its officers were promoted pursuant to notifications of the Ministry of Housing & Works. Its pay scales were revised with the approval of the Finance Division. The HR Committee that laid off the petitioners was chaired by the Senior Joint Secretary of the Ministry. The decision to close NCL was taken by a Cabinet Committee, and the Scheme by which its undertaking passed to PIDCL was approved by the Federal Cabinet. PIDCL, too, bears the words "Ministry of Housing & Works, Government of Pakistan" on its letterhead. In *Abdul Wahab and others v. HBL and others* (2013 SCMR 1383), the Hon'ble Supreme Court identified "the extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof" as the most relevant factors for deciding whether a body is a "person" within the meaning of Article 199(5) of the Constitution. The record reflects both State ownership and governmental control in the case of NCL. NCL, and PIDCL as its successor, are persons performing functions in connection with the affairs of the Federation. Their status, however, is one question and the nature of the rules

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governing the claim is another. As held in Tanweer-ur-Rehman (supra), a writ does not lie to enforce non-statutory terms of service merely because the employer is such a person. Against this backdrop, the two claims of the petitioners may now be examined.

12. The claim for absorption is untenable. The petitioners do not challenge their terminations in this petition. Those terminations were a consequence of the decision of the Federal Government to close NCL. According to the respondents, the notices were assailed through a miscellaneous application in W.P. No.1318 of 2024, but that petition was disposed of without any relief against them, and the petitioners did not pursue the matter any further. They completed their clearance formalities and received a substantial part of their dues. What they now seek is employment in a different company. They have not pointed to any statute, rule, and term of the Scheme of Amalgamation or contract conferring upon a terminated employee of NCL a right to be absorbed in PIDCL. The order of this Court dated 08.12.2022 does not confer such a right. It required the Federal Government to decide the fate of NCL and its employees and merely expected it to accommodate them "as per their requirement and suitability". The matter was thus left to the Federal Government, which has since taken its decision. An expectation expressed in such terms cannot be converted into an enforceable right to appointment in another organisation. The expectation expressed in the earlier order does not, by itself, confer an enforceable right to appointment or absorption.

13. The plea of discrimination does not advance the case of the petitioners either. Article 25 of the Constitution requires that persons similarly placed be treated alike. The petitioners and the employees absorbed in PIDCL were not similarly placed. The minutes of the HR Committee dated 25.11.2024 show that all 49 regular employees were considered "in light of his Qualification, Date of Superannuation and Suitability cum Fitness", keeping in view the minimum number of employees required till NCL was wound up. Twenty-one were laid off and twenty-eight were retained. The retained employees were in service when the Scheme of Amalgamation was approved, and even then they were not transferred as a matter of course. According to the comments, they

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were assessed afresh by the HR Committee of PIDCL and approved by its Board. By then, the petitioners had already ceased to be employees. The allegation of arbitrary selection is not supported by material identifying an employee similarly placed to the petitioners who received preferential treatment. The petitioners have not named a single retained employee who was junior to them, less qualified or otherwise less suited for retention. The fact that the Managing Director of NCL also heads PIDCL does not, by itself, establish mala fides.

14. There is, moreover, a further difficulty. A direction to absorb the petitioners would require this Court to compel a company to employ particular persons, against its own assessment of its needs and on the strength of non-statutory rules. That would run contrary to the principle settled in Tanweer-ur-Rehman (supra). It would also draw this Court into the restructuring of State-owned enterprises, which is a matter of executive policy. On this aspect, the august Supreme Court in *Wattan Party through President v. Federation of Pakistan and others* (PLD 2006 SC 697) held:

> *"Thus it is held that, in exercise of the power of judicial review, the courts normally will not interfere in pure policy matters (unless the policy itself is shown to be against Constitution and the law) nor impose its own opinion in the matter."*

The petitioners have not shown that the decision to close NCL, or the manner in which its workforce was reduced, offends the Constitution or any law. The prayer for re-employment or absorption is, therefore, declined. It is, however, observed that the record reflects that PIDCL has been advertising posts. If the petitioners apply for any such post, it is expected that their applications will be considered on merit, and their long service with NCL will be kept in view.

15. The prayer to restrain the transfer of NCL's assets to PIDCL has been rendered infructuous. On the respondents' own showing, the Scheme of Amalgamation has been approved by the Federal Cabinet and finalised, and the undertaking of NCL has passed to PIDCL. The transfer cannot now be restrained. This does not, however, leave the petitioners remediless. Section 282 of the Companies Act, 2017 provides for the transfer of the property as

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well as the liabilities of the transferor company to the transferee company under an amalgamation. A transferee company takes the assets cum onere, that is to say, along with the liabilities attached to them. PIDCL, having taken over the undertaking and assets of NCL, stands answerable for its liabilities, including the dues of its former employees. PIDCL has not suggested otherwise. On the contrary, it has itself placed on record the payments made to the petitioners and offered reconciliation of the balance.

16. This brings this Court to the claim for terminal dues and the objection that it must also be pursued before a civil court. The objection would have been well-founded if the petitioners were asking this Court to determine a disputed entitlement under non-statutory rules. In *PIA Corporation v. Syed Suleman Alam Rizvi and others* (2015 SCMR 1545), retired employees of a corporation having non-statutory service rules approached the High Court about nine years after their retirement for encashment of leave and increments. The Hon'ble Supreme Court held the petition not maintainable, noted their indolence, set aside the writ and left them to a civil suit (paras 8 and 9). That case did not involve a liability which the employer had itself quantified, promised in writing and acknowledged before the Court. The present claim is of a different kind. The respondents acknowledge that any balance found payable upon reconciliation is to be dealt with in accordance with the applicable rules. The claim rests on the respondents' own acts, which may be considered in turn.

17. First, the letters dated 14.01.2025 were issued by NCL itself. They listed the dues of each petitioner and expressly promised, in addition, payment at the rate of 30 days' basic salary per completed year of service under clause 53 of the NC Service Rules. Second, the HR Committee which laid off the petitioners decided in the same meeting, on 25.11.2024, that NCL's assets be disposed of to generate revenue and that "preference would be given to 21 No. lay-off employee's terminal benefits i/c provisions of Clause-53 of NC's Service Rules". It further decided that the "proposed auction receipts and payment to be received from projects will be utilized for payment of Ex-employees liability". Third, the report produced before this Court in W.P.

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No.1318 of 2024 stated that the Board of Directors of NCL, in its 94th meeting held on 12.11.2024, had directed that the process of asset disposal be initiated immediately and that the auction receipts be utilised exclusively for the payment of employee liabilities. This Court disposed of that petition on the strength of that report, recording that the dues "of other employees of NCL will be paid after auction process". Fourth, in their comments in the present petition, the respondents do not deny the liability. They say that about 90% of it has been paid and that any balance found due on reconciliation shall be dealt with in accordance with the rules. The same basis applies to petitioner No.3. She was one of the twenty-one employees laid off under the same decision, clause 53 applies to all regular employees, and her payments are also listed in the comments.

18. Even the figure of 90% is not borne out when the payments listed in the respondents' comments are measured against the amounts claimed by the petitioners. On that measure, they come to approximately 86.6%, 77.7% and 49.3% in the cases of petitioners No.1, 2 and 3, respectively. On these The differences between the amounts claimed and the payments recorded are Rs.490,918/-, Rs.1,156,197/- and Rs.1,993,060/- respectively. The respondents have not explained the difference. These differences do not, by themselves, establish the amounts legally payable; the admissible balance remains subject to reconciliation under the applicable terms.

19. To the extent that liability is admitted and only its computation remains, reconciliation may resolve the claim without adjudication of a disputed service entitlement. The direction sought must, however, be considered within the limits of constitutional jurisdiction. In these circumstances, requiring separate civil proceedings merely to secure reconciliation of acknowledged terminal dues would prolong resolution of the claim. The principles governing the relationship of master and servant ordinarily preclude enforcement of non-statutory terms of service through constitutional jurisdiction. These principles do not permit a State-owned company to withhold, indefinitely, what it admits it owes. In Ghulam Mustafa

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(supra), while reaffirming the rule, the Hon'ble Supreme Court was careful to add:

> "*The relationship of master and servant cannot be construed as so sagacious that the master i.e. the management of a statutory corporation or the corporation and/or company under the control of government having no statutory rules of service or the private sector may exercise the powers at their own aspiration and discretion in contravention or infringement of fundamental rights envisioned under the Constitution. ... Therefore, in all fairness, even under the relationship of master and servant, fundamental rights should be respected and followed, as the same are an integral part of due process.*"

Article 4 of the Constitution entitles every person to be dealt with in accordance with law. The petitioners were laid off by a decision taken by the Federal Government through its own Ministry and officers. Those officers assured them, in writing, that their terminal benefits would have priority in the sale of NCL's assets. The assets have now passed to another company of the same Ministry, while the claim to the unpaid balance remains unresolved. Such conduct is neither fair nor reasonable, and it is open to correction under Article 199. This course is consistent with *Muhammad Rafiq v. Vice-Chancellor, Allama Iqbal Open University and others* (2023 PLC (C.S.) 1143), where this Court, faced with an amount admittedly lying with a public body and unpaid to a retired employee, directed that the matter be decided by a speaking order.

20. The respondents may not withhold the gratuity under clause 53 on the strength of the conditions in paragraph 3 of the letters dated 14.01.2025. The first condition was "winding-up/deregulation of NCL in SECP". Clause 53 itself speaks of the "liquidation, privatization or deregulation" of NCL. Respondent No.5 has stated in its comments that the Federal Government decided to "wind up (through scheme of amalgamation under the provisions of SECP) NCL". That process has been completed. NCL no longer exists as an independent concern, and its undertaking now vests in PIDCL. The event on which the gratuity was to become payable has, therefore, occurred, by the respondents' own account. The second condition was "availability of funds". The comments do not plead that funds are not available. Even had they done

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so, the plea would have been of no avail to the respondents. In *M. Asghar Janjua and others v. Federation of Pakistan and others* (2026 SCMR 267), which arose out of constitutional petitions filed by employees of Pakistan Steel Mills Limited, the High Court had declined relief on the ground that the employer was suffering financial losses. The august Supreme Court set aside that judgment and remanded the matter, observing:

> *"In our considered view, every employee is entitled to the payment of his full and final settlement on his superannuation. The non-payment of gratuity has nothing to do with losses or financial crunch, quite the reverse, the amount of gratuity, provident fund and pension is an inherent/vested right of every retired employee which is deep-seated in the Industrial Relations and Civil Service Laws. Every employer without any pretext or deferment is bound to pay off this liability immediately on the eve of retirement rather than delaying or shelving this vested right for an indefinite period or result in this obligation in a state of uncertainty."*

The Court also explained that gratuity, depending upon the terms and conditions of employment, "becomes a legal obligation rather than a voluntary benefit". In *Suo Motu Action regarding non-payment of retirement benefits by the relevant departments* (2018 SCMR 736), which concerned the pension paid to retired employees of privatised banks, the Hon'ble Supreme Court held that to subject a pensioner "to a life of penury and impoverishment, is a clear violation of his fundamental rights to life and dignity as enshrined in Articles 9 and 14" of the Constitution, and that once the right to pension "has been perfected and earned", it is no longer a question whether the pensioner is entitled to it. The petitioners' services were terminated before superannuation. The application of this principle to their claim depends upon the accrual of the benefit under clause 53 and the terms governing termination. Moreover, NCL's Board had earmarked the sale proceeds of its assets for these very dues, and those assets are now with PIDCL. A condition of this kind cannot be read to leave payment to the will of the payer for all time. Read in that way, the promise would be rendered illusory.

21. The plea of acquiescence and estoppel is also misconceived. The letters dated 14.01.2025 themselves divided the dues into two parts: the dues

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payable at once, and the gratuity under clause 53 payable later. The petitioners received part of their terminal dues. Acceptance of one part of an admitted debt cannot be read as a waiver of the other part, which the same letter promised. Waiver postulates the intentional relinquishment of a known right and cannot be presumed from part-payment alone. The respondents do not claim that the petitioners signed any receipt in full and final settlement. The order of the National Industrial Relations Commission dated 06.02.2026, on which reliance is placed, was passed in the case of a different employee. It turned on the finding that he had received cheques "as full and final settlement". The finding concerning that employee's full and final settlement does not, without more, determine the petitioners' claim. The order dated 24.02.2025 in W.P. No.1318 of 2024 also does not bar the present claim. Far from deciding against the employees, it recorded that their dues would be paid. That order does not, on the account set out above, constitute an adjudication rejecting the present claim to the unpaid balance.

22. For the foregoing reasons, this petition is partly **allowed** in the following terms:

(i) The prayer for re-employment or absorption of the petitioners in PIDCL or any other organization stands declined.

(ii) The prayer regarding the assets of NCL is disposed of, as it has been rendered infructuous by the amalgamation of NCL with PIDCL. PIDCL, as the transferee of NCL's undertaking, is liable for the dues of the petitioners.

(iii) Respondent No.5, through its Chief Executive Officer, shall reconcile the accounts of each petitioner after affording each petitioner an opportunity to participate in the reconciliation. It shall then determine, through a speaking order, the balance of the terminal dues of each petitioner on the basis set out in the letters dated 14.01.2025 issued to petitioners No.1 and 2, which shall apply equally to petitioner No.3, including gratuity under clause 53 of the NC Service Rules, after adjusting the amounts already paid. The reconciliation shall be completed within thirty days, and the amount so determined shall be paid within sixty days, of the receipt of a certified copy of this judgment.

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(iv) The Secretary, Ministry of Housing & Works, shall ensure that the above directions are complied with within the stipulated time.

(v) If any petitioner is aggrieved by the computation made under clause (iii), he or she shall be at liberty to seek redress before the competent forum in accordance with law.

(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on 23.10.2026.

JUDGE

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