ISLAMABAD HIGH COURT

BULLETIN

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Case Law Bulletin

Volume I, Issue I (January- March 2026)

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Islamabad High Court

Reasons by Ex-Officio Justice of Peace for non-reliance on Police Report

Writ Petition No.975 of 2026

Jahanzaib Noor Muhammad v. Ex. Officio Justice of Peace, etc.

Before the Hon'ble Chief Justice Mr. Justice Sardar Muhammad Sarfraz Dogar. –

The petitioner impugned order of Ex-Officio Justice of Peace where petition filed by Respondent No. 4, u/s 22-A & 22-B of the Code of Criminal Procedure, 1898, was disposed of and SHO was directed to record statement u/s 154 of Cr.PC. Petitioner contended that police report favoring the petitioner, was discarded by Ex-Officio Justice of Peace without assigning cogent reasons. While allowing the petition, it was held and observed by the Court that

> *"Despite the availability of such a clear, cogent, and authoritative police report, the learned Ex-Officio Justice of Peace failed to apply judicial mind and proceeded to pass the impugned order in a purely mechanical manner, without due consideration of the material on record. Such an approach not only vitiates the impugned order but also tends to encourage the growing misuse of the process of law, whereby litigants, through mala fide tactics, manage to secure directions against innocent persons without any credible evidence."*

The impugned order passed by learned Ex-Officio Justice of Peace/Additional Sessions Judge, Islamabad (East) was set-aside.

Section 489-F, PPC - Pending civil dispute does not bar bail

2025 YLR 1368

Muhammad Awais Qarni v. The State, etc.

Before the Hon'ble Chief Justice Mr. Justice Sardar Muhammad Sarfraz Dogar.-

Petitioner sought post-arrest bail in case F.I.R. u/s 489-F the Pakistan Penal Code, 1860. Petitioner allegedly issued two cheques to the complainant for payment of loan; out of these cheques, the second cheque presented in the bank for encashment was dishonored. The Court noted that the maximum punishment under Section 489-F is up to 3- years or fine, and it does not fall under prohibitory clause contained in section 497(1) of the Code of Criminal Procedure, 1898. It was observed by the Court that

> *"… [I]n non-bailable offences falling in the second category i.e. punishable with imprisonment for less than ten years, the grant of bail is a rule and refusal an exception."*

The Court further observed that civil proceedings for remedies under the Civil Procedure Code, 1908, are already pending, and the large amount involved does not expand Section 489-F:

> *"...for recovery of amount, civil proceedings provide remedies under Order XXXVII of Code of Civil Procedure, 1908 ("CPC") and in this regard civil suit is pending adjudication between the parties before the Civil court. Moreover, involvement of a huge amount does not enlarge the punitive scope of Section 489-F PPC and is no ground for refusal of bail."*

Furthermore, in response to the question whether bail is granted when criminal cases are registered against the accused, it was observed that

> *"…It is trite law that mere registration of other criminal cases against an accused does not disentitle him for the grant of bail if on merits he has a prima facie case."*

In view of the above, bail application was allowed by the Court.

Security Clearance within PEMRA's Licensing Framework

PLD 2026 Islamabad 20

Pakistan Electronic Media Regulatory Authority through Chairman PEMRA, Islamabad and another v. Shoukat Ali and another

Before the Hon'ble Chief Justice Mr. Justice Muhammad Sarfraz Dogar and Hon'ble Justice Muhammad Asif.-

Petitioners challenged single bench's judgment, whereby Rule 9 (5) of PEMRA Rules, 2009, was held to be ultra vires to the extent that it required PEMRA to seek security clearance for an applicant prior to grant of license. The Court discussed the route which enabled PEMRA to frame rules/ regulations. For the purpose, the Court referred to sec 39 (1) of the PEMRA Ordinance, 2002, which relates to rule-making power by PEMRA and held that

> *"… Authority exercised the power within the bounds of the Ordinance to make Rules."*

Another question for consideration of the Court was whether the condition of security clearance does or does not find its nexus with the Ordinance, 2002? The Court held as under:

> *"… [T]he Authority, where it is empowered to issue license, is at the same time also empowered to place it under term or condition by virtue of rule."*

It was observed by the Court that

> *"... it cannot be said that the rule 9(5) of the Rules has been framed in excess of the scope of the Ordinance and without authority to do so. The Authority, in pursuit of the powers conferred upon it by the ordinance, was very much within its scope to frame Rules, as such, any term or condition imposed by the Authority by framing of Rules is within its domain and power."*

At another place, it was observed and held by the Court that

> *"…the role of Media, particularly Electronic Media in shaping and reshaping of minds of general public, should not be overlooked and to clog any possibility of unwarranted interference by it through mis-information in the smooth, peaceful & harmonious existence of society, the relevant part of the Rule 9(5) of the Rules in respect of security clearance from Ministry of Interior before issuance of licence, should not be declared ultra-vires the Ordinance. Therefore, security clearance prior to issuance of license, is not inconsistent with the Ordinance, rather it facilitates the Authority to conclude the suitability of any applicant in respect of national security and falls within the scope of General Delegation of power under Section 39 of the Ordinance..."*

The Court allowed Intra Court Appeals and held that Rule 9 (5) of PERMA Rules, 2009, was intra vires the PEMRA Ordinance, 2002.

Winding Up of Private Limited Company of 2- members on petition by 50% shareholder

Companies Original No.07 of 2022

Fahad Saif v. Mohtaram Fabrics (Pvt.) Ltd. and others

Before Hon'ble Justice Mohsin Akhtar Kayani.-

The petitioner is a 50% shareholder and Chief Executive of Mohtaram Fabrics (Pvt.) Ltd., seeking winding up of the company under the Companies Act, 2017, contending that the company was formed as a joint venture with the respondent on the basis of a long-standing personal relationship and verbal

understanding to run a fabric business under the "Mohtaram" brand. It was pleaded that both parties initially contributed capital and transferred funds for business purposes. However, the relationship subsequently deteriorated due to alleged breaches of fiduciary duty and mutual mistrust, leading to parallel litigation between the parties. The petitioner argued that the substratum of the company had completely disappeared, no business activity had been carried out since incorporation, statutory obligations such as holding AGMs and filing financial statements had not been fulfilled, therefore, it was just and equitable to wind up the company. On the other hand the respondent opposed the petition, asserting that the requirements of Section 304 of the Companies Act, 2017 were not met and that the petition was an attempt to deprive him of his investment. He maintained that the arrangement was a bona fide business understanding involving equal shareholding, mutual investment, and reinvestment of profits and that any failure to maintain accounts or properly manage funds was attributable to the petitioner which had resulted in cessation of business operations and non-fulfillment of statutory obligations.

The Court allowed the petition and in addition to the winding-up order observed the following:

> *"In the light of foregoing, respondent No.1 is hereby ordered to be wound up, and the petition is ALLOWED. However, in addition to the winding-up order, this Court also observes that where all such factors are present, the Court may exercise its powers under Section 342 of the Companies Act, 2017, read with Section 308(1)(e) of the Act, which confers discretion upon the Court to pass an order of dissolution where the company possesses no funds or assets. Accordingly, while exercising such powers under Section 322(1) read with subsection (5), this Court has the discretion to straightaway dissolve the company at any stage of the proceedings if it is not economical to continue formal winding-up proceedings after the passing of a winding-up order. As a result, there is no need to appoint an official liquidator, especially when only Rs.10,000/- remains in the company's account. Therefore, this company is simultaneously ordered to be wound up and dissolved. The Registrar of Companies is directed to take all necessary actions as provided under Section 342 of the Companies Act, 2017, accordingly."*

Recovery in Family Loan Dispute upheld- Amendment to CPC, Order XLII, urged

Regular Second Appeal No. 02 of 2023 converted into Civil Revision No. 56 of 2026

Moulana Abdul Qayyum v. Muhammad Shafi

Before Hon'ble Justice Mohsin Akhtar Kayani.-

In this judgment, the Islamabad High Court, while hearing a Regular Second Appeal later converted into a Civil Revision, examined a monetary recovery dispute arising between close relatives involving alleged payment of Rs.1,480,000/- as a loan and its denial by the appellant, who instead claimed that the amount was utilized for purchase and adjustment of properties on behalf of the respondent. The Court noted conflicting versions of the parties regarding whether the amount was a loan or part of a property transaction arrangement and held that the burden of proof under the Qanun-e-Shahadat, 1984, lay upon the party asserting a fact, particularly where specific pleas of repayment and adjustment were raised. Upon appraisal of evidence, including admissions and failure of the petitioner to substantiate his version of property sale and adjustment, the Court found no illegality or perversity in the findings of the First Appellate Court, which had rightly decreed recovery in favour of the respondent.

In conclusion, the appeal was converted into a Civil Revision under Section 115 CPC. On merits, it was dismissed with a proposal for amendment in Order XLII, CPC, in the following words:

"Before parting with this judgment, in the light of foregoing discussion, this Court reaches to the irresistible conclusion that no pecuniary value has been prescribed in the Islamabad Capital Territory. In this regard, let the matter be placed before the Honorable Chief Justice of this Court to convene a meeting of Full Court to propose an amendment to Order XLII of the Civil Procedure Code, whereby the amount or value of a suit for the purposes of section 102 CPC may be specified through an amended rule. The recommendation of Full Court may then be forwarded to the Government of Pakistan for submission to the President of Pakistan for approval and thereafter publication in the Gazette notification. It is further observed that, this High Court is competent to exercise such powers under sections 122 and 125 of the Civil Procedure Code to make rules regulating its own procedure and that of the civil courts. These powers are conferred under Article 202 of the Constitution of Pakistan, 1973. Accordingly, a copy of this judgment shall be forwarded to the Registrar of this Court to be placed before the Honorable Chief Justice for appropriate action. "

Dowry articles remain exclusive property of wife

Writ Petition No. 365 of 2023

Mst. Amara Waqas v. Muhammad Waqas Rasheed and others

Before Hon'ble Justice Mohsin Akhtar Kayani.-

This writ petition was filed by Mst. Amara Waqas challenging the judgments of the Family Court and Appellate Court whereby her claim for recovery of dowry articles and alternate value was partly rejected. The Family Court had initially awarded maintenance and granted 30% of the alternate value of dowry articles, but the Appellate Court set aside this relief on the ground that the petitioner failed to prove entrustment, existence, and valuation of dowry articles amounting to Rs. 16.91 million. The petitioner argued that her evidence, list of articles, and circumstances were sufficient to establish her claim, whereas the respondent denied liability and contended that the judgments were based on proper appreciation of evidence.

The Court set aside the judgments of both lower forums and remanded the matter to the Family Court for fresh decision within two months and proposed some Parliamentary Enactments in the following words:

"33. Consequently, it is appropriate to recommend that the Government of Pakistan shall consider initiating comprehensive legislation and placing the same before Parliament for enactment. Such legislative measures should take into account the interests of women, who constitute nearly half of the country's population and represent a vital segment of the nation's future. The protection and effective enforcement of their rights would significantly contribute to the development of a more just and progressive society.

34. At last, this Court also comes to a conclusion that the marriage form i.e. Nikah Nama in terms of Muslim Family Laws Ordinance, 1961, may be amended and a column be created in the Nikah form, and the same should be filled by the wife with the condition that any property owned by husband after marriage shall be equally divided with the wife during the subsistence of marriage or post-divorce or in case of death of husband. As such, this condition will protect and materially confirm the property rights of wife in Pakistan as an alternate route without any legislation. In this regard, every girl child at school, college, and university level shall be educated accordingly with their matrimonial rights and they may refer their rights in column No. 18 of the Nikah Nama in the present form in a similar manner, and such terms are enforceable by law in every aspect considering the constitutional mandate and protection provided in CEDAW which has been ratified by Pakistan."

Conduct of Local Government elections in Islamabad Capital Territory

Writ Petition No. 1787 of 2024

Muhammad Ijlal v. Election Commission of Pakistan and others

Before Hon'ble Justice Mohsin Akhtar Kayani.-

The petitioner challenged the inaction of the Election Commission of Pakistan (ECP) in announcing the election schedule for Local Government elections in the Islamabad Capital Territory (ICT) and assailed the legality of the Administrator MCI's continued functioning and its actions beyond the statutory period. The petitioner also sought directions for immediate elections under the ICT Local Government Act, 2015 read with the Elections Act, 2017, and declaration that the Administrator had no lawful authority after expiry of the prescribed six-month period.

The Court directed the ECP to proceed with local government elections in ICT within 120 days. It was held and observed that

> *"The official representative of the Election Commission of Pakistan has also been confronted with respect to the above mandate of section 219 (4) of the Elections Act, 2017, whereby, it has been acknowledged on behalf of the Election Commission of Pakistan that they have consulted with Federal Government and are ready to hold the elections of the local government within 120 days, even the process of delimitation has already been completed.*
>
> *16. In view of above discussion, instant writ petition is ALLOWED. The property tax enforced by the Administrator MCI is declared to be illegal and without lawful authority. The petitioner is directed to pay the property tax as per old rates till notification of local bodies assemblies in session who are competent to exercise their powers to settle the question of property tax, or for that matter surcharge or any delayed charges within the mandate of section 88, 89 and 90 of the Islamabad Capital Territory, Local Government Act, 2015, accordingly. However, with regard to the status of the present Administrator, the tenure earlier fixed under Section 29(3) of the ICT LG Act, 2015 has already expired. Therefore, no Administrator can be re-appointed in a manner that defeats the mandate of the law. Office is directed to transmit copy of this judgment to the Election Commission of Pakistan for information."*

Dower as sacred continuing debt - not defeated by Limitation Law

Writ Petition No. 2561 of 2025

Asia Ijaz v. Additional District Judge-West, Islamabad and others

Before Hon'ble Justice Mohsin Akhtar Kayani.-

The petitioner is a widow and has challenged the dismissal of her suit for recovery of dower. The Family Court had initially rejected her claim and the appellate court affirmed the dismissal on the ground that it was barred by limitation under Article 104 of the Limitation Act, 1908. The petitioner argued that she had earlier pursued civil proceedings in good faith based on a Gift Deed allegedly executed in lieu of dower and that the time spent in those proceedings should be excluded under Section 14 of the Limitation Act. She further contended that dower is a vested right under the Nikah Nama and cannot be defeated on technical grounds.

The High Court after examining the factual background observed that

> *"35. Before parting with this judgment, it is observed that the issues raised in the present case highlight the need for legislative reconsideration of Articles 103 and 104 of the Limitation Act, 1908 in light of Article 227 of the Constitution and the evolving constitutional commitment to protection of women's financial rights. Let a copy of this judgment be forwarded to the Law and Justice Commission of Pakistan for consideration of appropriate legislative reform.*
>
> *36. Further, in view of the mandate of the National Commission on the Status of Women Act, 2012, particularly Section 11, which empowers the Commission to "examine the policy, programs and other measures taken by the Federal Government for gender equality, women's empowerment, political participation and representation, assess implementation and make suitable recommendations to the concerned authorities; review all Federal laws, rules and regulations affecting the status and rights of women and suggest repeal, amendment or new legislation essential to eliminate discrimination, safeguard*

and promote the interest of women and achieve gender equality before law in accordance with the Constitution and obligations under international covenants and commitments" a copy of this judgment shall be transmitted to the National Commission on the Status of Women (NCSW). The Commission is thereby empowered to make recommendations and take such action as it may deem appropriate within its statutory domain, including advising the Federal Government or other authorities for implementation or reform, so as to advance the cause of gender equality and the protection of women's rights."

Forensic report of cut and welded chassis of vehicle not sufficient to prove smuggling; confiscation requires establishing fault element

Custom Reference No. 12 of 2022

Laal Mat Khan & another v. Customs Appellate Tribunal, Islamabad & others

Before Hon'ble Justice Babar Sattar and Hon'ble Justice Sardar Ejaz Ishaq Khan.-

Main questions before the Court were: (1) Does a forensic lab's finding of a tampered chassis number conclusively prove that a vehicle is smuggled u/s 2(s) of the Customs Act, 1969? (2) If a vehicle's chassis number is found tampered, can it ever be released to the owner, or must it always be confiscated with title vesting in the State u/s 182 of the Act, ibid?

The principle of 'presumption of legal character of a vehicle' has been provided in sec 187A of the Act, ibid. It was observed by the Court that

"…. Section 187A of the Customs Act is therefore to be understood as a deeming provision vesting jurisdiction in the Customs Authorities to exercise powers in relation to vehicles with tampered chassis numbers, which power, but for such deeming provision, would ordinarily vest police authorities and MRA. Notwithstanding such jurisdiction vesting provision, Section 2(s) of the Customs Act would continue to control what constitutes a smuggled good and the ultimate legal onus to prove that a vehicle is smuggled would remain with the State, subject to the requirements of Section 187 read with Section 156 of the Customs Act …. The presumption created by Section 187A of the Customs Act would thus be a rebuttable presumption and the mere fact that a vehicle with a tampered chassis number is purportedly registered with a MRA would not be dispositive of the fact that such vehicle is not smuggled."

The Court answered first question in negative. It was observed and held by the Court that

"….Tampering triggers a rebuttable presumption under Section 187A. The initial burden to establish "lawful excuse" or "lawful justification" to own/possess the vehicle rests with the vehicle owner. Once the vehicle owner makes out a prima facie case to establish him/herself as the bonafide owner of the vehicle, the particulars of which are listed in the certificate of registration issued by the MRA, the onus of proof shifts to the State. The State must then rebut the presumption and discharge the legal burden to establish "smuggling" as defined in Section 2(s) on a balance of probabilities."

The Court observed that although civil forfeiture is formally an action against the property, in practice it operates as a penalty that infringes the owner's constitutional right to property. Therefore, such a penalty can only be valid if it is preceded by a clear finding of liability or wrongdoing against the owner. In respect of question No. (2), it was held by the Court that

"It [vehicle] can be released to the owner if they establish a "lawful excuse," such as being a bona fide purchaser for full value without notice of illegality. Confiscation in favor of the State is only permissible upon the State establishing a fault element on the part of the owner, as required in terms of the offense as defined in the relevant clause of Section 156(1) of the Customs Act."

Section 153(3) of the Income Tax Ordinance, 2001 - No Special Tax treatment for un-deducted amounts absent taxpayer fault

I.T.R. No. 56 of 2013

The Commissioner Inland Revenue (Zone-II) LTU, Islamabad v. M/s Inter City (Pvt.) Limited

Before Hon'ble Justice Babar Sattar and Hon'ble Justice Saman Rafat Imtiaz. -

Court was hearing references filed before it, arising from a consolidated judgment of the Appellate Tribunal Inland Revenue. The essential question for consideration of the Court was: where no tax has been withheld by a payee u/s 153(1) of the Income Tax Ordinance, 2011, and the taxpayer offers its business income for tax under the ordinary tax regime, can it be held that the return so filed is erroneous and prejudicial to the interest of revenue for purpose of sec 122 (5A) of the Ordinance, due to not offering income for tax in accordance with the tax rate prescribed u/s 153(1).

The question of law arising from the order of the Tribunal was decided by the Court in favor of the taxpayer. The Court observed and held that

> *"We find that the Tax Department fell into error where it read the word "deductible" for the word "deducted" in section 153(3) of the ITO, as it stood for purposes of the relevant tax year. Section 153(3) read with section 153(6) and section 169(1) of the ITO treated tax deducted by a payee as final tax. In the relevant years the provisions of section 153(3) did not contemplate special tax treatment of amounts in the hands of a taxpayer, that ought to have been deducted but were not so deducted by a payee for no fault of the taxpayer (except through proceedings undertaken in terms of section 162 of the ITO at the relevant time…)"*

Section 179 (3) of the Customs Act, 1969: Collector's order valid if signed within statutory thirty days limit, despite later dispatch

Custom Reference No. 78 of 2025

The Collector of Customs (Enforcement), Islamabad v. Rana Rizwan Saeed & others

Before Hon'ble Justice Babar Sattar and Hon'ble Justice Saman Rafat Imtiaz.-

Reference before the Court was filed against the majority decision of the Customs Appellate Tribunal (2:1) whereby the order-in-original passed by the Collector of Customs, directing the vehicle in question to be confiscated, was set aside. The vehicle in view was registered as a 2003 Toyota Land Cruiser but physically appearing as a Lexus LX-570 with a cut and welded chassis.

One of the questions before the Court, inter alia, for consideration was: whether the Tribunal erred in law by holding that the order was passed beyond the 30 -day limitation prescribed under the first proviso to sec 179(3) of the Customs Act, 1969. The question was decided in favor of the Customs Department and the Court did not agree with the decision of the Tribunal. It was observed and held by the Court

> *"We are not in agreement with the decision of the two Members of the Tribunal, whose opinions are in majority, that the Order-in-Original was barred by limitation. The record establishes that the Order-in-Original was signed and released on 25.09.2024, which was the last day of the period prescribed in Section 179(3) of the Customs Act for issuance of the order. The Tribunal erred in holding that merely because an order that was signed and issued within the period prescribed under Section 179(3) of the Customs Act was postmarked a day after the expiry of the limitation period would render the order void on grounds of limitation. The language used in the first proviso to Section 179(3) of the Customs Act, applicable in this case, is that the case 'is to be decided' within a period of 30 days of the issuance of the Show cause notice. The date when the Order-in-Original was signed and issued was the date when the case was decided. Just because it was dispatched by the courier on the next day would not render such order barred by limitation..."*

Presumption of consideration under the Negotiable Instruments Act, 1881, for civil disputes

Criminal Revision No.106 of 2023

Muhammad Atif v. The State

Before Hon'ble Justice Sardar Ejaz Ishaq Khan.-

The petitioner assailed his conviction u/s 498-F, PPC, along with dismissal of his appeal. After reviewing judgments of courts below, the Court held that the petitioner's conviction was not possible as there were "material shortcomings in the complainant's evidence on the pivotal facts on which his complaint rested." It was observed by the Court that

> *"Both the Courts below ignored the most important element of section 489-F, namely, that the cheque was issued for the discharge of a financial obligation. With no evidence of payment through bank to the petitioner, with no sight of the KPRA's tax default notice, with the complainant admitting that he had no direct dealings with the petitioner, and with no appointment letter of the petitioner, it was a gross miscarriage of justice for the learned Courts below to conclude that the financial obligation underlying the cheques was established beyond reasonable doubt solely because the complainant had so deposed in his examination-in-chief."*

It was further observed by the Court that

> *"The prosecution case has to stand on its own strength, and not on an inferential basis that the underlying element of actus reus of the offence, namely, existence of a financial obligation, which had to be proved independently by the prosecution, but which was not proven to the standard of beyond reasonable doubt. The mere issuance of a cheque which stood dishonoured on presentation does not per se constitute the offence under section 489-F PPC unless some evidence of the underlying financial transaction accompanies it."*

Also, it was observed and held by the Court that

> *"The presumption of consideration under the Negotiable Instruments Act is for civil disputes. It does not apply to criminal matters, and does not dispense the prosecution's duty to establish the underlying financial obligation beyond reasonable doubt."*

Regarding multiple F.I.Rs, it was observed and held by the Court that

> *"Another crucial aspect of this case is the registration of three FIRs in different police stations under section 489-F, despite this being held contrary to the law by the Islamabad High Court in Hamid Khan vs The State (2022 MLD 31 Islamabad). The underlying transaction was the same: the three cheques were issued for payment of the same amount in instalments, which, in any event, per the petitioner's case, were issued under coercion in the police station. In the circumstances, I find that the registration of the other two FIRs was plainly contrary to the settled law on the subject."*

To sum up, it was held by the Court that

> *"… there was patent misreading of the evidence in the trial by both the learned Courts below, and also that the conclusion of law of the financial obligation premised on the presumption of consideration was incorrect, leading to a grave miscarriage of justice, with the petitioner ending up serving a sentence that could not be awarded to him."*

An investment contract with capital protection guarantee versus investment contract without guarantee

Writ Petition No. 3670 of 2023

Jubilee Life Insurance Company Limited v. Office of the President (Public) and others

Before Hon'ble Justice Sardar Ejaz Ishaq Khan.-

The petitioner assailed the order passed by the President's Secretariat allowing insured's representation of the respondent against Federal Insurance Ombudsman's order. Earlier the Ombudsman had closed the complaint on the basis that no mis- selling was found. It was observed by the Court that

> *"Underlying the President's impugned order was the erroneous assumption that the insurance contract in question guaranteed the preservation of the invested premia. Instead, it was an 'investment contract', that companies conducting life insurance business offer under the Insurance Ordinance,*

2000, whereby a mix of returns and payments contingent on insured risks such as death or injury are assured."

The Court viewed that the President's Secretariat wrongly assumed that when the policies were surrendered early, the cash value (the amount payable back to the policyholder) should automatically equal the total premiums paid. It was observed and held by the Court that

"The legal framework underpinning the life insurance business offering investment contracts is a fairly detailed one and this perhaps is not the occasion for this Court to delve into any greater detail in that legal framework, for the instant matter may end up before the Insurance Tribunal. Suffice it to say that any knowledgeable person, let alone a Director Legal exercising the very important function of advising the President correctly, would be expected to understand the difference between an investment contract with capital protection guarantee versus an investment contract without such guarantee. The two products are by no means identical ……..……..there was no valid legal basis for the President's Secretariat to conclude that the cash value of the policies must have equaled the total sum of the premia paid up until the pre-mature surrender of those policies."

The Court set aside the order by the President's Secretariat.

Existence of statutory remedy bars filing of intra court appeal

I.C.A No. 390 of 2025

M/s The Crescent Textile Mills Limited and another v. Securities and Exchange Commission of Pakistan and others

Before Hon'ble Justice Arbab Muhammad Tahir and Hon'ble Justice Inaam Ameen Minhas.-

Appellants challenged the judgment whereby a show cause notice issued by the Securities and Exchange Commission of Pakistan was set-aside as void ab initio on the ground, *inter alia* that the matter had already been pending before the Lahore High Court u/s 286 and 287 of the Companies Act, 2017.

The Court referred to the bar contained in proviso to sub- section (2) of section 3 of the Law Reforms Ordinance, 1972, which excludes maintainability of Intra Court Appeal. While dismissing the instant intra court appeal, it was observed and held by the Court that

"the proceedings, within the meaning of the proviso to sub section (2) of section 3 of the Ordinance commenced with the filing of an application and issuance of show cause notice under section 256 of the Act of 2017. Such proceedings were, in law, to culminate in an order to be passed by the Commission in exercise of its statutory jurisdiction under the Act, determining the rights and liabilities of the parties. Against such order, an express remedy of appeal is provided under section 480 of the Act of 2017. Therefore, the proceedings in question are those in which the law applicable provides for at least one appeal against the original or culminating order. In terms of the settled principle laid down by the august Supreme Court in Mst. Karim Bibi"s case, it is the availability of an appeal within the statutory proceedings that attracts the bar, irrespective of the nature of the interlocutory action/order impugned in the constitutional petition. Consequently, the bar contained in the proviso to sub section (2) of section 3 of the Ordinance is attracted to the instant case."

Parliamentary Committee Proceedings do not enjoy immunity

I.C.A. No. 388 of 2023

Muhammad Awais and others v. Mumtaz Khan and others

Before Hon'ble Justice Arbab Muhammad Tahir and Hon'ble Justice Inaam Ameen Minhas.-

Appellants challenged the Single Bench's judgment which held that recommendations of the National Assembly's Special Committee on affected employees were void.

The Committee had been constituted under the Sacked Employees (Reinstatement) Act, 2010. Appellants argued that its proceedings were protected under Article 69 of the Constitution of the Islamic Republic of Pakistan, 1973. The Court dismissed the appeal. It was observed and held by the Court that

> *"it is evident that the constitutional and legal framework strictly circumscribes the powers of all state organs under the doctrine of trichotomy of powers, and ensures that the executive, legislature, and judiciary operate within their constitutionally defined domains, with the judiciary empowered to interpret the Constitution and review legislative or executive actions that transgress fundamental rights or statutory limits. Article 69 of the Constitution provides limited immunity to proceedings in Parliament, protecting only those acts that do not suffer from procedural irregularities, but does not extend to violations of substantive constitutional provisions or statutory law. Any directions issued by the Special Committee to the executive to regularize daily-wage or contract employees in contravention of the Act [Civil Servants Act, 1973] and the APT Rules [Civil Servants (Appointment, Promotion and Transfer) Rules, 1973] are ultra vires, lack legal efficacy, and constitute a breach of the separation of powers. The only competent mechanism for Parliament to address the situation would have been through valid legislation, consistent with constitutional provisions, which could create rights or confer benefits without violating existing law."*

FIA is bereft of jurisdiction to act as a civil court and determine civil contractual rights

W.P. No. 5552 of 2025

Pakistan State Oil Company Limited v. Federation of Pakistan and others

Before Hon'ble Justice Arbab Muhammad Tahir. -

The matter related to the extension of lease agreement. Petitioner assailed a letter issued by the Federal Investigation Agency, intimating the initiation of a criminal inquiry against the petitioner, on the ground that the letter was issued without lawful authority/ in excess of jurisdiction, and constitutes interference with civil contractual rights. The instant petition was allowed by the Court. It was observed that

> *"[e]xecution of a registered addendum, with contractual obligations between parties, cannot be converted into a criminal matter merely because a complaint has been filed. The FIA's attempt to investigate a civil contractual dispute represents an unauthorized intrusion into civil law matters."*

It was held by the Court that

> *"… (i) the matter involves pure civil contractual disputes, revolving around disagreement to its clauses and (ii) the FIA is bereft of jurisdiction, in the instant case, to act as a civil court and determine civil contractual rights under the garb of initiation of a criminal inquiry deriving power from the provisions of Federal Investigation Agency Act, 1975."*

Transparency in distribution of Hajj quota

W.P. No. 2597 of 2023

M/s Naimat-e-Illahi (Pvt.) Limited and others v. Federation of Pakistan through Secretary Ministry of Religious Affairs and Interfaith Harmony and others

Before Hon'ble Justice Arbab Muhammad Tahir. -

The petitioners challenged five years Hajj quota certificates issued by the Ministry of Religious Affairs. The Court ruled in favor of petitioners with finding that such multi-year allocations without transparent, season-wise merit evaluation unfairly advantaged certain operators. Respondents were directed to ensure that quota distribution is season-wise, transparent, merit-based, and non-discriminatory, applying equally to all enrolled Hajj Group Organizers (HGOs).

The petition was disposed of by the Court; it was observed and held that

"i. The respondents shall strictly adhere to the principles and law laid down in Dossani's case (PLD 2014 SC 1) and Arif Idrees's case (2017 SCMR 1379) while allocating Hajj quota, ensuring season- wise, transparent, merit-based and non-discriminatory evaluation applicable equally to all duly enrolled HGOs.

ii. Any certificate/offer letter purporting to allocate or assure Hajj quota in advance for multiple seasons, without demonstrable compliance with an explicit, pre-declared policy grounded in objective third-party evaluation or without any legal backing, shall not create any vested right or binding entitlement for future quota allocation……."

Arbitration Agreement Unenforceable Without Final Arbitral Award

Enforcement Petition No.04 of 2025

Petrosin CNG (Private) Limited v. Mari Energies Limited

Before Hon'ble Justice Arbab Muhammad Tahir. -

Petitioner filed enforcement petition u/s 3 of the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011, to seek recognition and enforcement of the arbitration agreement and to restrain the respondent against creation of third- party interests pending arbitration. While dismissing the enforcement petition, it was observed by the Court that

"[t]he Act of 2011 was enacted to give effect to Pakistan's obligations under the New York Convention, 1958, and to establish an arbitration-friendly legal framework grounded in party autonomy, minimal judicial intervention, and respect for the arbitral process. Section 3 vests exclusive jurisdiction in this Court over matters arising under the Act; however, it does not create an independent cause of action nor confer the right to enforce an arbitration agreement in the absence of an arbitral award. As held by the Hon'ble Supreme Court in the case of Fecto Belarus Tractors Limited, supra, an arbitration agreement alone does not constitute an executable right but is merely a contractual commitment to arbitrate, enforceable only upon the rendering of a final award."

The Court held that

"[t]he Act clearly distinguishes between pre-award and post-award stages. Section 4 governs the pre-award stage, mandating that courts refer disputes to arbitration and, where necessary, stay judicial proceedings in respect of the subject matter of the agreement. Section 3, by contrast, is concerned solely with the recognition and enforcement of final arbitral awards. In the present case, the pre-award mechanism under Section 4 was invoked and conclusively adjudicated by the Civil Court, which stayed the petitioner's civil proceedings and directed the parties to proceed to arbitration. This binding judicial determination establishes that the arbitral tribunal, not this Court, is the proper forum for resolution of the underlying dispute. In the present case, the petitioner, having neither voluntarily initiated arbitration nor complied with the Civil Court's order, cannot circumvent the Section 4 adjudication by invoking Section 3. Any attempt to do so would amount to an indirect re-litigation of a matter already conclusively decided, in contravention of settled principles of law. Accordingly, in the absence of a finalized arbitral award, this Court is not competent to recognize or enforce the arbitration agreement, nor to grant interim relief affecting substantive rights, as such intervention would exceed the scope of judicial authority contemplated by the Act."

Application of Order XVII CPC - Distinction between Rules 2 and 3 in Trial Adjournments and Consequences of Party Default

R.F.A. No. 91 of 2015

Multi Professional Co-Operative Housing Society v. M/s AGECO Private Limited

Before Hon'ble Justice Saman Rafat Imtiaz.-

This judgment has expounded the principles for the application of Order XVII of the Code of Civil Procedure and distinction between Rule 2 and Rule 3 of Order XVII of the Code of Civil Procedure, 1908, regarding trial adjournments, the consequences of a party's failure to proceed and remedies available against the orders passed by the court. The

Court also issued certain guidelines for trial court to proceed U/O XVII Rule 2 or 3 CPC in case of default of any party. The Court observed that the point for determination involved in the appeal was *"whether it is Rule 2 or Rule 3 of Order XVII, CPC that is to be invoked by the Trial Court where the plaintiff not only fails to produce evidence or to cause the attendance of his witness or to perform any other act necessary for the further progress of the suit for which time has been allowed but also fails to appear on the day to which the hearing of the suit is adjourned."*

As per law settled by the court *"According to the scheme of law Order IX, CPC provides the consequences of non-appearance of the parties on the first date of hearing whereas Order XVII, CPC is attracted to adjourn dates of hearing. Rule 1 thereof allows the Court to grant adjournment and also empowers the Court to impose costs as occasioned by the adjournment, as it thinks fit. To cater to the latter, Rule 1 is followed by Rules 2 and 3 which provide the Courts with a course of action to check misuse and abuse."*

At one place, it was observed by the Court that

> *"The application of Order XVII, Rules 2 and 3, C.P.C. has been the topic of much judicial debate. As a result, judicial consensus has been achieved to the extent that the following conditions are considered necessary for the application of Rule 3:*
>
> *(i) time must have been granted to the party at his instance;*
> *(ii) the time must have been granted to the party to do one of the three things mentioned in the rule viz to produce evidence or to cause attendance of witnesses or to perform any other act necessary for the progress of the suit;*
> *(iii) default must have been committed by the party in doing the act for which the time and adjournment had been granted to it;*
> *(iv) the Court must decide the suit forthwith which means a decision within a reasonable time under the circumstances."*

It was observed by the Court that

> *"To sum up, the case for mandating the presence of the parties in order to invoke Rule 3 of Order XVII, C.P.C is based not just on its plain language in comparison to Rule 2 thereof, but also on the distinct consequences that flow from the orders passed under each of the aforementioned provisions given that Rule 2 permits disposal of the suit whereas Rule 3 is a decision on merits. In case of dismissal in default a remedy of restoration is available before the same Court upon showing sufficient cause for the previous nonappearance whereas in the case of dismissal on merits under Rule 3 of Order XVII, C.P.C the only remedy available is by way of appeal. On the other hand, if Rule 3 of Order XVII, C.P.C is construed to require presence it would afford the defaulting party at least an opportunity before the same Court to show a valid reason for non-compliance which, if found unsatisfactory, could then lead to the consequences as specified in Rule 3 of Order XVII, C.P.C."*

Court enumerated some of the principles to be kept in mind by the trial court when dealing with cases under Order XVII, CPC as follows:

> *"(i) Adjournments must not be granted in routine and may only be allowed strictly in accordance with Rule 1 of Order XVII, CPC for sufficient cause which ought to be reflected in the orders;*
>
> *(ii) Matters falling squarely within the purview of Rules 2 or 3 of Order XVII, CPC should be dealt with strictly in accordance with the law without showing indulgence or leniency sooner rather than later;*
>
> *(iii) Where adjournment is refused for want of sufficient cause yet the plaintiff fails to produce evidence or to cause the attendance of his witness or to perform any other act necessary for the further progress of the suit for which time has been allowed but there is no material available for the trial court to decide the issue on merits the trial court should opt for Rule 2 of Order XVII, C.P.C. except in the case of negligent or contumacious conduct where Rule 3 may be invoked; and*
>
> *(iv) Rule 3 of Order XVII, C.P.C. may be invoked where all other necessary conditions are fulfilled and material is available".*

Powers of consumer court u/s 9(3) of the Islamabad Consumers Protection Act, 1995 - Authority to award compensation for damage/loss arising from unfair trade practices

Crl. A. No. 422 of 2022 & Crl. A. No. 16 of 2023

Murtaza Talpur v. Leopards Courier Service

Before Hon'ble Justice Saman Rafat Imtiaz.-

In this judgment powers and limitations of consumer court under Consumer Protection Act with respect to awarding of damages and losses incurred to the complainant, have been described.

The Court held that

> *"the word 'any' as used in Section 9 (3) of the Islamabad Consumer Protection Act before the words 'damage or loss' implies a wide scope of damages and loss and includes all or every damage or loss suffered by the consumer on account of 'unfair trade practice' (as defined in the Islamabad Consumer Protection Act).*
>
> .....
>
> .....
>
> *Since plain language of Section 9(3) of Islamabad Consumer Protection Act authorizes the learned Islamabad Consumer Court to award compensation for damage or loss without any restriction (except that it must be damage or loss suffered on account of any 'unfair trade practice') and the learned Islamabad Consumer Court may frame issues, record evidence, etc., there is no reason why consideration paid may be recovered under Islamabad Consumer Protection Act but not any other type of damage even if suffered on account of an unfair trade practice."*

AGAR recovery from Satellite TV Channels from Dec 2009–2021, held ultra vires

Writ Petition No. 1252 of 2022

Pakistan Broadcasters Association and others v. Pakistan Electronic Media Regulatory Authority (PEMRA)

Before Hon'ble Justice Saman Rafat Imtiaz.-

Petitioners contended that imposing of Annual Gross Advertisement Revenue (AGAR), vide impugned demand notices, is ultra vires the Constitution of the Islamic Republic of Pakistan, 1973, and the Pakistan Electronic Media Regulatory Authority Ordinance, 2002; and that the action by the authority imposing and recovering AGAR is without jurisdiction, illegal and of no legal effect.

Writ petitions were allowed by the court, to the extent that the impugned AGAR was declared unreasonable and excessive, and as such illegal, unlawful, and unjustified and resultantly the impugned demand notices were set aside.

The Court was of view that "PEMRA Rules, 2009, were framed in year- 2009. Therefore, any amount demanded as AGAR by way of the Impugned Demand Notices pertaining to a period prior to the framing of PEMRA Rules, 2009 is "illegal, unlawful and beyond the mandate of the law." The Court reaffirms a key rule of statutory interpretation as below,

> *"37. Be that as it may, statutes are presumed to be applicable to cases and facts which come into existence after their enactment unless there is an intention to give them retrospective effect which is expressed in plain, clear, and unambiguous language. Moreover, [Section 24(4) of the PEMRA Ordinance, 2002] is a substantive provision of law and not merely procedural in nature which therefore cannot be given retrospective effect. Alternately, retrospective operation can be given to statutes remedial in nature but remedial statute is intended to clear up an ambiguity or oversight in the prevailing or standing law and in its pith and substance corrects or modifies an existing law or an error that interferes with interpreting or applying the statute. If its scope is not for clarification it cannot be deduced to be retroactive merely for the reason that it amounts to beneficial legislation..."*

The Court also observed that AGAR is the component of the Annual Renewal Fee, which PREMRA is authorized to impose u/s section 19(4) of the PEMRA Ordinance, 2002, and this Annual Renewal Fee "is a regulatory fee for which no quid pro quo is necessary."

It was held by the Court that

> *"…PEMRA has failed to substantiate that the amount anticipated to be recovered in the form of AGAR from December, 2009 to 2021 from the licensed Satellite TV Channels was in relation to its functions as envisaged under the PEMRA Ordinance, 2002 and that it was reasonable and not excessive."*

Vehicle Confiscation Order Declared Invalid - Discharge of burden of proof u/s 187 of the Customs Act, 1969

Customs Reference No.112 of 2023

Iftikhar Ahmed Khan v. Customs Appellate Tribunal and 6 others

Before Hon'ble Justice Saman Rafat Imtiaz.-

Show cause notice was issued by the Customs Department and consequently custom department issued an Order-in-Original, decreeing the outright confiscation of the vehicle. The owner (Applicant) challenged this decision before the Customs Appellate Tribunal; however, the Tribunal upheld the original order and dismissed the appeal against which this reference was filed by applicant.

The Court observed that the applicant could not be penalized for the Registration Authority's lack of records. Once the Applicant produced the documents, the burden shifted to the Customs Authorities to prove that the vehicle was smuggled—a burden they failed to meet, leaving their case as mere conjecture and presumption.

The Court also observed that under section 179(3) of the Customs Act, there is a strict time frame for issuing an order. The original order was passed two months and twenty-four days after the show cause notice, rendering it time-barred and legally invalid.

The Court observed and held that

> *"…the Applicant discharged his burden of proof under section 187 of the Customs Act by producing the registration documents. The Applicant cannot be penalized for the failure of the Motor Registration Authority, Jacobabad for their failure to verify the registration document on account of loss of their record. Since the Applicant met its initial burden, the burden to prove that the Subject Vehicle was a smuggled one shifted upon the Custom Authorities which they failed to discharge as not a shred of evidence is available on the record to prove the charge of smuggling against the Applicant."*

The Court further held that the original order was clearly time barred as it was passed two months and twenty four days after the Show-Cause Notice. Resultantly, Customs Reference was allowed by the Court.

Writ of Quo - warranto in employment matters - PTA HR appointment not a public office

I.C.As. Nos. 227, 228 and 236 of 2022

Rabeeya Pervez v. Usman Zafar and 5 others

Before Hon'ble Justice Mohsin Akhtar Kayani and Hon'ble Justice Saman Rafat Imtiaz.-

The appointment of the appellant was challenged by respondent No. 1, alleging that the appellant did not actually possess the qualification when she applied for the said post and the appointment was secured through misrepresentation and false credentials. Despite acknowledging the legal merit of the claim for issuing of writ of quo warranto, the writ petition was dismissed on the ground that the Respondent No. 1 was not acting as a "bona fide" litigant and his conduct suggested ulterior motives rather than a sincere interest in upholding the law.

Hon'ble Justice Saman Rafat Imtiaz authored the judgment. In the judgment, the limits of judicial intervention in employment matters, specifically regarding the "Writ of Quo Warranto" have been discussed. The court ultimately ruled that while the Pakistan Telecommunication Authority (PTA) is a government-controlled body, the specific role of an HR officer does not constitute a "public office" subject to high-level constitutional challenges. It was also held that the original respondent (the person challenging the appointment) also failed to prove his bona fide to challenge the said appointment.

The Honorable Court held that

> *"Pakistan Telecommunication Authority falls within the ambit of person as defined in Art.199 (5) of the Constitution, as it exercises a rule over functions of Pakistan Telecommunication Company Limited relating to telecommunication pursuant to Ss. 4 and 5 of Pakistan Telecommunication (Re-Organization) Act, 1996 which is a subject that pertains to one of the important affairs of Federation, while headed by Chairman who along with its constituting Directors is appointed by Federal Government under S.3 of Pakistan Telecommunication (Re-Organization) Act, 1996.*
>
> *Appellant as Assistant Director (HR) or Deputy Director (HR) was not vested with some portion of sovereign function of government to be exercised by her for the benefit of public. Work undertaken by human resource management officers did not have any nexus with sovereign functions of State nor could it be considered a public duty.Pakistan Telecommunication Authority, under S.9 of Pakistan Telecommunication (Re-Organization) Act, 1996 may by general or special order delegate any of its powers, functions or duties as it may think fit from time to time to any of its officers with the exception of specific powers, functions or duties as stipulated in proviso to S.9 of Pakistan Telecommunication (Re-Organization) Act, 1996."*

It was further held that

> *"the post of Assistant Director (HR) to which the Appellant was initially appointed was not a public office created by statute nor could it be described as a substantive one which was vested with some portion of sovereign functions of government to be exercised for the benefit of public and no contravention of statute or a statutory instrument had been pointed out."*

The Court set aside writ of quo warranto as essential conditions for issuance of such writ were not satisfied.

Quashing of criminal proceedings in writ jurisdiction is reserved for exceptional circumstances

Writ Petition No. 09 of 2026

Fazeela Abbasi v. Federation of Pakistan, etc.

Before Hon'ble Justice Khadim Hussain Soomro.-

Petitioner sought quashment of FIR registered for maintaining a regulated healthcare clinic without obtaining mandatory registration and licensing from the Islamabad Healthcare Regulatory Authority (IHRA) as required under the Islamabad Healthcare Regulation Act, 2018. While allowing the writ petition, the Court observed that

> *"In view of the foregoing discussion, this court is of the considered opinion that the allegations contained in the impugned FIR, even if taken at their face value and accepted in their entirety, do not disclose the commission of a cognizable offence to justify initiation of criminal proceedings. The alleged violation of the Islamabad Healthcare Regulation Act, 2018, falls within the regulatory domain of the authority and is subject to the complaint-based mechanism envisaged under Section 32 of the Act. The purported breach of CDA Regulation 2.1.7, at best, attracts civil or administrative consequences and does not create criminal liability. The allegation relating to the use of spurious or unregistered medicines lacks specificity, recovery details, and foundational material. At the same time, the invocation of Section 201 PPC is unsupported by the identification of any specific evidence alleged to have been destroyed or concealed. The continuation of criminal proceedings in such circumstances would amount to misuse of the criminal process and an abuse of law, particularly when the special*

statutes provide their own enforcement mechanisms."

Transfer of Pending Case is not a Matter of Right

Crl. Revision No. 02 of 2026

Zulfiqar Ali Parwaz v. The State, etc.

Before Hon'ble Justice Khadim Hussain Soomro.-

Petitioner filed petition against dismissal of application for transfer of pre-arrest bail of respondents Nos. 2 & 3. The Court found no substance in the transfer application, as no reasonable or genuine apprehension of bias or denial of fair trial was made out. Application was dismissed and it was observed by the Court that

"It is a settled principle of law that the transfer of a pending case from a competent Court cannot be claimed as a matter of right, nor can such relief be granted as a routine or on the mere whims and wishes of a party. A case is liable to be transferred only where the record, on the face of it, establishes that the party seeking transfer is unlikely to receive a fair and impartial trial in accordance with law. During the course of arguments, learned counsel for the petitioner has failed to articulate any genuine, reasonable, or substantiated apprehension of bias or miscarriage of justice so as to justify the extraordinary relief of transfer."

Superdari of Vehicle does not prejudice Prosecution's case - Continued retention: deprivation of property

Crl. Misc. No.2186 of 2025

Muhammad Tariq v. The State, etc.

Before Hon'ble Justice Khadim Hussain Soomro.-

Petitioner impugned the orders passed by the Courts, whereby an application for superdari of vehicle was dismissed. While allowing the petition, it was observed by the Court that

"It is by now a settled principle of law that release of a vehicle on superdari is merely an interim arrangement and does not in any manner prejudice the case of the prosecution nor does it amount to acquittal or confer any undue advantage upon the accused or owner. The purpose of superdari is to ensure proper preservation of property while entrusting its custody to the lawful owner, subject to furnishing adequate surety and undertaking to produce the same before the Court as and when required. The identity and evidentiary value of the vehicle can be sufficiently preserved through proper documentation, photographs, and surety bonds.

Furthermore, the continued retention of the vehicle in official custody, despite the petitioner being its undisputed owner, would amount to unnecessary deprivation of property. Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973 guarantee the fundamental right of every citizen to acquire, hold, and protect property, and such right cannot be curtailed except strictly in accordance with law. In the absence of any legal impediment, confiscation proceedings, or competing claim, the petitioner cannot be deprived of interim custody of his vehicle for an indefinite period."

There is no distinction b/w vital and non-vital injuries - intention is evident once victim is targeted

Crl. Misc. No. 27 of 2026

Fawad alias Mani v. The State, etc.

Before Hon'ble Justice Khadim Hussain Soomro.-

The petitioner prayed for post-arrest bail in a case for inflicting firearm injuries under sections 324/34 of PPC. While dismissing the petition the court observed that

"On a tentative assessment of the record, it transpires that the petitioner has been nominated in the FIR with a specific and direct role of causing firearm injuries to the wife and son of the complainant. The allegation is not of a peripheral or vicarious nature; rather, the act of firing has been directly attributed to the petitioner. The medical evidence shows that the injured sustained firearm injuries, and the weapon of offence has also been recovered from the possession of the petitioner during the course of investigation, which prima facie connects him with the commission of the

alleged offence. The argument regarding the delay in registering the FIR lacks substance at this stage, as the record shows that the injured persons were first taken to the hospital and the FIR was lodged thereafter, which is a natural and plausible course of conduct. The delay of a few hours thus stands sufficiently explained and does not create any dent in the prosecution's case.

Turning to the point emphatically raised by the learned counsel of the applicant that the injured sustained injury on the non-vital part of the body. The significance of a murderous assault lies in the deliberate targeting and infliction of harm upon both vital and non-vital portions of the victim's body. According to Section 324 of the Pakistan Penal Code (PPC), there is no differentiation made between vital and non-vital parts of the human body. Once the trigger is pressed and the victim is successfully targeted, the element of "intention or knowledge," as outlined in Section 324 of the PPC, becomes evident. The trajectory of a bullet is not influenced or directed by the assailant's choice, and they cannot use poor marksmanship as a justification for leniency during the bail stage. "

Simply 'forming of an opinion' by Commission/Registrar at preliminary stage for initiation of inquiry/investigation in company's affairs and for appointment of Inspector

Writ Petition No.627 of 2017

Amtex Limited through duly authorized CEO v. Securities and Exchange Commission of Pakistan and other

Before Hon'ble Justice Muhammad Azam Khan.-

In the instant case, scope and nature of powers U/S 261, 263, and 265 of the Companies Ordinance, 1984 and section 33 of SECP Act, 1997 are discussed. Through the instant writ petition, grievance of petitioner revolves around initiation of proceeding under section 261 read with section 263 and 265 of the Companies Ordinance, 1984 and investigation by inspector; petitioner challenges the impugned action (Order No. 1/2026 whereby the petitioner was called upon to submit information and documents related to Prospectus passed under Section 261, Order No.2/2026, whereby similar information was sought from the Petitioner. In compliance, the petitioner submitted information and documents. Respondent found the information and documents containing discrepancies. Subsequently a Show Cause Notice (SCN) was sent under Section 263 and 265 of Ordinance, petitioner replied to the notices and refuted the allegation levelled and submitted that appointment of inspector is harsh and unjust. Vide Order No.3/2026 Mr. Amin Ali was appointed as inspector for investigation the affair of company. Petitioner filed appeal and challenged the appointment of inspector, department maintained that such appeal is not competent in accordance with amended section 33 of the SECP Act, 1973. Petitioner also challenged the vires of section 33(1) of the SECP Act, whereby right of appeal is unlawfully removed against interim orders, before such right of appeal was provided under section 263 of the Companies Ordinance.

The Hon'ble Court held

"It is well settled that at the stage of 'forming an opinion' Registrar just needs simply to form an opinion under section 261 and 265 of the ordinance. Registrar's request, therefore, was well within its statutory competence. The Registrar and the Commission are not required to possess "conclusive or irrefutable evidence" at the preliminary stage. Similarly, appointment of Inspector, Commission needs simply form an opinion. Apex Court of the country held that the opinion must be founded on some tangible basis, but needed to meet the evidentiary standard required for adjudication, a full-fledged inquiry in the form of a trial is not required before passing the order or for the appointment of Inspectors. The statutory scheme contemplates a preliminary and subjective satisfaction based on the existence of material that raises a legitimate concern about the correctness or propriety of company s affairs."

Section 175C of the Income Tax Ordinance, 2001: No unfettered extensions, authority confined to Board/Chief Commissioner - Doctrine of *pari materia* explained

Writ Petition No. 2744 of 2025

ZUBAIR FEEDS INDUSTRIES (PRIVATE) LIMITED through Manager Taxation v. FEDERATION OF PAKISTAN through Chairman Federal Board of Revenue

Before Hon'ble Justice Muhammad Azam Khan.-

Petitioner challenged the invocation of Section 175C of the ITO, 2001 by Respondent No. 4 as unlawful, without jurisdiction, and violative of Articles 4, 8, 10A, 18, 23, 25 and 77 of the Constitution of the Islamic Republic of Pakistan, 1973. Further contended that only the Board or Respondent No. 2 is competent to invoke such power, making Respondent No. 4's action without lawful authority, discretionary powers i.e posting of personnel must be exercised judiciously and only for a lawful, specific purpose. Respondent contended that the writ petition is not maintainable under Article 199 of the Constitution as alternate remedy is available and it is well-settled that constitutional jurisdiction cannot be invoked where statutory remedies exist and no final and adverse action has been passed.

The Hon'ble Court observed and held that

> *"…Section 175C of the ITO, 2001 has been recently inserted and remains to be judicially interpreted. Guidance may legitimately be drawn from Section 40B of the Sales Tax Act, 1990, which is pari materia in both language and purpose….*
>
> *The doctrine of pari materia permits courts to interpret two provisions in harmony where they are couched in substantially similar terms, address the same issue, and seek to achieve a common object. While Section 40B empowering the Board or Chief Commissioner to post officers of Inland Revenue at the business premises of a taxpayer…"*

Moot point before court was *"Whether the repeated extensions of thirty days each, without assigning reasons or disclosing material, can be sustained in law?"* Section 175C of the ITO, 2001 does not, in express terms, prescribe a limitation of time for such postings. It is well-settled that the law does not recognize unfettered and unbridled discretion.

After thoroughly going through the precedent, the Court observed that in order to prevent arbitrary exercise, the posting order must stipulate a reasonable timeframe, and that any extension should be made known to the taxpayer. It cannot be construed as a license to grant successive extensions in a mechanical or indefinite manner. Every extension of monitoring must be supported by cogent justification, demonstrating the necessity for continued oversight. Initial orders for posting of personnel may be regarded as valid, however extending the posting of officers at the Petitioner's hatcheries suffer from a conspicuous absence of reasons.

Section 175C of the ITO, 2001 confers authority upon the Board or the Chief Commissioner only to order the posting of officers of Inland Revenue to the business premises of a person or class of persons for the purpose of monitoring, Additional Commissioner, thereby excluding the possibility of delegation and or sub-delegation.

Deputation cannot confer rights of promotion/absorption - Rule 5 (c) of the Intellectual Property Organization Service Rules, 2022, declared as ultra vires & void ab initio

Writ Petition No. 907 of 2023

Muhammad Ismail, etc. v. Federation of Pakistan, Cabinet Division, through its Secretary, Cabinet Secretariat, etc.

Before Hon'ble Justice Muhammad Asif.-

The petitioners, regular employees of the Intellectual Property Organization of Pakistan, invoked constitutional jurisdiction under Article 199 to challenge Rule 5(c) of the IPO Service Rules, 2022, whereby certain posts were "reserved" for officers of the Commerce and Trade Group (CTG). They contended that such reservation amounted to unlawful encadrement of civil servants into an autonomous body, contrary to the Intellectual Property Organization of Pakistan Act, 2012 and the Civil Servants Act, 1973 and that excessive deputation of CTG officers had adversely affected their promotional prospects and undermined IPO's autonomy. The respondents defended the Rules as validly framed under Section 34 of the Act, 2012, arguing that CTG officers possessed relevant expertise and that deputation was legally permissible. The core questions before the Court were whether the impugned rule was intra vires the parent statute and whether deputation could be used as a permanent staffing mechanism.

The petition was disposed of in the following terms.

> *(i) Rule 5(c) of the IPO Service Rules, 2022, to the extent that it creates "reserved posts" for officers of the Commerce and Trade Group (CTG), is declared ultra vires the IPO Act, 2012, and void ab initio.*
>
> *(ii) Civil servants, including CTG officers, may be posted in IPO-P only on deputation strictly in accordance with Section 10 of the Civil Servants Act, 1973. Such deputation shall remain a temporary arrangement, and shall not confer any right of absorption, encadrement, or promotion within IPO-P.*
>
> *(iii) The IPO Policy Board shall remain competent to frame or amend rules under Section 34 of the Act, 2012, subject to approval of the Federal Government, provided that such rules are consistent with the Act and do not prejudice the vested rights of IPO-P's regular employees.*
>
> *(iv) The respondents are directed to ensure that all future appointments in IPO-P are made in strict accordance with the statutory framework, and that the career progression of IPO-P's regular employees is not obstructed by unlawful encadrement or prolonged deputation arrangements.*

Preservation of approved layout plan and amenity spaces — Residents' legitimate expectation against arbitrary alteration in CBR Employees Cooperative Housing Society

PLJ 2025 Islamabad 410

Muhammad Anwer Chaudhary, etc. v. Capital Development Authority, etc.

Before Hon'ble Justice Muhammad Asif.-

The petitioners, residents of CBR Employees Cooperative Housing Society (CBR-ECHS), Islamabad, invoked constitutional jurisdiction challenging the Revised Layout Plan approved by the Capital Development Authority (CDA), whereby amenity plots, green areas, and river spaces were converted into residential and commercial plots. They contended that the revision was made without lawful authority, in violation of the CDA Ordinance, zoning regulations, and society bye-laws, and without properly considering their objections or affording a meaningful hearing. It was further argued that such conversion adversely affected their property rights, quality of life, and legitimate expectations arising from the original layout plan approved in 2007. The respondents defended the revision on the ground that it was processed in accordance with applicable regulations, duly advertised, and objections were invited and disposed of; thus, due process had been followed.

It was held and observed by the Court that

> *"The impugned Revised Layout Plan dated 21-03-2025, passed by CDA is declared to be illegal, without lawful authority and of no legal effect, and is hereby set aside. The respondents are directed to restore the layout plan of CBR-ECHS Phase-I to its original form as approved on 24-02-2007. The CDA is further directed to ensure that*

no amenity plots, green areas or public utility spaces are converted to residential or commercial usage in violation of applicable laws and regulations, and that the rights of the residents are safeguarded in future with no order as to costs."

Pakistan Information Commission lacking jurisdiction against Election Commission and office of the President

Writ Petitions No. 784, 785, 963, 964, 965, 1485, 3564 of 2020 & 3706, 3707 of 2022

Election Commission of Pakistan, through its Secretary v. Pakistan Information Commission and another

Before Hon'ble Justice Muhammad Asif.-

The petitions were filed by the Election Commission of Pakistan and the Federation (President's Secretariat) challenging multiple orders of the Pakistan Information Commission, whereby directions were issued to disclose various categories of information relating to budgets, expenditures, elections, and administrative matters under the Right of Access to Information Act, 2017. The petitioners contended that they are constitutional bodies established under Articles 218 and 41 of the Constitution respectively, and therefore do not fall within the definition of "public body" under the Act, 2017, which applies only to entities created under federal law. Conversely, the respondents argued that access to information is a fundamental right under Article 19A of the Constitution, and since these institutions perform public functions and utilize public funds, they are bound to disclose such information and fall within the functional scope of the Act.

The petitions were allowed and the impugned orders were set aside. It was observed and held by the Court that

"(a) The Right of Access to Information Act, 2017 does not apply to constitutional bodies, including the Election Commission of Pakistan and the Office of the President of Pakistan, as they are not "public bodies" within the meaning of Section 2(ix) of the Act.

(b) The Pakistan Information Commission, being a statutory authority, has no jurisdiction to issue binding directions or orders against such constitutional entities.

(c) The impugned orders passed by the PIC, being without jurisdiction, are declared to have been issued without lawful authority and are of no legal effect within the meaning of Article 199 of the Constitution.

However, this Court also observes that the ECP and the Office of the President, being constitutional institutions, remain bound by the mandate of Article 19A of the Constitution. However, in the exercise of constitutional jurisdiction and to give full effect to Article 19A of the Constitution, the Election Commission of Pakistan and the President's Secretariat are directed to frame and notify appropriate regulations or mechanisms for ensuring citizens' access to information, thereby promoting transparency and accountability. This exercise shall be completed within ninety (90) days from the date of receipt of this judgment. Upon promulgation of such regulations, the information sought by the respondent No.2 shall be processed and provided strictly in accordance therewith, within a further period of thirty (30) days, subject to any legally permissible exemptions. Before parting, it is observed that Article 19A is self-executory in nature and extends to all organs of the State, whether established under the Constitution or by statute. While constitutional bodies may preserve their institutional autonomy, they remain bound by their constitutional duty to uphold transparency and ensure disclosure in matters of public importance."

No regularization/permanent appointment without lawful authority and codal formalities

Writ Petition No. 1063 of 2025

Samia Rehman, etc. v. Federation of Pakistan, through Secretary, Ministry of Federal Education & Professional Training, etc.

Before Hon'ble Justice Muhammad Asif.-

Petitioners sought enforcement of alleged regularization and permanent postings, citing Cabinet Sub-Committee's recommendations and notifications. They argued denial of postings was discriminatory and violated constitutional rights. Respondents countered that petitioners were engaged on daily wages by unauthorized officers without lawful recruitment, making appointments void ab initio. They maintained that regularization in BPS-16 and above lies solely within the jurisdiction of the FPSC, and Cabinet Sub-Committee's recommendations carry no legal authority. The Court dismissed the writ petition in the following terms:

> *i. The petitioners' initial engagements on daily wages were made by authorities lacking competence, without observance of codal formalities, and were void ab initio;*
>
> *ii. The concept of "regularization" is not a recognized mode of appointment under the Civil Servants Act, 1973 or the Rules of 1973;*
>
> *iii. The recommendations of Cabinet Sub-Committees for regularization of employees in BPS-16 and above have been declared void ab initio by the Hon'ble Supreme Court in Mohsan Raza Gondal and others v. Federation of Pakistan (2025 SCMR 104);*
>
> *iv. The reliance on Mst. Saima Malik is misconceived, that case being an isolated instance not amounting to a binding precedent;*
>
> *v. The plea of discrimination under Article 25 cannot be invoked to perpetuate an illegality; and*
>
> *vi. Resultantly, this Court finds no merit in the Writ Petition No.1063 of 2025. The same is accordingly dismissed. No order as to costs.*

No allowance without lawful sanction and budgetary approval

Writ Petition No. 3607 of 2019

Muhammad Khizer Aziz, etc. v. Election Commission of Pakistan, through Chief Election Commissioner, etc.

Before Hon'ble Justice Muhammad Asif.-

Petitioners were seeking enforcement of a Special Allowance @ 50% of running basic pay sanctioned by the Chief Election Commissioner (CEC). Although the order was vetted by the Law Division, its implementation was withheld by the Accountant General Pakistan Revenues (AGPR) on the direction of the Ministry of Finance, which raised objections regarding lack of prior consultation under Rule 12 of the Rules of Business, 1973, absence of budgetary allocation, and impermissible re-appropriation of funds. The petitioners contended that ECP, being a constitutionally independent body, possessed financial autonomy, and that denial of the allowance violated their fundamental rights, including equality and legitimate expectation, especially when similar benefits had been extended to employees of other constitutional institutions.

The Court observed and held that

> *"15. In view of the above discussion, this Court is of the considered view that the order dated 20.02.2019 issued by the Chief Election Commissioner sanctioning Special Allowance @ 50% of the running basic pay was not backed by lawful budgetary sanction or constitutional authorization under Articles 80 to 83 of the Constitution and the Public Finance Management Act, 2019. Accordingly, no vested right accrued to the petitioners. The refusal by the Finance Division and AGPR to implement the said order cannot be termed illegal, arbitrary, or unconstitutional. The doctrine of legitimate expectation is inapplicable in the absence of a lawful entitlement, and the plea of parity with other constitutional bodies is untenable in law. Accordingly, no case for interference under Article 199 of the Constitution is made out.*
>
> *16. Resultantly, the instant Writ Petition No.3607 of 2019 is devoid of merit and is hereby dismissed. No order as to costs."*

The jurisdiction of National Industrial Relations Commission emanates from statute itself; not from territorial considerations/private agreements

Writ Petition no. 2795 of 2025

M/S Reko Diq Mining Company v. National Industrial Relations Commission and others

Before Hon'ble Justice Inaam Ameen Minhas.-

In the instant petition, the Court has examined the limits of exclusive jurisdiction clauses in employment contracts and their interaction with statutory labour remedies under the Industrial Relations Act, 2012. The Court observed that commercial entities are free to choose forums among the available forums for dispute resolution, such freedom is not absolute in employment contracts where an "inequality of bargaining power" exists. The contract included "Clause 14", stipulating that any dispute would be subject to the exclusive jurisdiction of courts in Islamabad and governed by the laws of the Islamabad Capital Territory.

The Court further observed that the respondent was required merely to "sign on the dotted line" to secure her livelihood, leaving her with no option but to accept the company's terms. Invoking the "doctrine of unconscionably", the Courts must intervene when a dominant party exploits economic necessity to secure unfair advantages.

It was further held that the National Industrial Relations Commission derives its authority directly from the Industrial Relations Act, 2012. Its jurisdiction is federal and statutory in nature, and its benches across Pakistan function merely as administrative extensions. Consequently, territorial location or contractual stipulations cannot curtail the jurisdiction conferred by statute. A private agreement cannot override a legislative mandate.

The Court also emphasized that permitting employers to bypass statutory labour forums through contractual clauses would defeat the very object of labour legislation, which is designed to protect workers and ensure accessible dispute resolution. Access to justice, being a fundamental right, cannot be diluted by standardized contractual terms.

The Court observed that

> *"…where jurisdiction flows from a federal statute such as the IRA 2012, and is exercised through a duly constituted bench of the NIRC, the place where the bench sits or any contractual stipulation to the contrary cannot curtail or negate such statutory authority. The jurisdiction of the NIRC emanates from the statute itself and not from territorial considerations or private agreements. Although this Court ultimately concurs with the conclusion reached by the forum below, it is clarified that the reasoning and principles adopted therein do not correctly reflect the applicable legal principles..."*

Powers u/s 540, Cr.PC cannot be invoked to cure prosecution's lacuna

Criminal Appeal No. 24 of 2026

Muhammad Feroz v. The State and another

Before Hon'ble Justice Arbab Muhammad Tahir and Hon'ble Justice Inaam Ameen Minhas .-

Hon'ble Justice Inaam Ameen Minhas authored the judgment for the Court. The appellant was being tried before the Special Court (CNS)-II, Islamabad, under the Control of Narcotic Substances Act, 1997. After completion of evidence and final arguments, and when the case stood fixed for judgment, the prosecution filed an application u/s 540 Cr.P.C. seeking re-examination of a prosecution witness and production of official records never exhibited during trial. The trial court allowed the application, prompting the present appeal.

The Court allowed the appeal. According to the Court, the powers vested in a trial court U/S 540 Cr.P.C. cannot be exercised to fill lacuna's in the prosecution's case. It was observed and held by the Court that

> *"This section is divided into two components, one with the word 'may' conferring discretionary and*

permissive authority upon a court, and the other with the word 'shall' imposing an obligatory and mandatory duty upon it. While exercising discretion, a court must be vigilant against any attempt by any of the party to misuse this authority and should adhere to the guiding principle of serving the interests of criminal justice, and this discretion must be wielded judiciously since with great power comes a greater need for careful judicial reasoning.

It is the duty of a court to discover the truth and deliver a fair decision, wherein section 540 Cr.P.C. authorises courts to exercise such discretionary powers to summon any material witness, examine any person in attendance regardless of whether he has been included in the calendar of witnesses or not, and recall or re-examine any witness, who has previously been examined to avoid defeating ends of justice. Such application is legally permissible at any stage even at the stage of final arguments, provided that the evidence sought is genuinely essential for just conclusion of the case and its submission respects the fundamental right of fair trial guaranteed under the Constitution of Pakistan 1973. It must not be for the purpose to create anomalies in the trial or to fill lacunas in the evidence. The extent and limitations of section 540, Cr.P.C. are well settled, and the object of the provision, as a whole, is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of society. The court examines evidence under this section neither to help the prosecution nor to help the accused; it is done neither to fill up any gaps in the prosecution evidence nor to give it any unfair advantage against the accused. The fundamental thing to be seen is whether the court considers this evidence necessary in the facts and circumstances of the particular case before it. If such evidence results in only the filling of lacunas, the same remains purely a subsidiary factor and cannot be taken into consideration."

Competition Commission of Pakistan's jurisdiction upheld in telecom competition

W.P. No. 31 of 2014, 32/2014, 34/2014, 42/2014, 2901/2014, 2995/2014, & 2757/2023

China Mobile Pakistan Limited v. Competition Commission of Pakistan & others

Before Hon'ble Justice Inaam Ameen Minhas.-

The Court framed following questions for determination:-

I. Whether the CCP possesses jurisdiction under the Act, 2010 to inquire into alleged deceptive marketing practices in the telecom sector, or whether the Pakistan Telecommunication Authority (PTA), being the sectoral regulator under the Act, 1996, has exclusive jurisdiction in such matters, or both statutory bodies exercise concurrent jurisdiction?

II. Whether the issuance of Impugned Show Cause Notices (SCN's) and Impugned Notice by CCP constitutes an adverse order amenable to constitutional jurisdiction under Article 199 of the Constitution, or whether the availability of statutory remedies renders the present petitions premature and not maintainable?

The court observed that *"CCP's statutory mandate extends across all sectors of the economy, including telecommunications, and operates concurrently with the Pakistan Telecommunication Authority (PTA)."*

The Court reaffirmed that when allegations involve anti-competitive practices, cartelization, deceptive marketing, or abuse of dominant position, the matter squarely falls within the exclusive jurisdiction of the CCP. The Court categorically held that such issues must, in the first instance, be examined by the specialized competition regulator under the Competition Act, 2010.

The judgment also holds that *"PTA themselves fall within the definition of "undertaking," meaning even the PTA can be scrutinized by the CCP for anti-competitive conduct which serves as an important safeguard against the risk of "regulatory capture." Crucially, the Court underscored that while PTA's mandate is sectoral and limited to technical and regulatory oversight, competition enforcement is not an explicit part of PTA's statutory framework".*

"The doctrine of lex specialis derogat legi generali, i.e. a special law prevails over a general law

postulates that where two enactments govern the similar situation, the statute dealing with a particular subject-matter (lex specialis) overrides the statute which addresses the subject in more general terms (lex generalis)." The Act, 2010, being a comprehensive law within its purpose, scope, object and remedial portion on competition, constitutes lex specialis governing all competition-related matters across all sectors.

The principle, *lex posterior derogat priori* i.e. law later in time prevails, states that a later enactment with a non obstante clause can override prior one, unless legislature clearly intended otherwise. The interpretative rule consistently expounded by the superior Courts of Pakistan is that, where there exists overriding clauses between two special enactments, the later statute shall prevail over the former.

The Court affirmed that when allegations involve anti-competitive practices, cartelization, deceptive marketing, or abuse of dominant position, the matter squarely falls within the exclusive jurisdiction of the CCP. The Court categorically held that such issues must, in the first instance, be examined by the specialized competition regulator under the Competition Act, 2010.

The pith and substance of the Act, 2010, demonstrates that CCP has overarching jurisdiction, across all sectors of the economy, including telecommunications. Its functions are not limited to mere regulation but extend to the prevention and prohibition of anti-competitive behaviour, abuse of dominance, collusive arrangements, and deceptive marketing practices that may distort market dynamics or harm consumer welfare. PTA may continue to regulate the telecom industry within its domain and protect consumers' rights, the CCP possesses the primary authority to examine and address the broader implications of competition-related conduct within telecom industry. Both the frameworks thus operate in distinct yet complementary domains, and the exercise of jurisdiction by the CCP in matters of deceptive marketing or anti-competitive practices cannot be construed as an encroachment upon the regulatory sphere of the PTA. Therefore, this Court is of the considered view that, without ousting the role of the sectoral regulator PTA, the CCP has jurisdiction to inquire into and adjudicate upon issues related to competition in telecom sector. By contrast, the CCP possesses the specialized competence, expertise, and statutory capacity to apply uniform competition principles across all sectors, including telecom."

Section 214-A of the Income Tax Ordinance, 2001: Independent Power to condone delay must harmonize with time bound provisions

Writ Petition no. 2247 of 2025

Huawei Technologies Pakistan Limited v. Federation of Pakistan and others

Before Hon'ble Justice Inaam Ameen Minhas.-

The petitioner, having a special tax year, was selected for audit for the (Tax Year 2019) by the Commissioner Inland Revenue but the audit proceedings could not be finalized within the statutory time limit expiring on 31.12.2024. Resultantly, the Commissioner Inland Revenue, (CIR) sought condonation of delay regarding finalization of audit proceedings, which was approved by the competent authority under section 214-A, extending the limitation period by six months. The said condonation of period has been challenged in the instant petition.

The Court held that Section 214-A must be interpreted harmoniously with the rest of the law. It cannot be used to "revive" a case once the legal time limit has already expired, as taxpayers have a vested right to finality. An extension is only lawful if:

i. *A notice was already issued within the original statutory period.*
ii. *The delay was caused by reasons beyond the control of the authorities or the taxpayer.*
iii. *The department provides exceptional justification rather than generic excuses.*

The Court, in this regard, held that

> *"Section 214-A operates as an overriding, independent power enabling the Board or its authorized officers to condone delays to permit the performance of any statutory act and must therefore be harmoniously construed to allow for it to coexist with other time-bound provisions of the Ordinance. This, however, does not mean that in exercise of this statutory power the Board can extend time at its will since it cannot enlarge or revive a jurisdiction extinguished by the lapse of a substantive statutory limitation, as vested rights cannot be displaced by procedural law."*

The court also held that "no extension can lawfully be granted unless a notice under section 122 has been issued within the prescribed statutory period. However, where a notice for amendment of assessment has been issued within the limitation prescribed under section 122(2) of the Ordinance, and the final order cannot be passed for reasons manifestly justifiable and beyond the control of either the revenue authority or the taxpayer, the Board may, lawfully invoke its discretionary power under Section 214-A to extend the time for completing the proceedings within the reasonable period set. This construction preserves section 214-A and remains consistent with the statutory authority vested in the Board."

The Court in this particular case observed that

> *"The date of filing of the return which is an element that goes to the very root of the determination of limitation under section 122(2), was neither disclosed nor brought to the fore in the CIR's request for condonation. The omission of such a foundational fact, whether arising from negligence or from a deliberate attempt to manipulate the record so as to procure a mechanical extension of time, reflects a degree of administrative laxity that the law cannot countenance. Actions of this nature inflict greater injury upon the public exchequer than the conduct of an evading taxpayer, for they undermine statutory safeguards, distort the proper operation of fiscal law, and result in avoidable loss solely attributable to the conduct and inaction of the department. If the concealment or misstatement was intended to secure an extension destined to be set at naught, it represents an even more troubling abdication of duty. The statutory period (a period of six years under the second proviso to section 177(1)) granted is, by any measure, more than adequate and any additional time in the absence of any "exceptional justification" would amount to a reward for administrative inefficiency, which the law does not permit. Therefore, any condonation of time without recording any exceptional circumstances which might justify further extension constitutes an act of highhandedness and amounts to executive overreach. However, in the present matter the Impugned Condonation was granted on the basis of the generic observation of "taking cognizance of the facts of the case" without specifying any grounds. Thus, the Impugned Condonation does not even satisfy the basic threshold of eligibility for consideration under this test."*

Bar of Article 212 does not cover civil servant's fitness - High Court has jurisdiction

Writ Petition No. 3710 of 2024

Maj (Retd.) Bashir Ahmed and another v. Federation of Pakistan through Secretary Establishment Division and others

Before Hon'ble Justice Inaam Ameen Minhas.-

This judgment has established that, if a civil servant is denied promotion based on a subjective assessment of their suitability or fitness, the High Court has got the jurisdiction to adjudicate the matter and not the Service Tribunal. The Court further laid down certain criteria to be observed for the purpose of promotion excluding the unfettered discretion of the department in case of promotion based on subjective criteria.

The Court precisely observed that promotion is not a matter of pure executive discretion; it is a structured legal process governed by Schedule-IV of the 2019 Rules. This schedule utilizes a quantification formula where the Departmental Selection Board (DSB) must score candidates out of 30 across ten specific parameters, including leadership, professional expertise, and integrity.

The law mandates that these scores be grounded exclusively in the documentary record, such as: PERs: Performance Evaluation Reports, TERs: Training Evaluation Reports and Service Dossiers: The officer's formal employment history.

The courts have strictly prohibited "supersession" (denying promotion) based on vague impressions or unrecorded perceptions. The Departmental Selection Board (DSB) cannot supersede an officer based on secret or undisclosed material. Under the principles of natural justice, the officer must be confronted with the evidence against their integrity and given a fair opportunity to explain or disprove it. Failure to provide this hearing "vitiates" (invalidates) the entire promotion process.

If an officer has years of unblemished service and positive reports (ACRs), the DSB cannot suddenly claim they are dishonest without clear and specific evidence that contradicts their entire service history.

"It is well settled that the jurisdiction to resolve questions regarding fitness and suitability of a civil servant to be considered for promotion does not vest in the FST. The Honourable Supreme Court has consistently held that the bar contained in section 4 of the Federal Service Tribunal Act, 1973, does not extend to questions concerning the fitness of a civil servant to hold a particular post and that in such matters the High Court is the proper forum to adjudicate upon such matters in exercise of its Constitutional jurisdiction. In the case of Orya Maqbool Jan vs. Federation of Pakistan through Secretary and others, (2014 SCMR 817), it was held that jurisdiction of High Court is not barred, where the issue pertains to fitness for promotion. Similarly, in Secretary Establishment Division vs. Aftab Ahmed Maneka, (2015 SCMR 1006), the Honourable Supreme Court reiterated that the constitutional jurisdiction of the High Court is not ousted in matters relating to promotion of civil servants to higher grades. It was also held that promotion does not fall within the terms and conditions of service and consequently, the bar of Article 212 of the Constitution to invoke the constitutional jurisdiction of High Court under Article 199 is not attracted.

The governing framework for promotions is embodied in the Promotion Rules, 2019, which prescribes not only the procedure but also the criteria upon which the fitness of an officer for promotion is to be assessed.

Schedule-IV of the Promotion Rules, 2019, contains the quantification formula, which is intended to structure discretion of Selection Board to ensure just and fair treatment to contenders for promotion. Under Schedule-IV of the Promotion Rules, 2019, the DSB in the objective assessment form scores the civil servants out of 30 under the following ten parameters:-

> *"**i.** Output and quality of work **ii.** Variety and relevance of experience **iii.** Professional expertise **iv.** Personality Profile **v.** Conduct, Discipline and Behavior **vi.** Leadership **vii.** Estimated Potential for Middle/Higher Management **viii.** Integrity/General reputation/Perception **ix.** Commitment to Public Service **x.** Teamwork."*

Promotion under the Promotion Rules, 2019 is to be grounded in objective assessment of the documentary record, including PERs, TERs and service dossier. To disregard this material and instead substitute it with vague impressions or undisclosed considerations is to act in direct violation of the Promotion

Rules, 2019. Supersession based on vague and unrecorded perceptions not only undermines the settled law but also strikes at the root of fairness, transparency and meritocracy in the civil service.

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