



(1) **ADMINISTRATION OF JUSTICE**

2017 S C M R 1444

[Supreme Court of Canada]

**Present: McLachlin, C.J., Abella,
Moldaver, Karakatsanis, Wagner,
Gascon, Côté, Brown and Rowe, JJ**

**DIRECTOR OF CRIMINAL AND PENAL
PROSECUTIONS---Appellant**

Versus

**ROBERT JODOIN and others---
Respondents and Intervenors**

The courts have the power to maintain respect for their authority. This includes the power to manage and control the proceedings conducted before them. A court therefore has an inherent power to control abuse in this regard and to prevent the use of procedure "in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. This is a discretion that must, of course, be exercised in a deferential manner, but it allows a court to "ensure the integrity of the justice system".

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- ii. It is settled law that this power is possessed both by courts with inherent jurisdiction and by statutory courts. It is therefore not reserved to superior courts but, rather, has its basis in the common law.
- iii. There is an established line of cases in which courts have recognized that the awarding of costs against lawyers personally flows from the right and duty of the courts to supervise the conduct of the lawyers who appear before them and to note, and sometimes penalize, any conduct of such a nature as to frustrate or interfere with the administration of justice. As officers of the court, lawyers have a duty to respect the court's authority. If they fail to act in a manner consistent with their status, the court may be required to deal with them by punishing their misconduct.
- iv. This power of the courts to award costs against a lawyer personally is not limited to civil proceedings, but can also be exercised in criminal cases. This means that it may sometimes be exercised against defence lawyers in criminal proceedings, although such situations are rare.
- v. The power to control abuse of process and the judicial process by awarding costs against a lawyer personally applies in parallel with the power of the courts to punish by way of convictions for contempt of court and that of law societies to sanction unethical conduct by their members. Punishment for contempt is thus based on the

same power the courts have "to enforce their process and maintain their dignity and respect". These sanctions are not mutually exclusive, however. If need be, they can even be imposed concurrently in relation to the same conduct.

(2) CONSTITUTION

(i) 2017 SCMR 1344

[Supreme Court of Pakistan]

**Present: Mushir Alam, Qazi Faez Isa
and Sardar Tariq Masood, JJ**

**SINDH REVENUE BOARD through
Chairman Government of Sindh and
another---Appellants**

Versus

**The CIVIL AVIATION AUTHORITY OF
PAKISTAN through Airport Manager---
Respondent**

FEDERALISM

- i. Whilst the provincial legislatures are independent, they must operate within the sphere allotted to them and within their prescribed limit. Neither the Federation nor the provinces should invade upon the rights of the other nor encroach on the other's legislative domain. The pith and substance of the legislated subject is to be examined to determine in whose legislative sphere a particular subject comes under. And above all a reasonable interpretation which does not produce

impracticable results should be adopted.

- ii. Civil Aviation Authority (CAA) performs functions mentioned in the Federal Legislative List and is also a federal regulatory authority envisaged in item 6 of Part I of the Federal Legislative List. The functions and regulatory duties performed by CAA are within the exclusive sphere of the Federal Legislature and the appellants cannot impose sales tax on the purported services provided by CAA. The Sindh Sales Tax on Services Act (Sindh Act No.XII of 2011) and the Sindh Sales Tax on Services Rules, 2011 to the extent that they impose on CAA sales tax on services are contrary to the provisions of the Constitution, are void ab initio and of no legal effect.

(ii) 2017 S C M R 1179

[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar, C.J.,
Umar Ata Bandial and Maqbool
Baqar, JJ**

**The FEDERAL GOVERNMENT
through Secretary Interior,
Government of Pakistan—
Petitioner**

Versus

Ms. AYYAN ALI and others---

Respondents

Exit from Pakistan (Control)

An order/notification issued by the federal government on basis of an order passed High Court of one province may

be amenable to the jurisdiction of High Court in the other province.

(3) CRIMINAL LAW

2017 S C M R 1213

[Supreme Court of Pakistan]

**Present: Asif Saeed Khan Khosa,
Sardar Tariq Masood and Tariq
Parvez, JJ**

**STATE through Director General,
Anti-Narcotics Force---Appellant**

Versus

**ABDUL JABAR alias JUBBARA---
Respondent**

Appeal in a criminal case is a continuation of the trial. When an accused person is acquitted by a Trial Court then filing of an appeal against his acquittal may also be a step towards his prosecution.

(4) ELECTION LAWS

PLJ 2017 Lahore 523 (DB)

**Present: MRS. AYESHA A. MALIK
AND JAWAD HASSAN, JJ.**

**Syed KHURRAM ABBAS
BUKHARI etc.--Petitioners**

Versus

**ELECTION COMMISSION OF
PAKISTAN etc.--Respondents**

Whether Election Commission could set aside notified result of election after calling for recount of votes, based on application moved by losing candidate. Election tribunal can declare election to be void on grounds given in Section 42 to 44 of Act. Therefore, power of declaring any election of any returned candidate to be void and power of

declaring any other contesting candidate to have been duly elected vests solely with election tribunal and not with ECP.

(5) ISLAMIC LAW

(i) PLJ 2017 FSC 88

[Original Jurisdiction]

**Present: RIAZ AHMAD KHAN, C.J.
ALLAMA DR. FIDA MUHAMMAD KHAN
& ZAHOR AHMED SHAHWANI, JJ.
FAROOQ SIDDIQUI--Petitioner**

versus

**MST. FARZANA NAHEED--
Respondent**

Surrogacy, as is generally in vogue in many countries, is against Injunctions of the Quran and Sunnah.

(6) INTERPRETATION

2017 SCMR 1427

[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar, C.J.,
Maqbool Baqar and Faisal Arab, JJ**

**The COLLECTOR OF SALES TAX,
GUJRANWALA and others---
Appellants**

Versus

**Messrs SUPER ASIA MOHAMMAD
DIN AND SONS and others---
Respondents**

Ultimate test to determine whether a provision was mandatory or directory was that of ascertaining the legislative intent. The use of the word 'shall' was not the sole factor which determined the mandatory or directory nature of a provision, it was certainly one of the

indicators of legislative intent. Other factors included the presence of penal consequences in case of non-compliance, but the clearest indicator was the object and purpose of the statute and the provision in question. Court was duty bound to garner the real intent of the legislature as expressed in the law itself.

(7) INCOME TAX LAW

(i) 2017 SCMR 1006

[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar, C.J., Umar
Ata Bandial and Faisal Arab, JJ**

**Messrs SQUIBB PAKISTAN PVT. LTD.
and another---Appellants**

Versus

**COMMISSIONER OF INCOME TAX
and another---Respondents**

Remedy of reference before the High Court under S. 133 of the Income Tax Ordinance, 2001 is appellate in nature and must be construed and applied as such. Law, as it presently stood, allowed all questions "arising" out of the order of the Tribunal to be referred to the High Court and not just questions "argued" or "raised" before the Tribunal.

(ii) 2017 SCMR 1572

[Supreme Court of Pakistan]

**Present: Ejaz Afzal Khan, Dost
Muhammad Khan and Maqbool
Baqar, JJ**

WARIS ALI and 5 others---Appellants

Versus

The STATE---Respondent

- i. Whenever a penal statute required interpretation, it shall be interpreted in a way which favoured the accused person and not the State. If statute is susceptible to two interpretations, then it must be interpreted in favour of the accused.
- ii. Under the jurisprudence, "mens rea" is an essential ingredient of every crime, needs to be attended first by the Courts of law however, in cases of terrorism or terrorist activities the "mens rea" becomes twofold, i.e. the first object is to commit a crime, while the primary object of "the mens rea" in the second fold speaks of terrorism related ideology, purpose and object, the most nefarious and detestable designs to commit crimes, creating sense of fear, insecurity and instability in the society and community with the ultimate object to destabilize the State as a whole. The true and perceivable object of this second "mens rea" is to create chaos, large scale disturbances, widespread sense of insecurity in the society/public and to intimidate and destabilize the State as a whole by means of terrorist activities.
- iii. the offences contained in the Schedule to the Anti-Terrorism Act would fall within the definition of terrorism and terrorist activities but the crimes committed due to private revenge or to say traditional crimes, cannot be dragged into the fold of terrorism and terrorists activities.

(iii) PLJ 2017 SC 453

Asif Saeed Khan Khosa, Dost Muhammad Khan and Manzoor Ahmad Malik, JJ.

AMJAD ALI, etc.—Appellants

Versus

STATE—Respondent

That entry in the Third Schedule only makes such a case triable by an Anti-Terrorism Court but such a case does not ipso facto become a case of terrorism for the purposes of recording convictions and sentences under Section 6 read with Section 7 of the Anti-Terrorism Act, 1997. The case in hand had, thus, rightly been tried by an Anti-Terrorism Court but the said Court could not have convicted and sentenced the appellants for an offence under Section 7(a) of the Anti-Terrorism Act, 1997 as it had separately convicted and sentenced the appellants for the offences of murder, etc. committed as ordinary crimes.

(8) LAW OF LIMITATION

(i) 2017 SCMR 1476

[Supreme Court of Pakistan]

Present: Mushir Alam and Mazhar

Alam Khan Miankhel, JJ

KHAN MUHAMMAD through L.Rs

and others---Appellants

Versus

Mst. KHATOON BIBI and others---

Respondents

- (i) Generally, the time provided for filing a suit for declaration under Art. 120 of the Limitation Act, 1908 is six years. In cases of simple correction of revenue record, every fresh wrong entry in the record of rights would provide fresh cause of action provided the party aggrieved was in physical or symbolic possession of the property as owner.
- (ii) Where a right of inheritance was claimed, the claimant becomes co-owner/co-sharer of the property left by the predecessor along with others the moment the predecessor died. Entry of mutations of inheritance

was only meant for updating the revenue record and for fiscal purposes and in such cases no limitation would run against the co-sharer.

(9) SERVICE LAW

(i) 2017 SCMR 890

[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar and
Mushir Alam, JJ**

**FEDERAL PUBLIC SERVICE
COMMISSION through Secretary---
Petitioner**

Versus

**ANWAR-UL-HAQ (PRIVATE
SECRETARY) ISLAMABAD and
others---Respondents**

(i) Upgradation of post is not a promotion.

(ii) Issue relating to upgradation of civil servants can be decided by a High Court in exercise of its constitutional jurisdiction and bar contained under Article 212(3) of the Constitution would not be attracted. 2016 SCMR 859 reaffirmed.

(ii) 2017 SCMR 969

[Supreme Court of Pakistan]

**Present: Mian Saqib Nisar, C.J.,
Maqbool Baqar and Ijaz ul Ahsan, JJ**

**FEDERATION OF PAKISTAN through
Secretary, Establishment Division
and others---Appellants/Petitioner**

Versus

**Dr.MUHAMMAD ARIF and others-
--Respondents**

Policy Guidelines for promotion the criteria for the award of 15 marks at the disposal of Central Selection Board (CSB), **with overriding effect of 5 marks and thereby placing the civil servants in category A, B and C,** and also that the process carried out by CSB on the basis of above formula, and resulting into deferment/supersession of the respondents as illegal, without jurisdiction and violative of the law laid down by this Court.

Supersession

- i. Officers superseded on the basis of knowledge of the board's members, but neither has any reason given for ignoring the quantification in the service record, nor the nature and/or source of the so called knowledge been disclosed.
- ii. Since it has not even been stated as to what came to the knowledge of the members (and to which of them) so as to persuade them to override the evaluation on the basis of the service dossier of the officer covering the entire spectrum of his performance and conduct, spread over long years of his service, and recommend his supersession in the face of his meeting the prescribed criteria otherwise, and therefore neither was the board in a position to disclose or convey to the affectee any ground/reason for his predicament, nor was any explained before us, despite our repeated queries, and thus the process not only violated the requirement of adequate disclosure, but also offended the principle of fairness, due process and procedural propriety.