

LAHORE HIGH COURT BULLETIN



Fortnightly Case Law Update *Online Edition*

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FORTNIGHTLY CASE LAW BULLETIN

(01-02-2021 to 15-02-2021)

A Summary of Latest Decisions by the Superior Courts of Local and Foreign Jurisdictions on crucial Legal, Constitutional and Human Right Issues prepared by Research Centre Lahore High Court

DECISIONS OF INTEREST

No	Reference	Subject	Jurisdiction	Page(s)
1.	CrI. Petition No.513/2020	Whether the D.N.A report is per se admissible?	Supreme Court Pakistan	1
2.	Civil Petition No.3380-L of 2017	Determination of territorial jurisdiction in case of a contract executed at one place and approved at different place	Supreme Court Pakistan	1
3.	Criminal Appeal No.239/2020	What is the procedure to prove electronically generated documents and what is evidentiary value	Supreme Court Pakistan	2
4.	C.R. No.52826/2019	Whether judgment and decree can be set aside merely for recording additional evidence?	Lahore High Court	3
5.	C. R No. 2191/2012	Whether, in a partition suit, questions like adjustment of cost of improvements made by one of co-sharers in a joint property will be decided by trial court while passing preliminary decree or at the time of passing of final decree?	Lahore High Court	4
6.	CR No.1536 of 2012	Whether insufficiently stamped document can be read in evidence, and whether the Courts can rely upon the same?	Lahore High Court	4
7.	Writ Petition No.26062 of 2016.	Whether the jurisdiction of Civil Court is barred under The Waqaf Properties Ordinance, 1979, to entertain and adjudicate the suit?	Lahore High Court	5
8.	W.P. No. 7788 of 2020	Whether presumption of correctness attached to the judicial record is rebuttable and if it is with what evidence?	Lahore High Court	5
9.	C.R. No.441-D/2013	Whether the transaction of suit property was a sale transaction or land was transferred through exchange to defeat the right of pre-emption?	Lahore High Court	7

10.	W.P.No.3176 of 2021	Whether petitioner as transgender is entitled to be considered as applicant for the post of Lecturer advertised by the Punjab Public Service Commission?	Lahore High Court	7
11.	ICA No.250/2020	Whether MEPCO could demand NOC from the concerned development authorities to the effect that housing society is duly approved, for the electrification of respondents housing societies?	Lahore High Court	8
12.	Crl. Appeal No.989-P/2019	Whether at the time of destruction of the case property in narcotics cases, notice is mandatory to be given to the appellant?	Lahore High Court	9
13.	Constitutional Petition No. D –331 of 2021	Maintainability writ petition against show cause notice in disciplinary proceedings	Lahore High Court	9
14.	Constitutional Petition No. D – 6666 of 2015	Whether vested right of a bank employee is involved in the matter of promotion or the Rules determining his eligibility or fitness?	Sindh High Court	10
15.	Constitutional Petition No. D – 6435 of 2020	Whether Police Department was justified in withholding the appointment of the petitioner for the post of Assistant Sub-Inspector on the stigma of involvement in the criminal case?	Sindh High Court	11
16.	Constitutional Petition No. D –646 of 2021	Whether the permission to extract brackish water from the aquifer may disturb the aquifer and environment of the concerned area?	Sindh High Court	12
17.	Customs Reference. No. 48/2018	Whether the presence of foreign currency beyond permissible limit was a case of attempt to smuggle?	Islamabad High Court	13
18.	Criminal Appeal No.99 of 2021	Whether High Court i.e. First Appellate Court is required to re-appreciate the entire evidence on record in detail while acquitting the accused, who has been convicted by the learned trial court	Indian Supreme Court	14
19.	District, 2021 SCC 7 (CanLII)	Whether reallocation of waste constitutes breach of duty to exercise contractual discretion in good faith?	Indian Supreme Court	15
20.	Van Buren v. United States	Access information on a computer for certain purposes violate Section 1030(a) (2) of the Computer Fraud and Abuse Act if he accesses that information for an improper purpose?	Supreme Court of United States	16

Selected Articles

1.	Legal Lessons from a Very Fast Problem: COVID-19 by Eric E. Johnson & Theodore C. Bailey	16
2.	What Makes an Administrative Decision Unreasonable? by Hasan Dindjer	16
3.	Suicide: Psychiatric Misconceptions and Legal Implications in Pakistan by Minahil Sikander	16
4.	Evolution of Fundamental Rights and Constitutional Remedies by By Keshav Sharma	

- 1. Supreme Court of Pakistan**
Ali Haider @ Pappu v. Jameel Hussain, etc
CrI. Petition No.513/2020
https://www.supremecourt.gov.pk/downloads_judgements/crl.p. 513 2020.pdf

Facts: An eight year old girl was raped under murdered. Occurrence was unseen. Case was based on circumstantial evidence of wajtakkar, extra judicial confession, medical evidence and D.N.A.

Issue: Whether the D.N.A report is per se admissible?

Analysis: DNA Report like any other opinion of an expert under Article 59 of Q.S.O is relevant and thus admissible. Under section 9 of the Punjab Forensic Science Agency Act, 2007 an expert of the PFSA is considered to be an expert in terms of section 510 Cr.P.C. Therefore, DNA Test Report prepared by an expert of the PFSA is per se admissible.

Conclusion: DNA Test Report prepared by an expert of the PFSA is per se admissible.

- 2. Supreme Court of Pakistan**
M/s James Construction Company (Pvt.) Ltd v. Province of Punjab
Civil Petition No.3380-L of 2017
https://www.supremecourt.gov.pk/downloads_judgements/c.p. 3380 1 2017.pdf

Facts: Contract between contractor and the Provincial Government was executed in Faisalabad but it was approved by latter at Lahore. Petitioner's suit for recovery of money against the Provincial Government and the concerned Highways Authorities of the Provincial Government before the learned Civil Court at Lahore was held to be not maintainable on account of lack of territorial jurisdiction.

Issue: Whether suit was not maintainable at Lahore when contract between contractor and the Provincial Government was executed in Faisalabad but it was approved by latter at Lahore and it should have been filed in Faisalabad?

Analysis: The commercial activities do not form a part of the core functions of a government which remain its executive, judicial, legislative and administrative functions. When a government enters into the domain of business and commerce it cannot be given a premium of its position and must be treated at par with its competitors or near competitors in the private sector. It must be subject to the laws of the land. Its commercial activities must be regulated in the same manner as those of the private sector. It cannot be exempted therefrom simply by dint of being a "government". Hence when a government is engaged in the 'business' of road building through the vehicle of construction contracts with a private contractor then it cannot be allowed to claim privileges on account of being the government. In these circumstances it would be liable to be treated as a corporation in terms of Explanation II to Section 20, C.P.C. When the State carries on commercial activities then Section 20, C.P.C. would apply. The Government in the exercise of its core functions viz, its executive, legislative,

judicial and quasi-judicial, and administrative roles exercises sovereign powers. But when it engages in commercial activities it is not exercising sovereign power, rather it is engaging in business/commercial activities and merits no undue advantage over ordinary litigants: it is subject to Section 20, C.P.C. in its entirety.

Conclusion: Civil Court at Lahore did have the territorial jurisdiction to entertain the suit filed by the petitioner (both in terms of clause (a) and clause (c) of Section 20 of the CPC).

**3. Supreme Court of Pakistan
Mian Khalid Perviz v. The State
Criminal Appeal No.239/2020**

https://www.supremecourt.gov.pk/downloads_judgements/crl.a. 239 2020.pdf

Facts: Appellant produced defense evidence in shape of CDR Data and Tracking Data of vehicle which was not relied and he was convicted for imprisonment of life for possessing 12 kg narcotics.

Issue: i). What is the procedure to prove electronically generated documents?
ii). What is the evidentiary value of CDR Data and Tracking Data?

Analysis: i). Some of the documentary evidence in defence produced by the Appellant was recorded by automated information system which according to law is admissible under Article 164 of the Qanun-e- Shahadat Order, 1984 (P.O. No.X of 1984) but in case of denial, law requires that such evidence generated through the system ibid must be proved in accordance with law. The Courts have been empowered to receive and make use of such evidence collected through modern technologies. Articles 46-A and 78-A of the Order ibid as well as the provisions of Electronic Transactions Ordinance (LI of 2002) provide procedure to receive and prove such evidence.
ii). Mere production of CDR DATA without transcripts of the calls or end to end audio recording cannot be considered/used as evidence worth reliance. Besides the call transcripts, it should also be established on the record that callers on both the ends were the same persons whose calls data is being used in evidence. Tracking data does not mention the details of vehicle in question or its owner. No doubt this data reflects different locations but apparently nothing could confirm that it is with regard to the same vehicle of the Appellant.

Conclusion: i). Articles 46-A and 78-A of the Qanun-Shahadat Order as well as the provisions of Electronic Transactions Ordinance (LI of 2002) provide procedure to receive and prove such evidence.
ii). Mere production of CDR DATA without transcripts of the calls or end to end audio recording cannot be considered/used as evidence worth reliance. It should also be established on the record that callers on both the ends were the same persons whose calls data is being used in evidence. Tracking data does not mention the details of vehicle in question or its owner. This data cannot confirm that it is with regard to the same vehicle of the Appellant.

4. Lahore High Court
Sher Muhammad (deceased) through LRs v. Mst. Sameeri Bib
C.R. No.52826/2019
<https://sys.lhc.gov.pk/appjudgments/2021LHC162.pdf>

Facts: First appellate court set aside the judgment and decree and remanded the case merely for the recording additional evidence by accepting application of the respondent for production of additional evidence which were annexed with the record and mentioned in the plaint and could not be produced due to negligence/omission of counsel.

Issue: i). Whether judgment and decree can be set aside merely for recording additional evidence?
 ii). Whether application for production of additional evidence (documents) can be accepted which could not be produced due to negligence/omission of counsel?

Analysis: i). No provision exists in Civil Procedure Code to empower the appellate Court to set aside the judgment of the trial Court merely on the ground of recording of further evidence. Learned first appellate Court should not have set-aside the decree of the trial Court and remanded the case for fresh consideration after recording the additional documentary evidence. It goes without saying that it was imperative for the learned first appellate Court to follow the procedure as envisaged under Order XLI Rule 28 of C.P.C.
 ii). Mere omission/negligence of counsel is not a good ground to grant permission to produce documents at the stage of appeal, nonetheless, when the court obviously concludes that such omitted documents are necessary for the just decision of case, then justice should not be defeated at the altar of negligence of counsel, and this should not ordinarily prevail to frustrate the inalienable right of fair trial, in that, denying such right shall have the perforce of defeating the ends of justice. The paramount consideration to do substantive justice must take precedence over technical reasons and for that purpose the courts of law ought not to overlook the documents submitted by the parties along with pleadings, as such practice may end up with gross miscarriage of justice.

Conclusion: i). Judgment and decree cannot be set aside merely for recording additional evidence.
 ii). Though omission/negligence of counsel is not a good ground to grant permission to produce documents at the stage of appeal however where omitted documents are necessary for the just decision of case, then justice should not be defeated at the altar of negligence of counsel, and this should not ordinarily prevail to frustrate the inalienable right of fair trial, in that, denying such right shall have the perforce of defeating the ends of justice

5. Lahore High Court
C. R No. 2191/2012
Muhammad Ashraf v. Mst. Najma Begum alias Najma Sultana, etc
<https://sys.lhc.gov.pk/appjudgments/2021LHC108.pdf>

Facts: A suit for partition was filed by the plaintiffs/respondents against their step brother/present petitioner. Suit was decreed by the trial court and appeal of the present petitioner was also dismissed by the first appellate court. In High Court petitioner has taken the plea that the trial court and first appellate court did not consider his plea regarding improvements made in the suit properties by him.

Issue: Whether, in a partition suit, questions like adjustment of cost of improvements made by one of co-sharers in a joint property will be decided by trial court while passing preliminary decree or at the time of passing of final decree?

Analysis: The Court observed that there was no cavil that preliminary decree was only meant for determination of shares of the respective parties in common property, whereas remaining questions could be raised/agitated and culminated at the time of final conclusion of such suit.

Conclusion: The Court held that if there would be any evidence in this regard, then learned Trial Court before whom suit is still pending will decide the same on its basis besides keeping in mind continuous use of properties by the present petitioner alone.

6. Lahore High Court
CR No.1536 of 2012
Iftikhar Ahmad Vs. Manzoor Ahmad (deceased) through LRs etc
<https://sys.lhc.gov.pk/appjudgments/2021LHC103.pdf>

Facts: Petitioner executed agreement for alienation of four acres (suit property) in favour of respondent, however, subsequently no instrument to honour the same was executed, compelling the respondent to file suit for its specific performance.

Issue: Whether insufficiently stamped document can be read in evidence, and whether the Courts can rely upon the same?

Analysis: Court has observed that obvious object of section 35 of Stamp Act, 1899 is not to abrogate the document, rather this provision is aimed to have a check on evasion of revenue. There is no cavil that document even under value or without impounding once admitted in evidence, neither it could be de-exhibited nor ignored or discarded for said lapse.

Conclusion: The Court held that such document once admitted in evidence cannot be de-exhibited or discarded.

7. Lahore High Court
Writ Petition No.26062 of 2016.
Qari Faiz Rasool. Vs. Chief Administrator Auqaf,etc
<https://sys.lhc.gov.pk/appjudgments/2021LHC112.pdf>

Facts: Petitioners had instituted a declaratory suit to challenge a Notification issued by Chief Administrator Auqaf, Punjab whereby mosque and Khanqah Sidiq Ali Shah alias Sirki Shah along with five shops were taken over as well. The Auqaf Department made two applications; one u/s. 10 for staying proceedings of the suit & the other u/o. VII r. 11 of the Code, 1908 for rejection of the plaint, whereas the petitioner/plaintiffs also tabled petitions for de-sealing of shops & demarcation of boundaries. Applications of respondents were dismissed and those of petitioner/plaintiffs were granted. However, Revisional Court, through impugned order rejected the plaint, thus this petition.

Issue: Whether the jurisdiction of Civil Court is barred under The Waqaf Properties Ordinance, 1979, to entertain and adjudicate the suit?

Analysis: Provisions of the The Waqaf Properties Ordinance, 1979 are very much clear, whereby not only protection is provided to the action of the Department but suit and other legal proceedings except filing of petition u/s. 11 before the District Court are also specifically barred.

The Ordinance itself provides remedy through a petition before the District Court, but has excluded the jurisdiction of Civil Court in respect of the proceedings and intended action. Once it is established that jurisdiction of the Civil Court is ousted then no further inquiry is needed, rather plaint is liable to be rejected at its inception.

Conclusion: Court held that suit before the learned Civil Court was not competent as its jurisdiction is clearly barred under The Waqaf Properties Ordinance, 1979.

8. Lahore High Court
Rohail Rizwan Qureshi v. Globe Cosmetics Company
2020 LHC 3524
W.P. No. 7788 of 2020
<https://sys.lhc.gov.pk/appjudgments/2020LHC3524.pdf>

Facts: Revision of the respondent against the petitioner was accepted with costs on the basis of consent given by the petitioner and the matter was remanded to the Commissioner Workmen's Compensation for decision afresh. The petitioner had sought setting aside of the impugned order on the ground that his counsel had only requested for an adjournment and had never given any consenting statement before the appellate tribunal for remand of matter for decision afresh.

Issue: i). What remedy is available to an aggrieved person or party to the proceedings where some error or omission has crept in the judicial record or would such person or party be rendered remediless?

- ii). Whether presumption of correctness attached to the judicial record is rebuttable and if it is with what evidence?
- iii). What credence can be attached to a matter deposed through an affidavit when it was directly in conflict with the judicial record and not supported by any evidence?

Analysis:

- i). A person may avail any remedy provided under the law subject to limitations imposed by law, which remedy may be before the same court or before a higher forum. Besides, if more than one remedy is available, he may elect to choose any one of the said remedies. As in this case, the petitioner had not raised the ground of impugned order not depicting correctly what transpired before the Appellate Tribunal before the said Tribunal, therefore, the said venue is still open to the petitioner as the said aspect of the matter was not finally decided by the said Tribunal and it has the jurisdiction to deal with the same for the reason that every court of law has inherent power and is authorized to correct its order in case some error has crept into the same and as the learned Chairman of the Appellate Tribunal is the best judge as to the authenticity of the order passed by him.
- ii). Though presumption of correctness is attached to the judicial record but this presumption is not absolute. Rather the same like most of the presumptions is rebuttable subject to strict proof through strong unimpeachable evidence of grounds of rebuttal raised by the aggrieved party and that too through appropriate proceedings as was held by Supreme Court in Fayyaz Hussain Case (2004 SCMR 964) that there is always a presumption of correctness in favour of judicial proceedings and credibility is attached to proceedings before a judicial forum and strong unimpeachable evidence is required to rebut such presumption.
- iii). The courts wherein impugned orders are challenged do not give much weight to the matters deposed in the affidavits without there being enough supporting corroborative evidence because if such a course of action is adopted, the same would result in a large number of legal complications and multiplicity of litigation and there would be no end to the same. In Fayyaz Hussain case (2004 SCMR 964), the matter under consideration was that the petitioner after having offered to have the matter decided on the basis of respondent's statement to be made on oath, subsequently opted to resile from his offer after such statement was recorded by stating that he had not made such an offer and produced his affidavit to that effect. The Supreme Court held that adopting course of action of giving preference to affidavit of counsel over judicial proceedings recorded by a Presiding Judge would lead to a large number of legal complications.

Conclusion:

- i). Subject to law the order on the ground of error can be challenged before the same court or higher forum. But same court would be the best judge to weigh the authenticity of the order.
- ii). Though presumption of correctness is attached to the judicial record but this presumption is not absolute and can be rebutted through strong unimpeachable evidence.

iii). In such circumstances, the courts do not give much weight to the matters deposed in the affidavits without there being enough supporting corroborative evidence.

9. Lahore High Court
Farooq Ahmad v. Rashid Ahmad etc.
C.R. No.441-D/2013
<https://sys.lhc.gov.pk/appjudgments/2021LHC174.pdf>

Facts: The plea of the petitioner was that the transaction of sale was shown as an exchange transaction in order to defeat rights of pre-emption.

Issue: Whether the transaction of suit property was a sale transaction or land was transferred through exchange to defeat the right of pre-emption?

Analysis: To controvert the ostensible nature of transaction of an exchange and to prove it as a sale, the petitioner/plaintiff was required to lead some evidence to show as to when the parties to the exchange agreed for the sale, but with an object to circumvent the right of the petitioner have diverted the transaction as exchange. However, the evidence led by the petitioner is vague and sketchy. There is no proof of the date, the day, the time, the place and nature of negotiations between respondents No.1 to 8 and 9 to 11 regarding the sale. There is also no witness produced in whose presence, the price was settled or paid by the respondents. The entire evidence is hearsay evidence and not sufficient to prove the transaction of sale.

Conclusion: The petitioner has not produced any witness, in whose presence, the sale price was paid by respondents No.1 to 8 to respondents No.9 to 11. The documentary evidence, on the other hand, shows that it was an exchange transaction and not a sale transaction. In view of above discussion, the instant petition being meritless is dismissed.

10. Lahore High Court
Faiz Ullah v. P.P.S.C., etc.
W.P.No.3176 of 2021
<https://sys.lhc.gov.pk/appjudgments/2021LHC153.pdf>

Facts: Petitioner being a transgender person, in exercise of its option under Section 3 of the Transgender Persons Protection of Rights Act, 2018 applied for the post of Lecturer (Female), however, the application of the petitioner was rejected on the ground that the said posts have been earmarked for Lecturers (Male/Female) and not for transgender persons, which culminated into filing of this petition.

Issue: Whether petitioner is entitled to be considered as applicant for the post of Lecturer advertised by the Punjab Public Service Commission?

Analysis: In a conservative society like ours where although rights of transgender persons have been recognized by the Honourable Supreme Court of Pakistan as well as

this Court in judgments reported as Dr. Muhammad Aslam Khaki and others v. S.S.P. (Operations) Rawalpindi and others (PLD 2013 S.C. 188), Dr. Muhammad Aslam Khaki and another v. Senior Superintendent of Police (Operation), Rawalpindi and others (2013 SCMR 187) and Mian Asia v. Federation of Pakistan through Secretary Finance and 2 others (PLD 2018 Lahore 54) upon which a comprehensive legislation in the shape of the Transgender Persons (Protection of Rights) Act, 2018 (ACT) has been made through which they have been given equal rights as any other citizen of this Country, however, in practice, the said segment of society is still treated to be less equals or non-existent. Refusal by respondent No.1 was not only violative of the Constitutional Guarantees ensured to the citizen of this country as enshrined in the Constitution of the Islamic Republic of Pakistan but also violative of Sections 4, 6, 9, 11 and 16 of the Act for which there is no explanation.

Conclusion: The petitioner is entitled to be considered by the respondent No.1 (PPSC) for the post of Lecturer (Female) and the petitioner will be allowed to participate in the recruitment process.

**11. Lahore High Court
Mepco v. Akaash Jibraeel etc.
ICA No.250/2020**

<https://sys.lhc.gov.pk/appjudgments/2021LHC205.pdf>

Facts: Respondents developed private housing schemes and applied for electrification of said housing schemes to Multan Electric Power Company (MEPCO) (appellant). The appellant demanded “No Objection Certificate” (NOC) from the respective Development Authorities to the effect that the master plan of the society has been approved by the concerned Development Authorities. The respondent being aggrieved filed constitutional petitions which were disposed of with direction that MEPCO will not demand NOC from Multan Development Authority (MDA)/Civic or concerned Authority for the electrification of the colony.

Issue: Whether MEPCO could demand NOC from the concerned development authorities to the effect that housing society is duly approved, for the electrification of respondents housing societies?

Analysis: The office order dated 07.11.2019 of MEPCO, Standards and Criteria of WAPDA dated 26.10.1993 and Rules, specifically provide for the approval of the respective development authority for electrification of the housing schemes. Without holding the relevant Rules, SOPs or instructions being unconstitutional, the appellant was directed not to demand any NOC from the Development Authorities for the electrification of the housing societies. In view of aforesaid settled propositions of law, the learned Single Judge could not direct the appellant/MEPCO not to demand NOC from the development authorities, as such direction would amount to direct the public functionaries to act in derogation of the applicable rules and policy.

Conclusion: MEPCO may demand required documents including NOC from the concerned Development Authorities, under the applicable SOPs, Policy and Rules for the supply of electricity to the housing societies.

**12. Peshawar High Court
Rehmat Gul v. The State
Crl. Appeal No.989-P/2019**

https://peshawarhighcourt.gov.pk/PHCCMS//judgments/Rehmat-Gul-vs-the-State-CNSA_.pdf

Facts: The appellant was convicted under section 9 (c) of the CNSA and sentenced to undergo life imprisonment.

Issue: Whether notice is mandatory to be given to the appellant at the time of destruction of the case property?

Analysis: Notice to accused at the time of destruction of the case property, particularly, in narcotics is not the requirement of section 33(4) of the Control of Narcotic Substances Act, 1997 read with section 516-A Cr.P.C. The Statutes governing destruction of seized narcotics do not provide any specific time for such destruction. The law employed in third proviso to section 561A Cr.P.C. empowered the Court to pass an order of destruction of narcotics at any stage which may even be at the time of production of accused for physical custody before the Magistrate or any time before the trial.

Conclusion: The law on the subject referred above does not make any notice mandatory to be given to an accused before or at the time of destruction of narcotics.

**13. Sindh High Court
Waqas Behlum v. Trustees Of The Port Of Karachi (Kpt) And 06 Others
Constitutional Petition No. D –331 of 2021
2021 SHC 226**

<https://eastlaw.pk/cases/Waqas-BehlumVSTrustees-of-the.Mzk3NzIz>

Facts: Petitioner fell ill and absented from duty. After recovery he went to join the office but he was neither allowed to join his duties nor was paid salaries. He was also issued show cause notice (‘SCN’) and disciplinary proceedings were initiated against him.

Issue: Whether the Writ Petition is maintainable against the SCN as well as disciplinary proceedings initiated against a civil servant, which relates to the terms and conditions of his service and particularly where the outcome of the disciplinary proceedings has yet to come?

Analysis: Disciplinary proceedings fall within the ambit of expression terms and condition of service. A public servant has no vested right to call in question the disciplinary proceedings in Writ Petition, for the reason that any such direction would be disharmonious to the principle of good governance and canon of service

discipline; rather it will cause undue interference to hamper the smooth functioning of the departmental authorities. In law show cause is not defined as a punishment. Petitioner cannot file a petition against the issuance of SCN, which is simply an opportunity to explain the position in the course of the inquiry. High Court at this juncture cannot step in to declare the SCN illegal or void.

Conclusion: Writ jurisdiction is not meant to be exercised to restrain the competent authority from taking disciplinary action under law against a public servant against whom prima facie evidence showing his involvement in the serious charges of misconduct was available.

14. Sindh High Court
Mohsin Furqan v. National Bank Of Pakistan And Another
Constitutional Petition No. D –6666 of 2015
2021 SHC 222

<https://eastlaw.pk/cases/Mohsin-FurqanVSNational-Bank-of.Mzk3NzIx>

Facts: During his tenure of service with the respondent-bank petitioner was promoted from Senior Vice President to Executive Vice President. Now, he claims that he was/is entitled to further promotion as SEVP, but according to him respondent-Bank has promoted blue-eyed and junior officers but he was left at the lurch and, in the meanwhile he stood retired from service. He asserts that due to malafide intention of the respondent-bank he was not promoted to the above rank. He has claimed proforma promotion for just pensionary benefits.

Issue: Whether vested right of a bank employee is involved in the matter of promotion or the Rules determining his eligibility or fitness?

Analysis: In promotion cases there are certain conditions/criteria for consideration for promotion in the next rank i.e. seniority-cum-fitness, length of service, eligibility for the post and availability of the post; and, one being eligibility and the other being fitness, while the former relates to the terms and conditions of service, the latter is a subjective evaluation made based on objective criteria. It is for the Competent Authority, who could make appointments, determine seniority, eligibility, fitness and promotion, and other ancillary matters relating to the terms and conditions of the employees as prescribed under the Act and Rules framed thereunder. In promotion matters, the overall assessment of an officer's performance during a year may completely depend on the subjective opinion of his Reporting Officer; and, the weightage required to be accorded to it to determine his fitness for promotion, which entail an objective assessment. The Courts cannot play the role of assessing body and sit in judgment over subjective evaluation; however, can examine whether the required objective criterion for promotion was followed or otherwise in a suitable case.

Neither any seniority nor any promotion can be claimed or granted without fulfilling the promotion criteria under the relevant promotion policy/law. Eligibility for promotion does not mean the same as a vested right to be promoted under all circumstances. It is also a well-established principle in service

jurisprudence that promotion from the backdate to the retired Public Servant cannot be granted until and unless he meets the criteria prescribed under the law; and, after his retirement.

Conclusion: It is for the respondent-bank to determine the eligibility criteria of promotion. It is essentially an administrative matter falling within the exclusive domain and policy decision making of the respondent-bank. Interference with such promotion policy matters, is not warranted on the premise that no vested right of a Bank employee is involved in the matter of promotion, or the rules determining his eligibility or fitness.

15. Sindh High Court
Muhammad Danish Sidat v. Province Of Sindh And 07 Others
Constitutional Petition No. D –6435 of 2020
2021 SHC 218
<https://eastlaw.pk/cases/Muhammad-Danish-SidatVSProvince-of-Sindh.Mzk3NzE5>

Facts: Petitioner was recommended by Sindh Public Service Commission (SPSC) for the post of Assistant Sub-Inspector. Offer of appointment letter was issued in his favour, but the respondent-department withheld his appointment order on account of the pendency of the criminal case arising out of FIR registered for offenses under Section 380, 457, and 34 PPC. Petitioner contended that his candidature for the above post could not be kept in abeyance on account of pendency of the criminal case under the law, as he had already been acquitted in the aforesaid case. On the other hand the department contended that though the petitioner has been acquitted from the criminal case arising out of FIR, but lodging of aforesaid FIR against the petitioner renders him unfit to be appointed in Police department as now he carries the stigma of involvement in the above criminal case.

Issues: Whether the respondent-Police Department was justified in withholding the appointment of the petitioner for the post of Assistant Sub-Inspector on the premise of his involvement in the criminal case?

Analysis: FIR of the case was lodged on 31.12.2008 but the prosecution failed to produce witnesses before the learned trial Court, resultantly after the lapse of 10 years proceedings of the criminal case were stopped under Section 249 Cr.P.C. Subsequently, on application filed by the accused the proceedings of the case were restored and the complainant was examined as a witness, but he exonerated the accused. Thereafter, with the concurrence of the learned Assistant Deputy Public Prosecutor, accused was acquitted from the charge under Section 249-A Cr. P.C. No appeal against the aforesaid order was preferred by the respondent-Police Department. No provision under the Sindh Civil Servants Act, 1973, rules framed thereunder as well as Police Rules, 1934, and Disciplinary Rules, 1988, restrict any appointment in civil/public service on account of pendency of a criminal case, however, Section 15 of the Sindh Civil Servants Act, 1973 provides

that no person convicted for an offense involving moral turpitude shall unless government otherwise direct, be appointed to a civil service or post, which is not the case in hand.

Conclusion: After being acquitted in a criminal case there is no legal justification to withhold appointment order of the petitioner only on the score of involvement in such case.

16. Sindh High Court
M/S Al-Kauser Drinking Water v Province Of Sindh And 05 Others
Constitutional Petition No. D –646 of 2021
2021 SHC 220
<https://eastlaw.pk/cases/M-S-Al-Kauser-DrinkingVSProvince-of-Sindh.Mzk3NzIw>

Facts: Petitioner-company, primarily engaged in supplying drinking and subsoil water for commercial purposes applied to the office of KW&SB for issuance of No Objection Certificate for digging out the soil to get brackish water to supply to the National Refinery through the pipeline, but failed to achieve the target and approached the Provincial Ombudsman for direction to the respondent- KW&SB for issuance of the license, which was allowed. Petitioner-company being aggrieved by the inaction on the part of respondents filed the constitution petition. According to the petitioner extraction of water will not have its adverse effect, which could be caused to the aquifer. Petitioner relied upon the decision of the water commission on the subject issue for regularization of Subsoil water under the Sub Soil Water (Extraction and Consumption) Regulation 2018 framed by the respondent- KW&SB.

Issue: Whether the permission to extract brackish water from the aquifer may disturb the aquifer and environment of the concerned area?

Analysis: Brackish water is water that is more saline than fresh; and, is also the primary waste product of the salinity gradient power process. Presently there is no law prohibiting from using the sub-soil water in the quantity. Level of subsoil water has dropped to a dangerous level over the years and the whole irrigation system is now on the verge of collapse; and, excessive extracting of Brackish/subsoil water, as well as lifting of Minerals i.e. reti, bajri, sand and gravel, are being excavated in large quantities daily but no one from the government side is taking interest to curb such atrocity. Reportedly groundwater level is falling a meter every year mainly due to groundwater extraction; and, that due to bad water management. It is an admitted fact that natural source of water for the aquifer is rain and raining is negligible and highly insufficient. The Hon'ble Supreme Court in its judgment in the Shahab Usto case (2017 SCMR 732) directed the government to regulate and price groundwater be it industrial or agriculture use.

Conclusion: Extraction of alleged brackish water from the aquifer by the petitioner, if allowed in such huge quantities under the garb of Sub Soil Water (Extraction and Consumption) Regulation 2018, will certainly disturb the aquifer and environment of the concerned area. It is for the competent authority to look into the gravity of

the situation and take remedial measures under the law. While holding that the petitioner has no right to extract minerals/brackish water and prima-facie under the garb of this petition he has attempted to continue such an activity illegally; the Hon'ble Court dismissed the petition.

- 17. Islamabad High Court**
Collector of Customs, MCC, Islamabad, etc. V. Israr and others
Customs Reference. No. 48/2018
https://mis.ihc.gov.pk/frmRdJgmt.aspx?cseNo=Custom%20Reference-48-2018%20%20Citation%20Awaited&cseTle=Collector%20of%20Customs%20MCC%20Islamabad%20etc-%20VS%20-Israr%20etc&jgs=Honourable%20Chief%20Justice%20Mr.%20Justice%20Athar%20Minallah,%20Honourable%20Mr.%20Justice%20Babar%20Sattar&jgmt=/attachments/judgements/93555/1/Custom_Reference_48_of_2018_637472713516028079.pdf
- Fact:** Applicant was traveling abroad. At departure lounge, he was found to have foreign currency beyond the permissible limit.
- Issue.** Whether the presence of foreign currency beyond permissible limit was a case of attempt to smuggle? Consequently whether confiscation could be effected under section 2(s) read with section 156(8) of the Customs Act?
- Analysis** Possession of foreign currency is also not an offence, unlike drugs or other proscribed goods. It is not unreasonable to assume that a traveler, especially an infrequent or uninformed one, might not be aware of the limit prescribed by the State Bank of Pakistan at a given time. And even a frequent traveler might suffer from a mistake of fact regarding the quantum of foreign currency he is carrying. It places a higher burden on the state to disclose the limit of permissible foreign currency that can be carried.
- The mere possession of foreign currency in excess of the permitted limit in the luggage of a passenger scanned at the ASF scanners at the entrance of the Departure Lounge cannot constitute a step, in pursuance of guilty intent, that makes the carrying out of the offence imminent or can be treated as having crystallized into attempt. At this stage, even in presence of initial intent to attempt smuggling of foreign currency, the passenger could recede and return excessive currency to someone waiting outside the Departure Lounge, as passengers often do in case of excess baggage.
- Conclusion.** Mere presence of foreign currency beyond permissible limit is not case of attempt unless warning/information is given to the passenger and he is also given opportunity to return excessive currency to someone waiting outside. Thus in the absence of intent to smuggle foreign currency confiscation cannot be affected.

18. Supreme Court of India
Criminal Appeal No.99 of 2021
State of Gujarat v. Bhalchandra Laxmishankar Dave
https://main.sci.gov.in/supremecourt/2015/30840/30840_2015_36_1501_25848_Judgement_02-Feb-2021.pdf

Facts: Respondent/Accused was convicted by the trial court under the offences u/s 7 read with Sections 13(1) and 13(2) of the Prevention of Corruption Act but he was acquitted by the High Court without re-appraisal of evidence available on the record and now State has preferred an appeal against his acquittal by the High Court.

Issue: Whether High Court i.e. First Appellate Court is required to re-appreciate the entire evidence on record in detail while acquitting the accused, who has been convicted by the learned trial court?

Analysis: Supreme Court has observed that the High Court has only made general observations on the depositions of the witnesses examined. There is no detailed re-appreciation of the entire evidence available on record and also the reasoning given by the learned trial Court while convicting the accused, which ought to have been done by the High Court while dealing with the judgment and order of conviction passed by the Learned Trial Court. Such non re-appreciation of the evidence on record may affect the case of either the prosecution or even the accused.

In appeal against the order of conviction, there are no restrictions/limitations like in case of appeal against order of acquittal. The Court of appeal has wide powers of appreciation of evidence and the High Court has to re-appreciate the entire evidence on record being a First Appellate Court. Keeping in mind that once the learned Trial Court has convicted there shall not be presumption of innocence as would be there in the case of acquittal.

Conclusion: Supreme Court held that impugned judgment and order passed by the High Court acquitting the respondent/accused without adverting to the reasons given by the learned trial court while convicting the accused and without re-appreciating the entire evidence on record in detail cannot be sustained and the same deserves to be quashed and set aside. Supreme Court remanded the case to consider and deal with the appeal afresh in accordance with law and on its own merits keeping in mind the observations made hereinabove.

19. Supreme Court Of Canada
Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage
District, 2021 SCC 7 (CanLII)
<https://www.canlii.org/en/ca/scc/doc/2021/2021scc7/2021scc7.html>

Facts: Wastech, a waste transportation and disposal company, and Metro, a statutory corporation responsible for the administration of waste disposal for the Metro Vancouver Regional District, had a long-standing contractual relationship which contemplated the removal and transportation of waste by Wastech to three disposal facilities. Wastech was to be paid at a differing rate depending on which disposal facility the waste was directed to and how far away the facility was located. The contract did not guarantee that Wastech would achieve a certain profit in any given year and it gave Metro absolute discretion to allocate waste as it so chose.

Issue: Whether reallocation of waste constitutes breach of duty to exercise contractual discretion in good faith?

Analysis: The duty to exercise contractual discretion in good faith requires the parties to exercise their discretion in a manner consistent with the purposes for which it was granted in the contract, or, in the terminology of the organizing principle in *Bhasin*, to exercise their discretion reasonably. The duty to exercise contractual discretion is breached only where the discretion is exercised unreasonably, in a manner unconnected to the purposes underlying the discretion. Where discretion is exercised in a manner consonant with the purpose, that exercise may be characterized as reasonable according to the bargain the parties had chosen to put in place. But where the exercise stands outside the compass set by contractual purpose, the exercise is unreasonable in light of the agreement for which the parties bargained and may be thought of as unfair and contrary to the requirements of good faith.

Based on these purposes, Metro did not act unreasonably. Metro's exercise of discretion was guided by the objectives of maximizing efficiency, preserving remaining site capacity, and operating the system in the most cost-effective manner, and was made in furtherance of its own business objectives. Wastech is asking for an advantage for which it did not bargain: it asks that Metro confer a benefit upon it that was not contemplated, expressly or impliedly, under the contract. Although Wastech emphasized that the contract was a long-term relational agreement dependent upon an element of trust and cooperation between Wastech and Metro, this is not dispositive of the case in favour of Wastech. This is not an example of an unforeseen or unregulated matter that, by reason of the relational character of the contract, was left to the trust and cooperation said to be inherent in the long-term arrangement. The parties foresaw this risk — and chose to leave the discretion in place.

Conclusion: The reallocation of waste by Metro does not constitute breach of duty to exercise contractual discretion in good faith.

**20. Supreme Court of the United States
Van Buren v. United States**
<https://epic.org/amicus/cfaa/van-buren/>

- Facts:** Nathan Van Buren was a police officer who accessed personal information in a government database for a local wealthy man in the hopes of a financial payout. Van Buren had access credentials for the database, but knew he was only to use his access to view records pursuant to his job duties. Van Buren was charged under the CFAA and convicted by a jury. Van Buren appealed to the Eleventh Circuit, which affirmed his CFAA conviction.
- Issue:** Does a person who is authorized to access information on a computer for certain purposes violate Section 1030(a)(2) of the Computer Fraud and Abuse Act if he accesses that information for an improper purpose?
- Analysis:** It is a pending case dealing with the [Computer Fraud and Abuse Act](#) (CFAA) and its definition of "exceeds authorized access" in relation to one intentionally accessing a computer system having authorization to access. The CFAA's language has long created a [circuit split](#) in case law and the Court's decision will significantly impact cyber security and computer crime enforcement.
- Conclusion:** The case is pending in the US Supreme Court.

LIST OF ARTICLES:-

1. **STANFORD LAW REVIEW**
<https://www.stanfordlawreview.org/online/legal-lessons-from-a-very-fast-problem-covid-19/>
Legal Lessons from a Very Fast Problem: COVID-19 by Eric E. Johnson & Theodore C. Bailey
2. **MODERN LAW REVIEW**
<https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2230.12581>
What Makes an Administrative Decision Unreasonable? by Hasan Dindjer
3. **COURTING THE LAW**
<https://courtingthelaw.com/2021/02/10/commentary/suicide-psychiatric-misconceptions-and-legal-implications-in-pakistan/>
Suicide: Psychiatric Misconceptions and Legal Implications in Pakistan by Minahil Sikander
4. **LEGAL SERVICE INDIA E-JOURNAL**
<http://www.legalserviceindia.com/legal/article-4574-evolution-of-fundamental-rights-and-constitutional-remedies.html>
Evolution of Fundamental Rights and Constitutional Remedies by By Keshav Sharma

