



MONTHLY CASE LAW UPDATE

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*It is the spirit not the form of law
that keeps justice alive.*

Earl Warren

CONSTITUTION

1) Province of Sindh etc. vs. M.Q.M. Etc.

(PLD 2014 S.C. 531)

*Tassaduq Hussain Jillani, C.J., Khilji Arif Hussain
and Sh. Azmat Saeed, JJ.*

Interpretation of statutes

"Reading in" or "reading down" of a statute

At the time of "reading down" of a statute two principles had to be kept in view; first that the object of 'reading down' was primarily to save the statute and in doing so the paramount question would be whether in the event of reading down, could the statute remain functional; second, would the legislature have enacted the law, if that issue had been brought to its notice which was being agitated before the court.

Fundamental Rights

'Positive' and 'negative' rights---Distinction

Human rights law made a distinction between positive and negative rights, wherein positive rights usually obliged action and negative rights usually obliged inaction. Positive rights placed a positive duty on the State and included social and economic rights. Negative rights placed a duty on the State not to interfere in certain areas where individuals had rights. Holder of a negative right was entitled to non-interference, while the holder of a positive right was entitled to provision of some good or service. Right holder could thereby exercise his right to act a certain way or not to act a certain way and could exercise his or her freedom of choice within the existing right

Constitution of Pakistan

Art. 222(b)

Local Government elections---Delimitation of constituencies

Power of Majlis-e-Shoora (Parliament) to provide law for "the delimitation of constituencies by the Election Commission" would include the delimitation of constituencies of Local Government.

2) Muhammad Aslam Awan vs. Federation of Pakistan

(2014 SCMR 1147)

Tassaduq Hussain Jillani, CJ, Nasir-ul-Mulk, Anwar Zaheer Jamali, Asif Saeed Khan Khosa and Ejaz Afzal Khan, JJ.

Constitution of Pakistan

INTER SE SENIORITY OF THE JUDGES OF THE (LAHORE) HIGH COURT

Inter se seniority of Judges of a High Court shall reckon from the order and date of their appointment as Additional Judges of that Court--Inter se seniority of Additional Judges of a High Court appointed vide the same order and date shall reckon from their seniority in age. If appointment of two or more service candidates was simultaneously made with that of the candidates from the Bar, the Judges from service shall retain their existing seniority in the department regardless of their age, though that would be the determining factor in respect of their seniority vis-a-vis the candidates from the Bar.

3) Rana Naveed Ahmad Khan vs. Province of Punjab etc.

(PLD 2014 Lahore 436)

Syed Mansoor Ali Shah and Shujaat Ali Khan, JJ.

Single Judge while hearing an objection case was performing an administrative function and only after an office objection was overruled; that the case matured on the judicial side and formally entered the area of "original civil jurisdiction" or "constitutional jurisdiction" as the case may be. At the objection stage, the case was still premature, and fell within the domain of administrative jurisdiction of the single Judge. Intra-court appeal was, therefore, not maintainable against such an order; and was dismissed, in circumstances.

4) Miss Syeda Anam Ilyas vs. Dr. Haroon Rashid, Director

(PLD 2014 Lahore 439)

Syed Mansoor Ali Shah, J.

Legal status and authority of the National Testing Service ("NTS")

High Court disposed of the matter, by consensus between the NTS and HEC in the terms to the effect that HEC would not sponsor or extend any patronage to NTS, as NTS was not an officially approved national testing service under the Higher Education Commission Ordinance 2002; that Universities and other academic institutions recognized by HEC were not under any lawful obligation to conduct tests organized by NTS or be bound by the results of NTS in the matter of admissions or grant of scholarships; that HEC through proper channel, would propose an amendment in the Higher Education Commission Ordinance, 2002 and Rules in order to provide a proper regulatory statutory framework for establishing, monitoring and supervising a "national testing service" and till such time that proper legislation was put in place, HEC would not initiate the process of selecting and appointing a national testing body under the Ordinance; that NTS shall not hold itself out as an HEC approved "national testing service" however, it may continue operating as a private entity under the law, but shall not in any manner be taken to be an HEC approved entity; that HEC will not enter into any fresh contract with NTS or any other entity unless and until NTS or any such entity had been duly approved by HEC under the Ordinance and in the manner described above; that the existing contract/arrangement entered between NTS and the Universities/academic institutions may continue or may be reviewed by the respective Universities/academic institutions, as the case may be, in the light of present order; and that the existing arrangement between HEC and NTS shall only continue till a cutoff date and HEC shall not enter into any arrangement/contract with NTS after the said cutoff date.

CIVIL LAWS

5) Punjab Cooperative Board of Liquidation vs. Muhammad Ilyas

(PLD 2014 S.C. 471)

Nasir-ul-Mulk, Mian Saqib Nisar and Amir Hani Muslim, JJ

Punjab Undesirable Cooperative Societies (Dissolution) Act (I of 1993)

Power of Cooperatives Judge could only be invoked by an "aggrieved person" against an act or decision of the Cooperatives Board. Cooperatives Board itself had not been reckoned as an "aggrieved person" so as to avail any right or conferred with a locus standi to approach the Cooperatives Judge under S.11 of Punjab Undesirable Cooperative Societies (Dissolution) Act, 1993.

Interpretation of Statutes

Rule of Ejusdem Generis

When general word or phrase (in a statute) followed a list of specifics, the general word or phrase shall be interpreted to include only the words/items of the same class as those specified.

6) Liaqat Ali Khan vs. Falak Sher

(PLD 2014 S.C. 506)

Anwar Zaheer Jamali, Ejaz Afzal Khan and Iqbal Hameedur Rahman, JJ..

Suit for specific performance of agreement in respect of immoveable property

Relief of specific performance of agreement was purely discretionary in nature and the court was not bound to grant such relief merely on the basis that it was lawful to do so. At the same time, the discretion to be exercised by the court should not be arbitrary, but it should be based on sound and reasonable analysis of the relevant facts of each case, guided by judicial principles and capable of correction by a court of appeal. Peculiar facts and circumstances of each case, particularly, the terms of the agreement between the parties,

its language, their subsequent conduct and other surrounding circumstances, would enable the Court to decide whether the discretion in terms of S.22 of Specific Relief Act, 1877 ought to be exercised in favour of specific performance or not.

Held further:

Court while exercising its discretion to decree a suit for specific performance could award reasonable compensation to the parties, keeping in view the other surrounding circumstances, such as rate of inflation having direct bearing on the value of suit property, inordinate delay/passage of time, and change in the circumstances or status of the subject property etc.

CRIMINAL LAWS

7) Ghulam Mohy-ud-Din alias Haji Babu vs. The State.

(2014 SCMR 1034)

Asif Saeed Khan Khosa, Gulzar Ahmed and Dost Muhammad Khan, JJ.

Penal Code (XLV of 1860) S. 302(b)

Alternative Sentence

Once the legislature had provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty was the normal penalty and should ordinarily be awarded. If the intent of the legislature was to take away the discretion of the court, then it would have omitted from S. 302(b), P.P.C. the alternative sentence of life imprisonment. Sentence of death and life imprisonment were alternative to one another, however, awarding one or the other sentence essentially depended upon the facts and circumstances of each case.

Islamic jurisprudence

Fundamental principles of Islamic jurisprudence on criminal law was to do justice with mercy, being the attribute of Allah Almighty. On earth such attribute had been delegated and bestowed upon the Judges, administering justice in criminal cases, therefore, extra degree of care and caution was required to be

observed by the Judges while determining the quantum of sentence, depending upon the facts and circumstances of particular case/cases.

8) Iqrar Hussain vs. The State

(2014 SCMR 1155)

Anwar Zaheer Jamali, Sarmad Jalal Osmany & Dost Muhammad Khan, JJ.

Penal Code (XLV of 1860)--- Ss. 302 & 311

Compromise between parties

Accused were convicted and sentenced for murder of deceased. During pendency of appeal before the High Court, compromise was effected between the parties, which was duly verified to be genuine by the Trial Court. High Court, however held that present case was of the nature which fell within the definition of fasad-fil-arz and because the accused acted in a brutal manner, the crime committed was outrageous to public conscious, therefore, compounding right of "Qisas" by the 'walis' would not completely exonerate the accused nor could they go without any punishment. High Court convicted the accused under S.311, P.P.C. despite the compromise effected between the parties.

Supreme Court held:

Section 311, P.P.C. was attracted in cases punishable with "Qisas" and not to cases punishable under "Ta'azir". Section 302, P.P.C was compoundable in view of provisions of S. 345, Cr.P.C. Accused entered into a genuine compromise with the complainant/legal heirs of deceased. No clear evidence was available to constitute the offence involving the element/mischief of fasad-fil-arz, thus the High Court was not justified in law to convert the punishment of the accused to one under S. 311, P.P.C instead of acquitting them on the basis of compromise. High Court had committed a legal error in convicting and sentencing the accused for crime under S. 311, P.P.C., which caused serious miscarriage of justice.

COMPANIES ORDINANCE, 1984

9) Engr. Ghazanfar Ali Khan vs. F.O.P. and others

(2014 CLD 664)

Umar Ata Bandial, C.J.

In this landmark verdict, the Honorable Lahore High Court traced the evolution, development and conceptual framework of the Public Sector Distribution Companies (DISCOs) i.e. LESCO, FESCO etc. The matter in issue was appointment of CEOs of such companies by the Federal Government which procedure was held to be improper and directions were issued by the Honorable Court to revamp the procedure in accordance with the Companies Ordinance, 1984 and Public Sector Companies (Corporate Governance) Rules, 2013.

FAMILY LAWS

10) Muhammad Zahid vs. Mst. Ghazala Mazhar

(2014 CLC 895)

Mamoon Rashid Sheikh, J.

Where in a suit for recovery of dowry articles in shape of gold ornaments the wife had only prayed for recovery of 12 tolas gold ornaments and had not fixed any value, it was held that the husband had the option to either hand over 12 tolas of gold ornaments or to compensate the wife in terms of money equal to an amount that would enable her to purchase 12 tolas gold from open market.

INHERITANCE

11) Abdul Latif vs. Learned Additional District Judge, Kasur

(PLJ 2014 Lah. 860)

Ch. Muhammad Masood Jahangir, J.

By means of this judgment the Honorable Lahore High Court, while dealing with a question of paternity of an adopted child emphasized the need to deploy the DNA test methodology. The Court observed:

“The medical science has developed a lot in the recent span of life while the Forensic Lab has attained the level of perfection and the skill of expert cannot be denied. A person can tell a lie, but the medical science and its findings based upon skilled tests through most modern devices definitely will be an aiding factor for the Court to resolve the controversy. Matching of relationship of one person to the other person through DNA test with the aid of most modern devices, to my mind, is the safest way to depict the true picture of relationship. Throughout the world, these tests have attained a symbol of standard and correctness. It will be highly unsafe to suggest that in Europe and other modern countries, the report of such type of tests is fully followed, but in our society, due to lack of knowledge or unfairness, the result of such type of test is not being given preference. If such an approach is to be kept under consideration, then other test arising out of medical science would also become valueless. We have to trust upon our skill and we have to wait for the result of such a test which is yet to be gathered. Before the said report comes into existence, one cannot say that such report may be unsafe due to lack of skill or defective devices.”

“A large number of like nature cases are pending before the Courts of law regarding the adopted child where the inheritance transactions of adoptive parents are under question which may take years to years for its final adjudication. The most modern scientific test (DNA) will definitely be helpful in such like cases too.”

LAND ACQUISITION ACT

12) Province of Punjab through A.D. Fisheries Sialkot vs. Rana Abdul Hameed etc.

(2014 SCMR 1187)

Jawwad S. Khawaja and Ijaz Ahmed Chaudhry, JJ.

No court/forum within the revenue hierarchy could, therefore, set aside the acquisition of land or orders passed including notifications under Ss. 4 & 17 of Land Acquisition Act, 1894.

NOTIFICATIONS

13) Messrs Asif Traders vs. Collector of Customs etc.

(2014 PTD 1057)

Syed Hassan Azhar Rizvi and Muhammad Junaid Ghaffar, J.

Retrospective effect

Notification which confers a benefit or right to a person can be given retrospective effect, whereas the notification which disturbs or impairs a vested right of a person or creates new liability cannot be applied retrospectively in absence of legal sanction to such effect.

PRE-EMPTION ACT

14) Muhammad Zahid vs. Dr. Muhammad Ali

(PLD 2014 SC 488)

Ejaz Afzal Kkhan and Muhammad Ather Saeed, JJ.

The august Supreme Court of Pakistan enunciated the following principles in this authoritative verdict concerning pre-emption:

“It is correct that according to the entries in the daily diary maintained by the patwari, the appellant has been shown to have taken physical possession of the suit property under the sale, but for the purpose of reckoning limitation, the date of taking physical possession in terms of section 30(c) of the Act, would be relevant only when the sale has been made otherwise than through a registered sale deed or a mutation. Since the sale in this case has been admittedly made through a mutation, the period of limitation would be reckoned from the date of attestation of mutation.”

“Talab-i-Ishhad which, in fact, is confirmation of intention to exercise a right of pre-emption cannot be held to

have been established by mere signing and sending of notice. The witnesses examined in the Court, too, did not state anything regarding confirmation of such intention. One of the attesting witnesses, so called, rather turned the table on the respondent when he stated that he signed the notice in Urdu but the signature found thereon is in English. This also shows that he neither signed nor attested the notice in terms of section 13 of the Act. The argument of learned advocate Supreme Court for the appellant that mere signing and sending of notice cannot be held to be a substantive compliance with the provision of section 13 of the Act, is thus, not without substance. We, therefore, have no hesitation to hold that Talb-i-Ishhad in the circumstances of the case cannot be held to have been established in accordance with the requirements of section 13 of the Act.”

RENT LAWS

15) Gulzar Ali Shah vs. Additional District Judge

(2014 CLC 929)

Muhammad Farrukh Irfan Khan, J.

The Honorable Lahore High Court laid down the following principles:

“12. The main purpose of the promulgation of the Punjab Rented Premises Act, 2009 and its preceding legislations is not so much to provide a fast track mechanism to a landlord to realize unpaid rent or to evict a non-compliant tenant but is primarily aimed at protecting the rights of a tenant who is cognizant of the privilege and the licence which has been granted to use the rented premises and who does not in any manner render himself liable to eviction on the grounds provided in the said law. Therefore, keeping in mind the general principles of law if a statute grants privilege upon certain conditions to a

person the said person seeking the privilege must also demonstrate that he has strictly complied with the conditions of the privilege. Unless such conditions are not religiously fulfilled the said privilege is not available to the said person and as the other party to the lis cannot be deprived of its rights under the law, therefore, subsection (4) of section 24 of the PRPA, 2009 being mandatory in nature require that the Rent Tribunal "shall forthwith pass the final order" in case of non-compliance of its direction or order. Therefore, lawful orders of Rent Tribunal cannot be avoided by the tenant under the garb of putting forward his own stance. In the case of Muhammad Hanif v. Ch. Sami Ullah (2000 MLD 1345) it has been held that "tenant even if not satisfied with calculation or with rate of rent so determined, was duty bound to make deposit to avoid striking off defence.”

“13. It is settled law that a writ will not be issued by the Court as a matter of course and a writ can be refused even against an illegal order owing to the malicious conduct of a writ petitioner or the application of the established principle that "A writ will not be issued in the aid of injustice"

SERVICE LAWS

16) Syed Nazir Gillani vs. Pakistan Red Crescent Society etc.

(2014 SCMR 982)

Tassaduq Hussain Jillani, CJ, Khilji Arif Hussain and Sh. Azmat Saeed, JJ.

Statutory/Non-Statutory Rules

Service Rules framed by Pakistan Red Crescent Society were non-statutory and on such count constitutional petition filed by its employee before the High Court challenging his removal from service would not be maintainable.