



# MONTHLY CASE LAW UPDATE

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## CONSTITUTION

- 1) Ali Azhar Khan Baloch and others vs.  
Province of Sindh and others

**(2015 SCMR 456)**

*Nasir-ul-Mulk, C.J., Amir Hani Muslim and  
Ijaz Ahmed Chaudhry, JJ*

### Good governance

Public functionaries had to reinforce good governance, observe rules strictly and adhere to rule of law in public service. They were not obliged to follow illegal orders of higher authorities.

### It has been held further:-

Article 242 of the Constitution was a safety valve which ensured the transparent process of induction in the civil service, and it provided appointment by Public Service Commission with the sole object that meritorious candidates joined the civil service. Government through executive or legislative instruments could not withdraw any post from the purview of the Public Service Commission.

- 2) Muhammad Raza Hayat Hiraj & others vs.  
Election Commission of Pakistan and  
others

**(PLJ 2015 SC 335)**

*Nasir-ul-Mulk, C.J., Amir Hani Muslim &  
Gulzar Hamed, JJ*

Interlocutory orders passed by election tribunal impugned before High Court were not liable to be set aside in its Constitutional jurisdiction as petitioners before Court had a remedy available to them by way of appeal under Section 67 of Act after disposal of election petitions.

3) Bilal Akbar Bhatti vs. Election Tribunal etc.

**(PLD 2015 Lahore 272)**

*Before Muhammad Qasim Khan, Muhammad Ameer Bhatti and Shahid Waheed, JJ*

In view of the bar contained in Art. 225 of the Constitution, the High Court could not exercise jurisdiction under Art.199 of the Constitution with regard to post-election disputes. Person aggrieved should wait for the final decision of Election Tribunal and such decision could then be assailed, if so required by any of the party, before the Supreme Court.

4) Mrs. Ambreen Naseem Khawaja vs. Federation of Pakistan and others

**(2015PCr.LJ 506 [Islamabad])**

*Shaukat Aziz Siddiqui, J*

Filing of constitutional petition through attorney.

Attorney was real mother of petitioner and she was competent to file proceedings for quashing of FIR registered against her daughter in her absence

## ADMINISTRATION OF JUSTICE

5) GCU etc. vs. Syeda Fiza Abbas and another

**(2015 SCMR 445)**

*Ijaz Ahmed Chaudhry, Dost Muhammad Khan and Qazi Faez Isa, JJ*

Courts should not interfere with the policy matters of educational institutions.

## CIVIL PROCEDURE CODE (V OF 1908)

6) Muhammad Afzal Khan and another vs. NBP etc.

**(2015 CLD 464 [Lahore])**

*Amin-ud-Din Khan and M. Sohail Iqbal Bhatti, JJ*

Duty is cast upon Executing Court to determine reserve sale price of property as Executing Court is to safeguard interests and rights of judgment-debtor and ensure that properties are not sold at throw-away prices."Reserve sale price" means market price of property.

7) Idara-e-Tahaffuz Amn-o-Ikhlaq-e-Aamaa etc. vs. Trustee of Jamia Masjid Haft-E-Sultan Trust etc.

**(2015 CLC 357 [Sindh])**

*Aftab Ahmed Gorar, J*

Failure to annex certified copy of decree with the revision application.

Section 115, C.P.C. only required for furnishing copies of pleadings, documents and order of subordinate court, and there was no mention of copy of decree therein.

## CRIMINAL LAW

8) Nasir Mehmood and another vs. The State

**(2015 SCMR 423)**

*Ijaz Ahmed Chaudhry, Dost Muhammad Khan and Qazi Faez Isa, JJ*

Statement of an accused recorded under S. 342, Cr.P.C. was more reliable, compared to the statement recorded under S. 164, Cr.P.C.

- 9) Ghulam Qammer Shah vs. Mukhtiar Hussain, etc.

**(PLJ 2015 SC 400)**

*Asif Saeed Khan Khosa, Iqbal Hameedur Rahman & Umar Ata Bandial, JJ*

Mere pendency of private complaint could not be treated as a fresh ground for entertaining third application for bail. Judge-in-Chamber had also fallen in error in observing that earlier application for bail submitted by respondent had not been dismissed on merits of case because law declared by Supreme Court clearly holds that dismissal of an application for bail as having been withdrawn after arguing case on merits amounts to dismissal of application on merits of case and a subsequent application for bail can only be filed and entertained if same discloses any fresh ground for such relief, i.e. a ground which was not available till dismissal of earlier application for bail.

- 10) Zahid Rehman vs. The State

**(PLD 2015 Supreme Court 77)**

*Asif Saeed Khan Khosa, Ejaz Afzal Khan, Ijaz Ahmed Chaudhry, Dost Muhammad Khan and Qazi Faez Isa, JJ*

'Qisas' and 'Ta'zir'---Scope and distinction with respect to compoundability discussed at length—principles enunciated.

### **DEFAMATION ORDINANCE (LVI OF 2002)**

- 11) Ch. Zulfiqar Ali Cheema and 3 others vs. Farhan Arshad Mir and others

**(PLD 2015 Supreme Court 134)**

*Mian Saqib Nisar, Ijaz Ahmed Chaudhry and Umar Ata Bandial, JJ*

Section 9 of Defamation Ordinance, 2002, which dealt with remedies, could be split and segregated into two parts: the first was relatable to tendering of apology and statutory damages which the court could allow, for which no court fee was payable; second part of the section however starting with the expression "and in addition thereto, any special damage incurred that is proved by the plaintiff to the satisfaction of the court", was an added right of the party, giving him a choice and option to claim special damages from the special forum or to resort to civil suit---Said remedy (of special damages) available to the person approaching the "Court" was in the nature of a civil suit and the claim shall attract the payment of ad valorem court fee under S.7(1) of the Court Fees Act, 1870

### **INDUSTRIAL RELATIONS ACT (X OF 2012)**

- 12) National Bank of Pakistan and another vs. Anwar Shah and others

**(2015 SCMR 434)**

*Nasir-ul-Mulk, C.J., Gulzar Ahmed and Mushir Alam, JJ*

Nature of duties and functions of a person was to be considered to be the factor which would determine whether his status was that of a "workman" or not--- Designation per se was not determinative of a person being a "workman" rather the nature of his duties and function determined his status.

## INTERPRETATION OF STATUTES

- 13) Messrs Travel Waljis (Pvt.) Ltd. vs. Commissioner Appeals, Income Tax, etc.

**(2015 PTD 550) [Islamabad]**

*Athar Minallah and Noor-ul-Haq N. Qureshi, JJ*

### Remedial/curative provisions

Unless otherwise provided explicitly, the 'remedial' enactment operates retrospectively in those cases wherein proceedings are pending at the time of amendment---In absence of express words, passed and closed transactions cannot be reopened by operation of an enactment which is of a 'remedial' nature.

## PUNJAB PRE-EMPTION ACT (IX OF 1991)

- 14) Muhammad Abaidullah vs. Ijaz Ahmed

**(2015 SCMR 394)**

*Nasir-ul-Mulk, C.J., Asif Saeed Khan Khosa, Sarmad Jalal Osmany, Amir Hani Muslim and Ejaz Afzal Khan, JJ*

### Talb-i-Ishhad

Section 13(3) of the Punjab Pre-emption Act, 1991, specifically required that to prove a valid Talb-i-Ishhad, two truthful attesting witnesses were required to be examined, which excluded the scribe of such notice.

## SERVICE LAWS

- 15) Muhammad Asif Chatha and others vs. Chief Secretary, Government Of Punjab, Lahore and others

**(2015 SCMR 165= 2015 PLC (C.S.) 435)**

*Ijaz Ahmed Chaudhry and Umar Ata Bandial, JJ*

Appointment on acting charge/officiating basis did not confer any vested right for regular promotion.

It has been held further:-

When a departmental representation was barred by time, then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed before the Service Tribunal would be incompetent.

## TRANSFER OF PROPERTY ACT (IV OF 1882)

- 16) National Bank of Pakistan through Attorney and another vs. Paradise Trading Company and others

**(2015 CLD 366)  
[Supreme Court of Pakistan]**

*Nasir-ul-Mulk, C.J., Gulzar Ahmed and Mushir Alam, JJ*

Requirements of law for creation of a mortgage by deposit of title/sale deed are:

- (i) Existence of debt
- (ii) Delivery of documents of title
- (iii) Intention that the documents of title shall be security for the debt