



# MONTHLY CASE LAW UPDATE

Vol.2, No.6

October, 2014

<b>Contents</b>	<b>Page</b>
Constitution	1
Central Excise Act	3
Criminal Procedure Code	3
Contract Act	3
CNSA, 1997	4
Customs Act	4
Exit Control List	4
F.I.R.O, 2001	4
Income Tax Ordinance	4
Limitation Act	5
Pak. Arms Ordinance	5
Punjab Pre-emption Act	5
Stamp Act	5
Service Laws	6

## CONSTITUTION

- 1) Kamran Murtaza vs. Federation of Pakistan  
(2014 SCMR 1667)

*Nasir-ul-Mulk, C.J., Jawwad S. Khawaja, Asif Saeed Khan Khosa and Mushir Alam JJ.*

Petitioner contended that the political standoff or impasse created by the protest marches had adversely affected all spheres of national life and that such a situation may prompt or embolden some authorities or functionaries to take undue advantage of the situation and to resort to some unconstitutional measures; that the Supreme Court should intervene in the matter so that the relevant issues may be resolved within the framework of the Constitution and the law and the democratic polity and dispensation of the Republic was not dislodged or derailed

Supreme Court directed that all the State authorities and functionaries should act only in accordance with the Constitution and the law guided by the principles enunciated in the case of Sindh High Court Bar Association v Federation of Pakistan (PLD 2009 SC 897) and they should restrain from acting in any manner unwarranted by the Constitution and the law.

- 2) Federation of Pakistan etc. vs. Durrani Ceramics  
(2014 SCMR 1630)

*Nasir-ul-Mulk, CJ., Amir Hani Muslim and Muhammad Ather Saeed, JJ.*

Whether levy of a cess was a "tax" or a "fee". Nomenclature, however, would not be relevant and whether the imposition of a particular cess could be termed as a tax or fee would depend upon the nature of a levy. When cess was levied for a particular purpose; it could either be tax or fee depending upon the nature of the levy. Both were compulsory exaction

of money by public authorities. Whereas "tax" was a common burden for raising revenue and upon collection became part of public revenue of the State, "fee" was exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. However, the benefit so accrued may not be measurable in exactitude. So long as the "levy" was to the advantage of the payers, consequential benefit to the community at large would not render the levy a tax.

3) Rab Nawaz Dhadwana, Advocate vs. Rana Muhammd Akram, Advocate

(PLD 2014 Lahore 591)

*Syed Mansoor Ali Shah, Amin-ud-Din Khan and Mrs. Ayesha A. Malik, JJ.*

Process of decision making by the Provincial Bar Council in case of cessation of membership of an elected Member and the corresponding filling of casual vacancy through co-option process, the foundational role and jurisdiction of an impartial Chairman i.e., ex-officio Advocate General for the Province, prevalence and rampancy of adhocism and unexplained delay in constitutional appointments had come up for adjudication before the full bench. While rendering judicial definitions of the terms 'absence', 'vacancy' and 'co-option', the court shed light on Composition and constitution of the Provincial Bar Council, Functioning of the Provincial Bar Council with special reference to operation of committees, elections and meetings and decision making power of the provincial bar council. The court also delineated the functions of advocate general Punjab and held that Adhocism was an organizational philosophy or style characterized by (1) aversion to planning, tendency to respond only to the urgent, as opposed to the important, focus on 'fire fighting,' than on establishing systems and procedures

through goal setting and long term planning. Adhocism was a mind-set or a tendency to establish temporary, chiefly improvisational policies and procedures to deal with specific problems and tasks. Adhocism was a malaise, which exploits the system and weakens institutions and is, therefore, abhorred. Eventually, the Provincial Government was directed to fill in the office of advocate general within a fortnight.

4) Al-Ghazi Tractor Ltd. vs. Muhammad Hanif Iqbal

(PLD 2014 Lahore 635)

*Shujaat Ali Khan and Mahmood Ahmad Bhatti, JJ.*

It has been ruled that Constitutional jurisdiction of the High Court is confined to persons who are performing functions in connection with the affairs of the Federation or a Province. Jurisdiction of the High Court would not be attracted against a private limited company, thus a constitutional petition filed against such company would not be maintainable.

5) Haji Lal Muhammad vs. Federation of Pakistan etc.

(PLD 2014 Peshawar 199)

*Yahya Afridi and Malik Manzoor Hussain, JJ.*

**Obstruction/blockade of a highway by a political party**

By blocking the highway, such protestors were obstructing the passage of others including that of transporter in question, and thereby they could be termed as "unreasonable users" of the highway. Hindering or obstructing transporter's lawful business of transportation of goods in transit to Afghanistan was violation of his fundamental rights under Arts. 9, 18, 23, 24 & 25 of the Constitution, and thus illegal and without lawful authority

6) M/s. Bolan Steel Industries (Pvt) Ltd. vs. WAPDA etc.

(PLD 2014 Balochistan 173)

*Qazi Faez Isa, C.J. and Muhammad Ejaz Swati, J.*

**"Fuel Price Adjustment surcharge" and "Equalization surcharge"**

Federal Government or Federal Authority like National Electric Power Regulatory Authority ("NEPRA") could fix electricity tariffs, issue "Fuel Price Adjustment" notifications and determine "Equalization surcharge".

7) M.I. Sanitary Store etc. vs. Federation of Pakistan

(2014 PLC (C.S.) 1326)

*Syed Mansoor Ali Shah, J.*

Interpretation of a statute must be fashioned in a manner that advances the purpose of the statute.

**CENTRAL EXCISE ACT**

8) Central Board of Revenue, Islamabad vs. WAPDA etc.

(2014 PTD 1861)

*Tassaduq Hussain Jillani, Anwar Zaheer Jamali, Asif Saeed Khan Khosa, Amir Hani Muslim and Muhammad Ather Saeed, JJ.*

Pakistan Water and Power Development Authority (WAPDA) could not claim exemption (from levy of excise duty) on loans and advances made by Banking Companies, Financial Institutions, Insurance Companies, Cooperative Financing Securities and other lending banks or Institutions under item (g) of S.R.O. No.519(I)/1992 dated 25-5-1992 issued under S.12A of Central Excise Act, 1944.

**CRIMINAL PROCEDURE CODE**

9) Sajjad Hussain Mukhi vs. The State

(2014 SCMR 1741)

*Amir Hani Muslim, Gulzar Ahmed and Muhammad Ather Saeed, JJ.*

Where both parties had filed suits regarding disputed property, and the same were pending, the criminal court would obviously stay its hands in entering upon the dispute, as deciding the dispute with regard to properties squarely fell within the domain of the civil court.

**CONTRACT ACT**

10) Cedar Capital Partners LLC vs. FHR European Ventures LLP

(2014 SCMR 1702)

*Lord Neuberger, President, Lord Mance, Lord Sumption, Lord Carnwath, Lord Toulson, Lord Hodge and Lord Collins.*

**Principal and Agent**

Following are the fiduciary duties that an agent owed to his principal:--

(i) Agent owes a fiduciary duty to his principal because he was someone who had undertaken to act for or on behalf of his principal in a particular matter in circumstances which gave rise to a relationship of trust and confidence;

(ii) Agent must not make a profit out of his trust, and must not place himself in a position in which his duty and his interest may conflict; and

(iii) Fiduciary who acted for two principals with potentially conflicting interests without the informed consent of both was in breach of the obligation of undivided loyalty, by putting himself in a position where his duty to one principal may conflict with his duty to the other.

## **C.N.S.A, 1997**

11) Mst. Nasreen Bibi vs. The State

(2014 SCMR 1603)

*Asif Saeed Khan Khosa, Amir Hami Muslim and Ijaz ahmed Chaudhry, JJ.*

Samples had to be secured from every bag or packet of narcotic substance, and each such sample was to be separately tested by a chemical examiner.

## **CUSTOMS ACT**

12) Ghulam Hussain Ramzan Ali vs. Collector of Customs (Preventive), Karachi

(2014 SCMR 1594)

*Mian Saqib Nisar, Sarmad Jalal Osmany and Muhammad Ather Saeed, JJ.*

### **Reference to High Court**

Limitation period for filing reference before High Court would start to run from the date of service of post.

## **EXIT CONTROL LIST**

13) Jahangir Mehmood Cheema vs. Government of Pakistan, Ministry of Interior, Islamabad etc.

(2014 CLD 1384 [Lahore])

*Ijaz ul Ahsan, J.*

Mere fact that there was a claim against a person by a commercial bank, which was yet to be adjudicated upon, was no ground for placing name of such person on the Exit Control List or to deprive him of his fundamental right to travel abroad or restrict his right of free movement.

## **F.I.R.O, 2001**

14) Asif Kudia vs. Messrs Kasb Bank Limited etc.

(2014 CLD 1548 [Sindh])

*Nadeem Akhtar and Aftab Ahmed Gorar, JJ.*

If a wrong provision of law is mentioned in title of an application, the same can be ignored and application can be treated to have been filed under the relevant provision.

## **INCOME TAX ORDINANCE**

15) Sui Northern Gas Pipelines vs. Deputy Commissioner Inland Revenue etc.

(2014 PTD 1939)

*Syed Mansoor Ali Shah, J.*

### **Advance Tax**

Once the companies had paid advance tax for the quarter and categorically stated that no tax credit had been availed for the deduction of tax at source, it would be assumed that the amount of tax to be deducted by SNGPL had been duly paid and would qualify to be the payment paid in the meanwhile under S. 161(1B) of the Income Tax Ordinance, 2001. Once the payment (of advance tax) had been made by the companies, the amount of tax that SNGPL failed to deduct could not be recovered from SNGPL, except by the imposition of default surcharge penalizing the failure to deduct.

### **Doctrine of Unjust Enrichment**

Unjust enrichment was retention of a benefit by a person that was unjust or inequitable. For recovery under the concept of unjust enrichment, something must have been given, whether goods, services or money; the thing which was given must have been received and retained by the defendant, and the retention must be without juristic justification.

## LIMITATION ACT

16) Province of Punjab etc. vs. Muhammad Saleem

(PLD 2014 S.C. 783)

*Anwar Zaheer Jamali and Mian Saqib Nisar, JJ.*

### Interim/urgent relief

Litigant compelled to file suit/appeal during summer vacations for enabling him to seek some interim relief, which was imperative and of utmost expediency to prevent irreparable and irreversible loss and injury. Section 4 of Limitation Act, 1908 gave such a litigant a vested right to file the suit/appeal on the day of the re-opening of the court, but if the litigant sought some urgent relief during the closure of court, he could not be expected to sit idle (till the re-opening of the court) and watch irreparable, colossal and irretrievable loss being caused to him, and refrain from exercising his right of filing suit/appeal for the purpose of obtaining interim relief.

## PAKISTAN ARMS ORDINANCE

17) Letter From DG, Punjab Judicial Academy, Lahore:

(2014 SCMR 1609)

*Nasir-ul-Mulk, C.J. and Amir Hani Muslim, J.*

**In the matter of** Criminal Miscellaneous Application No.504 of 2014 in Criminal Appeals Nos.405 and 406 of 2012, decided on 8th August, 2014.

Supreme Court directed that Supreme Court's observations in the bail granting order regarding S.13 of the Pakistan Arms Ordinance, 1965, being non-bailable, was rectified to the extent that "no amendment had been made in S.13 of the Ordinance in the Province of Punjab to make the said offence non-bailable"

## PUNJAB PRE-EMPTION ACT

18) Karam Elahi through L.Rs. vs. Muhammad Ashraf etc.

(2014 YLR 2347)

*Ch. Muhammad Masood Jahangir, J.*

### Death of original pre-emptor.

Name of one of the plaintiff was not mentioned in the plaint nor was he signatory of notices of Talb-i-Ishhad who introduced himself to be present at a later stage. The statement of son of deceased pre-emptor had no evidentiary value as he was not present at the time of performance of Talb-i-Muwathibat by his deceased father who filed the suit and his statement was beyond pleadings. Version set up against the pleadings of the plaint could not be considered. Statement of one pre-emptor could not be considered on behalf of other pre-emptors to prove the performance of requisite talbs. Non-appearance of other plaintiffs before the Trial Court in a suit for pre-emption was fatal with regard to performance of talbs and said suit could not succeed.

## STAMP ACT

19) Sheikh Muhammad Shakeel vs. Sheikh Hafiz Muhammad Aslam

(2014 CLD 1378)

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

An instrument which fulfilled all the conditions mentioned in S. 4 of the Negotiable Instruments Act, 1881 would be termed as a "promissory note"

- i. Such an instrument was not required to be attested in terms of Art. 17(2)(a) of Qanun-e-Shahadat, 1984.
- ii. Insufficiently stamped Promissory Note was neither invalid nor a void instrument, but it was only subject to

disabilities mentioned in S. 35 of the Stamp Act, 1881. Deficiently stamped pro note was not admissible in evidence nor it could be acted upon unless duly stamped. However in terms of S. 36 of Stamp Act, 1881 if a deficiently stamped instrument was once admitted in evidence and marked as an exhibit, it was not permissible for the Court of first instance, or in appeal or in revision to exclude such instrument from its consideration. Provisions of S. 36 of Stamp Act, 1881 were mandatory in nature and had overriding effect on S. 35 of the said Act imposing a complete bar to question the admissibility of a Promissory Note once it had been admitted and exhibited in evidence without any objection from the other side and included all such instruments which fell under proviso (a) to S.35 of the Stamp Act, 1881.

## SERVICE LAWS

20) Muhammad Shehzad Zaheer vs. Federation of Pakistan etc.

(2014 PLC (C.S.) 1239)

*Nasir-ul-Mulk, Amir Hani Muslim and Muhammad Ather Saeed, JJ.*

Section 9 of Government Servants (Efficiency and Discipline) Rules, 1973 (as it stood before its amendment in the year 2001) provided that borrowing authority could take action against an officer of the lending authority by initiating proceedings against him under the Rules subject to certain conditions. Borrowing authority, in the present case, took action against the appellant without fulfilling the said conditions and therefore, appellant was reinstated into service. Appellant was reinstated into service not because he had been exonerated from the allegations but because there were certain procedural flaws in the procedure adopted for his dismissal, therefore contention regarding double jeopardy was without weight. After reinstatement by borrowing authority appellant was sent back to his parent department/lending authority and

entire material on basis of which appellant was removed was sent to the parent department. Upon appellant's retransfer to his parent department, Establishment Division had issued a direction to the parent department to conduct fresh disciplinary proceedings against appellant from the stage the borrowing authority was required to transmit to the lending authority the records of proceedings, which included the inquiry already conducted, therefore contention that entire disciplinary proceedings including inquiry had to be conducted afresh was without force. Proceedings against appellant had been conducted in accordance with S. 9 of Government Servants (Efficiency and Discipline) Rules, 1973, and principles of natural justice had been followed and the appellant had been provided opportunities to reply to the show-cause notices and statements of allegations at both stages and also given a chance of personal hearing. Appeal was dismissed accordingly.

21) Dr. Alyas Qadeer Tahir vs. Secretary M/O Education (Now M/O Cadd), Islamabad

(2014 PLC (C.S.) 1211)

*Anwar Zaheer Jamali and Ejaz Afzal Khan, JJ.*

Contention of civil servant that requirement of a Master's degree for promotion did not exist at the time of his appointment, therefore it could not be made a requirement for promotion at a subsequent stage just to debar him from promotion to the next scale. It was held that Government could enact and amend rules according to the needs and exigencies of service. Institutional interest shaped structure of a service and not individual interest. Although at the time of appointment of civil servant in question, no rules (for promotion) were enacted or enforced but that did not mean that the institution or department could not change the rules subsequently Institution's/department's right to improve and update its service structure to keep pace with modern age could not be restrained or restricted on the ground that at the time of appointment of a civil servant, a certain qualification was not a requirement for promotion.