



MONTHLY CASE LAW UPDATE

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Pakistani Judgments

CONSTITUTION

- 1) Rana MUHAMMAD NAVEED vs.
FEDERATION OF PAKISTAN

(2013 SCMR 596)

Iftikhar Muhammad Chaudhry, C.J., Ejaz Afzal Khan and Sh. Azmat Saeed, JJ.

Article 199(3) of the Constitution prohibits the High Court from making an order in relation to a person who is a member of Armed Forces of Pakistan or who is for the time being subject to any law relating to any of those forces or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law but not when acts, actions or proceedings which suffer from defect of jurisdiction and are thus coram non judge. The cases of "Federation of Pakistan and another v. Malik Ghulam Mustafa Khar" (PLD 1989 SC 26), "Secretary, Ministry of Religious Affairs and Minorities and 2 others v. Syed Abdul Majid" (1993 SCMR 1171) and "Ghulam Abbas Niazi v. Federation of Pakistan and others" (PLD 2009 SC 866) may well be referred to in this behalf. Once we are convinced that the order enhancing sentence is without jurisdiction and Coram non judge, it cannot be allowed to hold the field notwithstanding it surfaced during the course of hearing a review petition. The error being patent on the face of the judgment requires correction for the ends of justice.

CONTROL OF NARCOTICS SUBSTANCE ACT

2) THE STATE vs. Mst. FAZEELAT BIBI

(PLD 2013 S.C. 361)

*Mian Saqib Nisar, Asif Saeed Khan
Khosla and Ijaz Ahmed Chaudhry, JJ.*

The provisions of section 48(1) of the Control of Narcotic Substances Act, 1997 clearly and unambiguously contemplate an appeal to a High Court against an order passed by a Special Court comprising of a Sessions Judge or an Additional Sessions Judge and in the case in hand the learned Judge, Special Court, CNS, Lahore trying the respondent was a Sessions Judge. The right of appeal conferred by section 48(1) of the Control of Narcotic Substances Act, 1997 is all pervasive catering for every kind of appeal from every kind of order passed by such a Special Court and the provisions of section 48(1) of the Control of Narcotic Substances Act, 1997 do not make any distinction between an appeal against a conviction, an appeal against an acquittal or an appeal seeking enhancement of a sentence passed against a convict. The restrictive scope of section 48 of the Control of Narcotic Substances Act, 1997 visualized by the learned Division Bench of the Lahore High Court, Lahore confining it only to an appeal against conviction has been found by us to be offensive to the clear and unambiguous provisions of the said section and, thus, the same cannot be sustained or upheld by us.

CRIMINAL PROCEDURE CODE

3) Muhammad Sarfraz vs. The State

(PLD 2013 S.C. 386)

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

When any witness is called for the prosecution in an inquiry or trial whose statement has been reduced into writing, the Court shall on the

request of the accused refer to such writing and direct that the accused be furnished a copy thereof in order that any part of such statement if duly proved may be used to contradict such witness in the manner provided by Article 140 of the Qanun-e-Shahadat. It does not provide anywhere that any part of such statement if duly proved could also be used by the prosecution to contradict such witness. Articles 140 and 151 of Qanun-e-Shahadat, no doubt permit cross examination as to previous statement in writing but these being general in nature cannot be extended to cover a statement recorded under section 161 Cr.P.C, nor can they be taken to override the provision of section 162 of Cr.P.C. in the absence of a non-obstante clause.

4) Mukhtiar Ahmad vs. Haji Muhammad Saleem

(PLJ 2013 S.C. 101)

Nasir ul mulk & Amir Hani Muslim, JJ.

In the proceedings under Section 145, Cr.P.C., the Magistrate has to take cognizance on an application/complaint by a party/or report by the police on his satisfaction of imminent danger of breach of peace.

LIMITATION ACT

5) Messrs BLUE STAR SPINNING MILLS LTD. vs. COLLECTOR OF SALES TAX

(2013 SCMR 587)

*Tassaduq Hussain Jillani, Mian Saqib
Nisar and Muhammad Ather Saeed, JJ.*

Rule that no limitation ran against a void order was not an inflexible rule; that a party could not sleep over to challenge a void order and it was bound to challenge the same within the stipulated/prescribed time period of limitation from the date of knowledge before the proper forum in appropriate proceedings.

SERVICE LAWS

6) ZARAI TARAQIATI BANK LIMITED
vs. SAID REHMAN
(2013 SCMR 642)

Tassaduq Hussain Jillani, Mian Saqib Nisar and Sarmad Jalal Osmany, JJ.

The "rules" and "regulations" framed under any Act are meant to regulate and limit the statutory authority. All statutory authorities or bodies derive their powers from statutes which create them and from the rules or regulations framed thereunder. Any order passed or action taken which is in derogation or in excess of their powers can be assailed as ultra vires. Rules and regulations being forms of subordinate legislation do not have substantial difference as power to frame them is rooted in the statute. Statutory bodies are invariably authorized under the Act to make or adopt rules and regulations not inconsistent with the Act, with respect to such matters which fall within their lawful domain to carry out the purposes of the Act. This rule making power of such bodies, called 'delegated legislation' has assumed importance in the contemporary age. "The justification for delegated legislation is threefold. First, there is pressure on parliamentary time. Second, the technicality of subject matter necessitates prior consultation and expert advice on interests concerned. Third, the need for flexibility is established because it is not possible to foresee every administrative difficulty that may arise to make adjustment that may be called for after the statute has begun to operate. Delegated legislation fills those needs."

Broadly the salient characteristics of statutory rules are threefold:--

- (i) Rules or Regulations are framed by statutory or public body;
- (ii) Those are framed under the authority or powers conferred in the statute;
- (iii) Those have statutory Governmental approval or statutory sanction.

7) Khurram Iqbal vs. Deputy Director Food
(2013 PLC (C.S.) 530)

Anwar Zaheer Jamali and Sh. Azmat Saeed, JJ.

There is no denial of fact that for the post of Food Grains Supervisor (BS-6), Food Department, government of Punjab, the minimum educational qualification requirement was matric 2nd division from a recognized Board, which qualification the appellant did not have. In our opinion, mere holding of F.A. qualification will not be done away with the basic requirement of matriculation in second division, therefore, the Tribunal, while passing its impugned judgment, was fully justified in dismissing the appeal of the present appellant.

8) Mst. Mehmooda Arif vs. DCO
(2013 PLC (C.S.) 492)

Before Muhammad Farrukh Irfan Khan, J.

The Hon'ble High Court while dealing with the case of awarding of additional marks by recruitment committee has held that:

Giving discretion for grant of two additional marks to Selection/ Recruitment Committee at its own level through a corrigendum would promote misuse of discretion which could result in nepotism, corruption, feeling of despondency and hatred against the State and was detrimental and discriminatory to candidates who expected to be treated on merit.

The court further observed that:

Selection/Recruitment Committee is expected to exercise discretion judiciously, honestly, objectively and in accordance with law.

9) Usmat Batool vs. Bahauddin Zakariya University, Multan.

(2013 PLC (C.S.) 484)

Before Muhammad Farrukh Irfan Khan, J.

Advertisement in relation to filling up of vacancies was a promise stating all rules which the authority undertook to observe in consideration for giving employment to the most suitable candidate. No deviation should take place from the advertisement and if at all any deviation was necessary in order to overcome some shortfall/legal lacunas then such changes should have been advertised in the same manner as original advertisement and also to be notified to each and every applicant if process of filling up the posts commenced in the meanwhile.

10) Nazar Elahi vs. Government of Punjab

(2013 LHC 598)

Hon'ble Mrs. Justice Ayesha A. Malik.

(This recent judgment has not yet been reported however the same is available on the website of the Hon'ble Lahore High Court, Lahore.)

In this judgment age relaxation in favour of women was challenged being against equality but court upheld the decision of government being an affirmative action to ensure full participation of women in national life, while observing that:

I am of the opinion that the age relaxation for female candidates meets the standard of a permissible affirmative action, hence is protected under Article 25 (3) of the Constitution. I am also of the opinion that the age relaxation offered to female candidates does not violate Article 27 (1) of the Constitution. In fact it promotes the full participation of women in national life as contemplated under Article 34 of the Constitution, which provides that steps shall be taken to ensure full participation of women in all parts of National Life.

TAX LAWS

11) Commissioner Inland Revenue (Legal) vs. Commissioner Inland Revenue.

(2013 PTD 837)

Syed Mansoor Ali Shah and Muhammad Farrukh Irfan Khan, JJ.

Department sought reference of the High Court on the question "whether assessment under S.121(1)(d) of the Income Tax ordinance, 2001 could be made in cases where deemed assessment order had already been made under S.120 of the Ordinance"--- Assessee, in the present case, had filed return of total income under S.120 of the Income Tax Ordinance, 2001 and thereafter his case was selected for audit and another assessment order under S.121(1)(d) of the Ordinance was made---Held, for the tax period under discussion in the present case, the legislative scheme during that time, and before amendment vide Finance Act, 2010; did not provide for cancellation or annulment or amendment of the deemed assessment order passed under S.120 of the Income Tax Ordinance, 2001 by a best judgment assessment order under S.121(1)(d) of the Ordinance...

TRANSFER OF PROPERTY ACT

12) Nisar Ahmed Afzal vs. Muhammad Taj

(PLJ 2013 SC 179)

Nasir ul Mulk, Tariq Parvez & Amir Hani Muslim, JJ.

The provisions of section 53 of the Transfer of Property Act, provide that if a fraudulent transfer is made with intent to defeat the interest accrued to a party which it has acquired through a sale agreement, then such party can enforce the same not only against the vendor but also against the person from whom such a vendor has acquired the interest.

TORT AND DAMAGES

- 13) Malik Gul Muhammad Awan vs. Federation of Pakistan

(2013 CLD 733)

Tassaduq Hussain Jillani, ACJ and Nasir ul Mulk, J.

It is by now a well-established principle that the person claiming special damages has to prove each item of loss with reference to the evidence brought on record and for general damages as claimed by the petitioner relating to mental torture, agony, defamation and financial loss, those are to be assessed following the Rule of Thumb and the said exercise falls in the discretionary jurisdiction of the court which has to decide it in the facts and circumstances of each case.

Foreign Judgments

Australian Federal Court

- 14) Australian Licensed Aircraft Engineers Association vs. Qantas Airways Ltd & Anor,

[2012] FCAFC 63

A Full Federal Court has confirmed the decision of the Federal Magistrates, a case which considered the operation of the adverse action provisions in the Fair Work Act 2009. This decision indicates that for the purposes of the adverse action provisions, an employee's position may be altered to his or her prejudice if the employee is in a group of persons who may be affected by the employer's actions in a real and substantial way. This is the case even if the facts demonstrate that the employee in question was unlikely to be, and was not in fact, so affected.

The decision also highlights the complexities for an employer in discharging the onus of proof in adverse action proceedings, and the importance of selecting and presenting appropriate evidence to support the employer's assertions. This decision could be regarded as making a broad interpretation of the meaning of 'altering an employee's position to his/her detriment'. It also confirmed that a detriment may occur even if an employee suffered no actual loss or infringement of a legal right. However, the detriment must be real and substantial, not merely possible or hypothetical.

<http://www.mallesons.com/publications/marketAlerts/2012/employee-relations-and-safety-update-august-2012/Pages/Full-Federal-Court-confirms-Qantas-adverse-action-decision.aspx>

U.K. Supreme Court

- 15) Public Relations Consultants Association Limited v. The Newspaper Licensing Agency Limited

[2013] UKSC 18

The Supreme Court has recently considered whether the mere act of viewing copyright material on the internet could amount to infringement of copyright. This case dealt with whether copyright infringement proceedings could be brought against internet users for merely viewing copyrighted content. The five judge bench presided by Lord Neuberger and consisting of Lord Kerr, Lord Clarke, Lord Sumption and Lord Carnwath unanimously held that copyright infringement proceedings could not be brought against such internet users.

<http://spicyipindia.blogspot.com/2013/04/uk-supreme-court-relieves-internet.html>
http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0202_Judgment.pdf

SEND-OFF GIVEN TO RESEARCH OFFICERS

On Saturday, 1st June 2013, a simple and informal send-off ceremony was held in the Research Center of the Lahore High Court in honor of Mr. Nadeem Ahmad Sohail Cheema and Mr. Nadir Hussain Shah, Research Officers, on the eve of their transfer to district judiciary. The ceremony was jointly presided by Hon'ble Mr Justice Ijaz-ul-Ahsan and Hon'ble Mr. Justice Syed Mansoor Ali Shah. Mr. Sohail Shafiq, Senior Research Officer and Mr. Muhammad Amir Munir, Research Officer briefly offered their views about the outgoing officers. On this occasion, Hon'ble Mr. Justice Ijaz-ul-Ahsan appreciated the Research Officers for their work during their stay at the Center. His lordship apprised the contribution of Mr. Nadeem Ahmad Sohail Cheema to the proceedings of the Election Full Bench of High Court and of Mr. Nadir Hussain Shah to the Defective Drugs Inquiry Tribunal. Hon'ble Mr. Justice Syed Mansoor Ali Shah highlighted that the research experience gained at the Center will prove to be an asset for the Research Officers as they will be able to perform better at judicial side. His lordship has applauded the work of outgoing Officers, especially the preparation of Election Bench Book and materials by Mr. Cheema. The Hon'ble Judges also emphasized that the culture of research and scholarship should continue and the Officers have to become agents of change wherever they are posted. A gift of book "*Jinnah*" was also awarded to both the officers by the Hon'ble Judges. The ceremony concluded with vote of thanks by Mr. Sohail Shafiq, Senior Research Officer.



Mr. Nadeem Cheema receiving shield from Hon'ble Judges



Mr. Nadir Hussain receiving shield from Hon'ble Judges



Group Photo of Research Officers with Hon'ble Judges

NEW RESEARCH OFFICERS ASSUMED CHARGE

Mr. Amad-ud-Din Fazil, Civil Judge D.G. Khan and Ms. Yasmeen Ilyas, Civil Judge, Okara have been transferred to the Research Center to work as Research Officers. They have assumed charge of their new place of posting. The Research Center welcomes both of them and wish that they will add diversity and competence in the working of the Center. The Center has planned a brief training session for the new incumbents to sensitize them about the working of the Center and their specific role in this regard.