



MONTHLY CASE LAW UPDATE

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CONSTITUTION

- 1) Pakistan Bar Council vs. Federal Government.
(2013 SCMR 1651)

*Iftikhar Muhammad Chaudhry, C.J.,
Ijaz Ahmed Chaudhry and Gulzar
Ahmed, JJ*

It has been opined by the apex court while entertaining the constitutional petition under Art.184(3) of the Constitution, concerning recognition/affiliations of law colleges and universities and raising of standard of legal education in the country, that State was responsible for ensuring fundamental right of education enshrined in Art.9 read with Arts.25-A and 37 of the Constitution.

- 2) Haji Muhammad Zaman Khan vs. Member BOR Punjab.
(2013 SCMR 1595)

*Tassaduq Hussain Jillani and Asif
Saeed Khan Khosa, JJ*

It has been opined, inter alia, High Court in its constitutional jurisdiction could interfere with the order passed by a Tribunal of competent jurisdiction, however, said exercise had to be confined to examine whether the order passed was in accordance with the law; whether it was a case of no evidence; whether the authority acted in bad faith or there was failure to follow the procedure prescribed in law.

3) Nazar Elahi vs. Govt. of Punjab.

(2013 CLC 1457)

Mrs. Ayesha A. Malik, J

The petitioner assailed the proclamation wherein a relaxation of age was offered to female candidates but the same relaxation of age was not offered to male candidates. Hon'ble High Court while dismissing the petition observed as under:

“Equal protection of law was guaranteed under Art.25 of the Constitution, to every citizen and also required that the State would undertake action for protection of women and children---Constitution had itself recognized and created classification which needed special protection---Any act of government which aimed to protect women and children was affirmative action and did not offend Art.25(1) of the Constitution---Age relaxation for female candidates met standard of permissible affirmative action, hence was protected under Art.25(3) of the Constitution”.

4) Foundation for Fundamental Rights vs. Federation of Pakistan.

(PLD 2013 Peshawar 94)

Dost Muhammad Khan, C.J. and Musarrat Hilali, J

In this judgment court after discussing the issue of drone attacks in detail passed several directions to GOP and held that if resort to UNO does not prove fruitful then GOP shall sever all ties with USA:

“In case the US Authorities do not comply with the UNO Resolution, whether passed by the Security Council or by the General Assembly of UNO, the Government of Pakistan shall sever all ties with the USA and as a mark of protest shall deny all logistic and other facilities to the USA within Pakistan”.

CRIMINAL LAW

5) Dilawar Hussain vs. The State.

(2013 SCMR 1582)

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

Accused was convicted and awarded death sentence by Trial Court and the same was maintained by High Court as well as by Supreme Court---Accused sought review of judgment on the plea of incarceration in death cell for eighteen years- Life imprisonment meant twenty five years rigorous imprisonment---Even under Rule 198(b) of Pakistan Prisons Rules, 1978, life imprisonment meant twenty five years rigorous imprisonment---Accused was being incarcerated in death cell for last 17 years, one month and five days and by efflux of time he had also earned remissions for 18 years, eight months and ten days---Such were extenuating circumstances as, in the present case, where the accused did not repeat fire, chose lower part of body, accused and deceased being closely related to each other, incident having taken place on some abrupt altercation between them and that incarceration of accused in death cell for a long period, conversion of sentence from death to imprisonment for life would not only be proper rather it was in the interest of justice---Accused had not only served out one sentence provided under S.302(b), P.P.C. but had also suffered agonies of his remaining incarcerated in death cell for quite long period---Supreme Court keeping in view the principle of abundant caution, reviewed its earlier judgment and altered death sentence passed to accused into imprisonment for life.

No man is above the law and no man is below it; nor do we ask any man's permission when we ask him to obey it

Theodore Roosevelt quotes

6) Nadeem Ashraf vs. The State.

(2013 SCMR 1538)

Tassaduq Hussain Jillani and Asif Saeed Khan Khosa, JJ

The dictum laid down in Ameer Zeb case (PLD 2012 S.C 380) is not applicable in bail matters. The August Court while dismissing the bail petition has observed as under:

Admittedly the trial has yet to commence and it would be rather presumptuous on the part of the petitioner to infer that the prosecution would lead evidence only to the extent of the weight to which reference has been made by petitioner's learned counsel. It is always open for the parties and in this case for the prosecution to lead further evidence and to request the court that it be allowed to send the entire narcotics allegedly recovered from the petitioner for chemical analysis.

ELECTION LAWS

7) Allah Dino Khan Bhayo vs. E.C.P.

(2013 SCMR 1655)

Iftikhar Muhammad Chaudhry, C.J., Ijaz Ahmed Chaudhry and Sh. Azmat Saeed, JJ

It has been observed, inter alia, regarding qualification to be Member of Parliament (Majlis-e-Shoora) in terms of Art. 62(1)(f) of the Constitution, the framers of the Constitution had chosen not to prescribe any period of time through the flux whereof or any act or omission through which such qualification could be acquired if a candidate or a member had been held not to possess the same. However, if a person was held not to be qualified in terms of Art.62 (1) (f) of the Constitution, such absence of qualification in law would haunt him forever.

8) Raja Rab Nawaz vs. Federation of Pakistan.

(2013 SCMR 1629)

Iftikhar Muhammad Chaudhry, C.J., Ijaz Ahmed Chaudhry and Gulzar Ahmed, JJ

The apex court has commented upon the importance of local/municipal government elections by stating that the establishment of democratic institutions at the grass root level was basic requirement for the welfare of the society. Broad masses of people were to be genuinely associated with the management of their affairs and encouraged to work for their own welfare. Essentially, the institutions at local/grass root level protected the human dignity of common man to which he was entitled. Further observed that the Local Government or Municipal Government was a form of public administration, which in a majority of contexts, existed as the lowest tier of administration within a given state or district.

9) Muhammad Yaqoob Sheikh vs. Election Tribunal.

(2013 CLC 1512)

Ijaz ul Ahsan, Syed Mansoor Ali Shah and Sayyed Mazahar Ali Akbar Naqvi, JJ

In this case court determined the application of Article 63 of the Constitution of Pakistan when default is not directly by a natural person but same was through the medium of juristic person:

“The purpose behind the above Article is to disqualify a candidate aspiring for a seat in the Parliament if he is a loan defaulter or has got his loan written off, It will be restricting the above constitutional disqualification if it were to only cover situations where the aspiring candidate has obtained

loan as a natural person under his own name and disregard the loans obtained by the candidate through the vehicle of his business. The “veil of the incorporation” Can be lifted to determine whether the petitioner is the major beneficiary of the loan obtained by the corporate entity”.

FAMILY LAWS

10) Mst. Saeed Javed vs. Javed Iqbal.

(PLD 2013 Peshawar 88)

Rooh-ul-Amin Khan and Malik Manzoor Hussain, JJ

Suit for dissolution of marriage by wife on ground of infertility of husband- Neither Islam nor Dissolution of Muslim Marriages Act, 1939 recognized such ground for dissolution of marriage as fertility or infertility or other incapacitation for being beyond control of human being and an act of nature---Marriage in case of infertility of husband could be dissolved either by him by giving Talaq to wife or by her through "Khula".

FINANCIAL INSTITUTIONS (RECOVERY OF FINANCE) ORDINANCE

11) Faysal Bank vs. Justice of Peace.

(PLJ 2013 Lahore 530)

Abdus Sattar Asghar and Shujaat Ali Khan, JJ.

The appellant/bank lodged an application u/s 22-A of Cr.P.C before JOP seeking registration of FIR against respondent for bouncing of cheque allegedly issued for repayment of finance advanced by the bank. The application was allowed by JOP but the said order was reversed by the Hon’ble High Court while deciding the writ petition filed by the respondent.

The bank assailed this order of single bench through I.C.A, which was dismissed by the Hon’ble division bench in limine and it was held that:

“It is an established principle of interpretation of statutes that in case of a special law and a general law on the same subject which if standing alone would include the same matter and conflict with the special law, it is the special law which will prevail since it evinces the legislative intent more objectively and specifically than the general law. The intent to legislate Section 20(4) of the Ordinance ibid and Section 489-F PPC being altogether different should not be intermingled. In view of the above legal position the arguments of learned counsel for appellant that Bank in its own prerogative was not debarred from getting criminal case registered under Section 489-F PPC to redress its grievance through speedy remedy of his choice is devoid of any force and thus repelled”.

LAND ACQUISITION ACT

12) Askari Cement Limited vs. Land Acquisition Collector, Punjab.

(2013 SCMR 1644)

Anwar Zaheer Jamali, Asif Saeed Khan Khosa and Amir Hani Muslim, JJ

For determining proper rate of compensation for the acquired land, not only the factors highlighted in Ss.23 and 24 of Land Acquisition Act, 1894 were relevant, but the peculiar facts and circumstances of each case were more important deciding factors in such regard.

PRE-EMPTION ACT

13) Dawa Khan vs. Muhammad Tayyab.

(PLJ 2013 SC 609)

Iftikhar Muhammad Chaudhry, C.J., Tassaduq Hussain Jillani, Amir Hani Muslim, Gulzar Ahmed & Sh. Azmat Saeed, JJ.

Notice of talb-i-ishhad should be attested by two truthful witnesses --Non-production of one of the witnesses, without showing sufficient cause and or plausible explanation would be violative of such mandatory requirement of proving talb-i-ishhad .Admissibility of document in evidence by itself will not absolve party from proving its contents in terms of Art. 79 provided under scheme of order.

SERVICE LAWS

14) Abdul Wahab vs. H.B.L.

(2013 SCMR 1383)

Tassaduq Hussain Jillani, Mian Saqib Nisar, Asif Saeed Khan Khosa, Sarmad Jalal Osmany, Gulzar Ahmed and Muhammad Ather Saeed, JJ

It has been held by the apex court that where a service grievance was agitated by a person/employee who was not governed by statutory rules of service but by contractual stipulations, before the High Court, in terms of Art.199 of the Constitution, such petition shall not be maintainable. Any infringement of any condition of such a contract shall at the most entitle and clothe the employee to avail his ordinary remedy for the breach of contract and wrongful action against him, before the court of plenary jurisdiction. Moreover, in such a situation, it could not be urged that the fundamental right(s) of the employee had been violated conferring upon him a right to enforce

the same in terms of Art.199 and/or under Art.184(3) of the Constitution.

Further observing that Supreme Court while exercising jurisdiction under Art. 184(3) of the Constitution, qua the employment on contractual basis, was bound by the conditions of the said Article, and moreover by such rules which were laid by the Supreme Court for regulating its jurisdiction, keeping in view the principles of restraints. In cases of contractual service, where the grievance agitated was against a private person, there was no reason that such restraint should not be resorted to by the Supreme Court. Thus, where a case was not made out in terms of Art. 184(3) of the Constitution, jurisdiction should not be exercised on the plea of pity, compassion and humanitarian reasons only.

15) Imtiaz Ahmad Kaifi vs. Govt. of Punjab.

(PLD 2013 Lahore 598)

Umar Ata Bandial, J

Where penal terminology is used for removal of officer working on the pleasure of the government then reason for such removal and discriminatory treatment qua such officers are to be given:

“Therefore on that narrow ground of discrimination and also for the use of penal terminology for dispensing with the service of the petitioners, the impugned orders dated 2-5-2013 pronouncing the petitioners' removal from service are declared to be illegal, without lawful authority and of no legal effect”.

Time with its tides brings new conditions which must be cared for by new laws.

Cardozo, Benjamin N., Williams v. Baltimore, 289 U.S. 36, 46 (1933).

VISIT OF HON'BLE INDIAN SUPREME COURT JUDGE

While visiting Lahore High Court on 13th December, 2013 Mr. Justice Madan B. Lokur along with Hon'ble Mr. Justice Syed Mansoor Ali Shah called on the Research Centre. His lordship was briefed by Senior Research Officer regarding establishment and working of the Research Centre. Considering his keen interest in the functioning of the Centre, he was presented with the copies of Research Memo, Monthly Case Law Update and Bench Book on Election Laws. Hon'ble Judge was pleased to note that Research Centre is a novel and more refined idea of law clerkship. He also appreciated the idea of induction of Research Officers from District Judiciary which not only provides research support to the constitutional court but also helps to improve legal acumen of members of District Judiciary. His lordship was impressed by the quality of Memos prepared by the Research Centre and expressed his desire to establish a Research Centre on same pattern in Supreme Court of India.



Arrival of their lordships Madan B. Lokur and Syed Mansoor Ali Shah at the Centre.



The Hon'ble guest is being presented with a book "Precedent in Pakistani Law" by the Centre.



L to R. Yasmeen Ilyas, Amir Munir, Mr. Justice Syed Mansoor Ali Shah, Mr. Justice Madan B. Lokur, Sher Hassan Pervez, Amad-ud-din, Rai Muhammad Khan and Sohail Shafiq