



MONTHLY CASE LAW UPDATE

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CONSTITUTION

1) Human Rights Case No.14392 of 2013

(2014 SCMR 220)

Iftikhar Muhammad Chaudhry, C.J. Jawwad S. Khawaja and Amir Hani Muslim, JJ.

In this case Supreme Court of Pakistan, building upon Sheela Zia case (PLD 1994 SC 694) and also referring to Corruption in Rental Power Plants case (2012 SCMR 773) gave further extension to right to life and held that:

In the world of the 21st century, it seems unfathomable for life to carry on without the provision of an uninterrupted supply of energy in the form of electricity..... the provision of electricity comes under the guarantee of the right to life enshrined in Article 9 of the Constitution.

2) Khawaja Muhammad Asif vs. Federation of Pakistan

(PLD 2014 S.C. 206)

Iftikhar Muhammad Chaudhry, C.J. Jawwad S. Khawaja and Gulzar Ahmed, JJ.

It has been observed, inter alia, the jurisdiction under Article 184(3) is meant precisely for the purpose of ensuring that the assets belonging

to the People (such as mineral resources) are managed and exploited for the benefit of the People of Pakistan and also for ensuring that waste or abuse of such assets is not allowed to take place or to continue.

3) Excise and Taxation Department,
Lahore, vs. M/s. Metro Pole
Cinema

(2014 AC 139)

*Anwar Zaheer Jamali, Ijaz Ahmed
Chaudhary and Muhammad Athar
Saeed, JJ.*

Hon'ble Supreme Court on question of law regarding maintainability of appeal in Supreme Court in case of non-availing remedy of Intra-Court Appeal observed as under:

In certain exceptional circumstances the Supreme Court can entertain direct petition despite availability of remedy of Intra Court Appeal under proviso to Sec. 3(2) of the Ordinance of 1972. If there are no exceptional circumstances the remedy of Intra-Court Appeal cannot be by-passed.

4) Khalid Habib vs. Pakistan
Telecommunication Corporation
Ltd.

(2014 PLC (C.S.) 203)

Muhammad Khalid Mehmood Khan, J

In this judgment question of jurisdiction of Lahore High Court and Islamabad High Court has been considered. Upholding the concurrent jurisdiction of both courts, when order emanates from a person /office not only localized in Islamabad but in entire Pakistan, relief was granted against order of Prime Minister:

The Prime Minister is deemed to be functioning in the entire Pakistan and as such there is no doubt in my

mind that the impugned order can be assailed successfully before the Lahore High Court, Lahore...the Lahore High Court Lahore and Islamabad High Court are enjoying concurrent jurisdiction on Islamabad capital territory.

CONSUMER PROTECTION ACT

5) Muhammad Aslam vs. General
Manager Pioneer Pakistan Seed
Limited, Lahore

(2014 CLD 257)

Ibad-ur-Rehman Lodhi, J.

It has been observed that although section 30 of the Punjab Consumer Protection Act, 2005 provides procedure to be adopted by the Consumer Court do indicate the production of evidence but neither the concept of framing of issues on the basis of divergent pleadings of the parties nor specific procedure for recording of evidence has been provided with regard to the proceedings to be taken by the Consumer Court. Further opining that it is high time that the Act be suitably amended by inserting the provisions in Section 30 enabling the Consumer Court to frame issues on the basis of divergent pleadings of the parties and to provide ample opportunity to the parties concerned to produce their evidence on the issues and then to decide the same after giving issue-wise findings after consideration of the evidence available on record.

CIVIL PROCEDURE CODE

6) Syed Tahir Hussain Mehmoodi
vs. Agha Syed Liaqat Ali

(2014 SCMR 637)

*Mian Saqib Nisar and Amir Hani
Muslim, JJ.*

In this case while discussing Order XVII Rule 3 CPC, court distinguished between technical knock-out on one side and disciplinary

provisions on the other side and held that penal provisions which are disciplinary in nature cannot be left redundant for favoring disposal on merits:

4....once the case of a delinquent litigant squarely falls within the purview and mischief of the law (ibid) then neither any concession should be shown to such litigant nor a lenient view favouring him should be resorted to; this should not even be permissibly done on the touchstone of exercise of discretionary power of the court and/or on the approach that technicalities of procedure should not be allowed to impede the interest of justice, and/or that the litigants should not be knocked out on technical grounds, and that adversarial lis should be settled on merits. If such approach is liberally followed and resorted to there shall be no discipline in the adjudication of the civil litigation...

Court further explained this point and held:

It may not be out of place to mention here that to apply and to adhere to law is not a mere technicality, rather it is duty cast upon the court as per Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 to do so. Thus where Order XVII, Rule 3, C.P.C. is duly attracted, the court has no option except to take action in accord therewith.

CRIMINAL PROCEDURE CODE

7) The State vs. Syed Ali Baqar Naqvi

(2014 SCMR 671)

Anwar Zaheer Jamali, Asif Saeed Khan Khosa and Mushir Alam, JJ.

In this case court explained the question of limitation in different acquittal appeals and held as under:

...it is evident that the prescribed

period of limitation of sixty days and thirty days respectively is available only for those criminal acquittal appeals, which are filed by "the complainant" or "person aggrieved" respectively, while no specific period of limitation under the amended dispensation as regards the acquittal appeals under subsection (1) to section 417, Cr.P.C. is prescribed, which will thus continued to be regulated by Article 157 of the Limitation Act, as reproduced above.The correct legal position is that for filing an appeal under section 417(1) by the State/Provincial Government the period of limitation is six months as prescribed by Article 157 of the Act of 1908.

CONTRACT ACT

8) Muhammad Siddique vs. District Judge, Jacobabad.

(2014 CLC 442)

Abdul Rasool Memon and Abdul Maalik Gaddi, JJ.

Hon'ble Sindh High Court on Scope of Order I, Rule 10, C.P.C. observed as under:

"It is well-settled law that allowing any party to be joined or substituted as a party is discretionary with the Court and such discretion is to be exercised depending upon the facts and circumstances of the case and is guided by the rules of propriety and justice. Under Order I, Rule 10, C.P.C. impleading of a party at any stage means and suffices for its impleading for all subsequent stages of the suit. Moreover, the scope of Order I, Rule 10, C.P.C. is very wide. It is to be exercised liberally and no technical hurdle is to be considered so strong as to override the considerations of "adjudication" or right to justice and no question of limitation is involved in impleading or transposing any person as party."

ENVIRONMENTAL LAWS

- 9) Ch. Muhammad Saleem vs. Director General Environmental Protection Agency.

(2014 CLC 445)

Syed Mansoor Ali Shah and Mamoon Rashid Sheikh, JJ.

The Hon'ble Lahore High Court, Lahore on question of law whether appeal filed before learned Environmental Tribunal Punjab was within time or not, observed as under:-

Section 12(1) of the Limitation Act, 1908, provides that for the purposes of calculating the period of limitation prescribed for filing any suit/appeal/application the day from which such period is to be reckoned shall be excluded. It, therefore, follows that the date on which the order was communicated to the appellant "shall be excluded" for the purposes of calculating the period of limitation for filing the appeal. The order was communicated to the appellant on 6-7-2010. The limitation in the case would, therefore, run from 7-7-2010 and the thirty (30) days period would end on 5-8-2010. The appeal filed by the appellant before the learned Tribunal would, therefore, appear to be within time. The question of condonation of delay in filing the appeal by invoking the provisions of section 5 of the Limitation Act and/or the applicability thereof by virtue of section 29 of the said Act does not arise. The appellant applied for obtaining a certified copy of the impugned order and under the provisions of section 12 of the Limitation Act. The time spent by the appellant in obtaining the certified copy is to be excluded from the period of limitation.

ELECTION LAWS

- 10) M.Q.M vs. Province of Sindh
(2014 CLJ 79)

Muhammad Ali Mazhar and Sadiq Hussain Bhatti, JJ.

Hon'ble Sindh High Court declared 'delimitation of electoral units' as violative of the provisions of the Sindh Local Govt. Act, 2013 and Constitution of Pakistan and observed as under:-

Delimitation of electoral units carried out by Government of Sindh ("Provincial Government") for Local Government elections. Such delimitation process was carried out illegally and was also violative of certain Articles of the Constitution. Entire delimitation exercise carried out by the delimitation officers was conducted in violation of Ss.10, 11, 12 & 13 of the Sindh Local Government Act, 2013 and the guidelines issued by the Provincial Government. Amendments made in the Sindh Local Government Act, 2013 through Sindh Local Government (Third Amendment) Ordinance, 2013 were struck down consequently. Unbalanced or discriminatory delimitation was called "gerrymandering".

PRE-EMPTION ACT

- 11) Dilbar Khan vs. Muhammad Ashraf

(2014 AC 134)

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

In this case august court deliberated on an important issue of retrospective application of Precedents. Noting that in lis before court, suit was decreed in 1999 and appeal was dismissed in 2001, against which revision was decided by High Court relying on Pir Muhamad Case(PLD 2007 SC 302) in year 2010, August Court rejected the plea that

law prior to Pir Muhammad Should govern the lis. In this way retrospective application of precedent was approved, unless a cut-off date of application and saving of decisions prior thereto is provided by the court itself:

We are of the view that latest judgment/verdict of this Court not following within the above category, which enunciates the principle of law, in respect of a specific/particular law by interpreting the same e.g. (pre-emption/rent/family) that such judgment shall be given fullest effect and should be strictly followed.... This should be irrespective when the case was instituted or the decision was passed by the first Court or subsequent Courts.

RENT LAWS

12) Muhammad Farooq vs. Abdul Waheed Siddiqui

(2014 SCMR 630)

Gulzar Ahmed and Muhammad Ather Saeed, JJ.

In this case pertaining to rent issue court held that as photocopy was admitted after seeing the original and no objection was raised on that stage so subsequent objection was overruled and august court held:

Once this document was exhibited without objection from the side of the petitioner, it cannot be termed as inadmissible evidence.

SERVICE LAWS

13) Pakistan Telecommunication Company Ltd. vs. Member NIRC etc.

(2014 SCMR 535)

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

In this case Supreme Court of Pakistan dealt with the question of competing jurisdictions of Provincial Labour Court and National Industrial Relation Commission and observed as under:

It is not the nature of dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. To be more clear on the point we have no hesitation to hold that once it is established through any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces then the jurisdiction of the NIRC would be exclusive in nature and of overriding and super imposing effect over the Provincial Labour Court.

However dealing with validity of law on constitutional touch stone, court left the question to be considered in some of appropriate case as vires of the law were not directly under challenge.

14) Federation of Pakistan vs. Sultan Ahmad Shams

(2014 SCMR 570)

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

In this case question before the august court was calculation of pension by incorporating different allowances. Claim was accepted by Service tribunal however on appeal by government august court after thoroughly discussing the matter held that no case of discrimination is made out against the pensioners and reversed the order declining calculation of pension by incorporation of allowances, by observing:

Thus in our view there was no justification based on facts and law for the Tribunal to grant the allowances for recalculation of the pensions of the respondents and allowing their appeals.

15) Sarfraz Saleem vs. Federation of Pakistan

(PLD 2014 S.C. 232)

Anwar Zaheer Jamali, Khilji Arif Hussain and Iqbal Hameedur Rahman, JJ.

It has been held that bar of jurisdiction under Art.212(2) of the Constitution would not come into play till the Federal Service Tribunal was established in terms of S.3(3)(a) of Service Tribunals Act, 1973, and it was actually functional so as to attend the grievance of a civil servant under its jurisdiction. For establishment of Service Tribunal, appointment of its Chairman by the President, with prescribed qualification was a sine qua non.

16) Muhammad Siddique vs. Divisional Forest Officer, Okara

(2014 PLC (C.S.) 253)

Shahid Waheed, J.

A retired civil servant was issued show cause notice by the departmental authority, after four years of his retirement and was also asked to deposit Rs:2550/- in the Govt. Treasury. Both the notices were challenged by the petitioner through a writ petition which was accepted by the Hon'ble High Court while holding as under:

- i. Proceedings under Punjab Employees Efficiency Discipline and Accountability Act, 2006 on account of lapse of time (after one year of his retirement) could not be initiated against the petitioner.
- ii. Without delving into the issue as to whether the allegations levelled against the petitioner constitute "misconduct" within the contemplation of section 2(n) of PEEDA, no order of recovery could be passed.

- iii. A retired person did not fall within the definition of 'employee', therefore had no remedy of appeal before service tribunal and High Court could control action of an administrative or executive officer by an appropriate order if he had gone out of law i.e. exercised jurisdiction not vested in him by law or wrongly denied or omitted to exercise a jurisdiction or where the law under which he acted prescribed the manner in which he was to act, materially departed from the law

TAX LAWS

18) Commissioner Inland Revenue (Legal Division), Multan vs. M/s. Multan Educational Trust, Multan.

(PLD 2014 Lahore 57)

Syed Mansoor Ali Shah and Mamoon Rashid Sheikh, JJ.

It has been held that under S.80(2)(b)(v) of the Income Tax Ordinance, 2001 a Society established or constituted by or under any law for the time being in force shall mean to be a "company" for the purposes of the Income Tax Ordinance, 2001. Further observing, the phraseology "By an Act" would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication and the words "under an Act" would, in that context, signify what was not directly to be found in the statute itself but was conferred or imposed by virtue of powers enabling this to be done; in other words, by laws made by a subordinate law-making authority which was empowered to do so by the parent Act.