QUARTERLY CASE LAW UPDATE

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HIGH COURT OF SINDH, KARACHI

QUARTERLY CASE LAW REPORT

(01-05-2022 TO 31-08-2022)

A SUMMARY OF THE LATEST JUDGMENTS DELIVERED BY THE CONSTITUTIONAL COURTS ON CRUCIAL LEGAL ISSUES

JUDGMENTS OF INTEREST

		8B(2)(i) of Sales Tax Act, 1990, which requires furnishing of statutory auditor's certificate. Whether, on the facts and circumstances of the case, subsection (2) & (3) of Section 8B Sales Tax Act, 1990 gives the manner and time frame for adjustment or refund of the amount not allowed for adjustment under subsection (1) of section 8. Whether the tribunal, as well as the Commissioner Inland Revenue (Appeals) CIR (A), is, empowered to ignore the systems and procedures designed under the law in any circumstances?		
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Supreme Court of Pakistan

01. **Supreme Court of Pakistan**
Uzma Naveed Chaudhary, etc. (in CP-1655/2019),
Ather Farook Buttar (in CP-1347/2019) Vs. Federation of Pakistan, etc.
Civil Petitions No.1347 & 1655 of 2019
Mr. Justice Umar Ata Bandial (Chief Justice)
Mr. Justice Syed Mansoor Ali Shah

https://www.supremecourt.gov.pk/downloads_judgements/c.p._1347_2019.pdf

Facts: PTV's five female anchorpersons filed a complaint against the Controller in Incharge of the PTV News Centre Islamabad under the Protection against Harassment of Women at Workplace Act, 2010. The allegation includes that the accused individually at their workplace molested and harassed them by winking at and making indecent gestures. The Federal Ombudsman held the respondent liable for harassing the petitioners and, by allowing the complaint, imposed upon him the minor penalties of censure and payment of compensation of Rs. 250,000. In a representation against the order of the Federal Ombudsman, the President of Pakistan modified and converted the punishment of the respondent into that of a major penalty of removal from service. The Islamabad High Court partially accepted the writ petition of the respondents and set aside the order of the President.

Issues: What are the objectives of the Protection against Harassment of Women at the Workplace Act 2010? What are the Constitutional foundations of rights to 'gender equality' and 'safe working environment', meaning and scope of the right to 'dignity'?

Analysis: The scope of the Protection against Harassment of Women at the Workplace (Amendment) Act 2022 ("Amendment Act") has been widened. The Act has added in the definition of "employee" the informal workers without a contract, freelancers, domestic workers, trainees, apprentices, students, performers, artists, sportspersons, etc. The Amendment Act has also redefined the expression "harassment" and included therein "discrimination on the basis of gender". The Act provides for a right to a safe working environment for all genders including male, female and transgender, free of harassment, abuse and intimidation. NHC: Any act of harassment that affects the free choice to enter and continue any lawful profession or occupation would amount to threatening the safety of the working environment. Dignity is an inherent and inseparable right of a human being and has thus been guaranteed by our Constitution as a fundamental right that is not subject to any qualification, restriction or regulation. The universal value of human dignity provides that "all human beings are born free and equal in dignity and rights". It shuns patriarchy, misogyny and the age-old archaic

and dogmatic social norms, and nurtures constitutional ideals of liberty, equality and social justice.

Conclusion: Our lives begin to end the day we become silent about things that matter." In this case, a few brave women decided to break the silence by coming forward to speak up about the sexual harassment they faced at their workplace, praying that the perpetrator would be taken to task. The High Court has wrongly interfered with and set aside the President's order. The respondent has meanwhile retired from service and stays mostly out of the country (currently, in Canada). We convert his punishment from removal from service' into 'compulsory retirement' along with payment of Rs.500,000/as compensation to be paid by him to each of the petitioners. The amount of compensation shall be recovered from arrears of pay (if any), pension emoluments or any other source (property) of the respondent as per Section 4(i)(d) of the Act.

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2. **Supreme Court of Pakistan**
Abdul Rasheed Vs. The State & Others
Criminal Petition No. 1667 of 2021
Mr. Justice Qazi Faez Isa
Mr. Justice Syed Mansoor Ali Shah

https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1667_2021.pdf

Facts: The case against the petitioner established thus was convicted by the Trial Court for three years rigorous imprisonment (R.I) with a fine in default one month further simple imprisonment (S.I). the appellate court maintained the same, but High Court reduced it to one year(R.I) with same fine and default punishment. The petitioner appealed before Supreme Court.

Issues: Whether a convict for the remaining period of his conviction can be released at the appellate stage on probation under the Probation of Offenders Ordinance, 1960 ('the Ordinance') and the Rules?

Analysis: Section 5 of the Ordinance permits a convict to be released on probation. And, under section 3(2) of the Ordinance this power can also be exercised in appeal and revision, and, may also be exercised by Supreme Court by virtue of Article 187 of the Constitution of the Islamic Republic of Pakistan read with Order XXXIII Rule 6 of the Supreme Court Rules, 1980 (respectively 'the Constitution and 'the Rules').

A convict may be placed under the supervision of a probation officer (for a period of one year to three years) provided he executes a bond stipulating that he shall not commit any offence, shall keep the peace and be of good behaviour, and must abide by any other condition of his probation, failing which he shall appear and receive sentence if called upon to do so during the period of his probation.

The preconditions permitting the making of a probation order with regard to the petitioner are met. The petitioner is a young man and, does not have a criminal record. "*The object of punishing an offender is the prevention of offences or reformation of the offender. Punishment would be a greater evil, if instead of reforming an offender, it is likely to harm the offender to repetition of crime with the possibility of irreparable injury to him. The provisions of the Probation of Offenders Ordinance are, thus, intended to enable the Court to carry out the object of reformation and give the accused person a chance of reformation which he would lose by being incarcerated in prison.*'

Fatuwwah is the spiritual ethical concept of chivalry, mercy, altruism, and generosity. A probation order that mandates community service benefits the offender, the community, and the state. It saves the cost of keeping a convict imprisoned and it prevents the overcrowding of prisons. Islamic Sharia's, which includes analogous precedents from Islamic jurisprudence, is a legally acceptable method of statutory interpretation. By doing community service, the prisoner makes up for his wrongdoing and stays away from people he shouldn't be around. Unpaid community service may also instill a sense of social responsibility and personal accomplishment in the convict. The ordinance does not preclude incorporating unpaid community service into a probation order. The goal of the law is to turn a convicted criminal into an honest, hardworking, and law-abiding citizen.

Conclusion: Yes, a convict can be released under the condition stipulated under Section 5(2) of the Ordinance at appellate forum. Any condition may be imposed 'for rehabilitating him as an honest, industrious, and law-abiding citizen'. If the convict agrees not to commit any crime during his probation, he agrees to pay the fine to the complainant. He also agrees to remain on probation for a period of one year doing unpaid community service of one hundred hours, monitored by the Parks and Horticulture Authority. Consequently, the sentence and fine, and sentence in default of fine, are set aside.

Sindh High Court, Karachi

3. **Muhammad Sadiq Ali Khan *Vs.* Fed. of Pakistan and Others**
Const. P. 3875/2022 (D.B.)
Mr. Justice Ahmed Ali M. Shaikh (Chief Justice)
Mr. Justice Yousuf Ali Sayeed
https://caselaw.shc.gov.pk/caselaw/view-file/MTcxMzgwY2Ztcy1kYzgz

Facts: The Petitioner professes to be an Associate Professor (BPS-20) in the Department of Computer Science at the University of Karachi (the "University"), and has invoked the jurisdiction of this Court under Article 199 seeking to challenge an unofficial list of Journals said to have been prepared by the Board of Advanced Studies & Research (the "BASR") in the year 2021, as well as the reliance allegedly being placed thereon by the University in reckoning the eligibility of candidates for purpose of recruitment to the posts of Professor, Associate Professor, Assistant Professor and Lecturer (the "Subject Posts"), as advertised via publication in newspapers on 13.02.2019, rather than official list of Recognized Journals earlier prepared by the BASR and notified in the year 2015.

Issue: Whether an unofficial/un-notified list of Journals with no legal effect can be set aside?

Analysis: **…**Having considered the matter, it is apparent from the very case set up by the Petitioner that the alleged list of 2021 is admittedly unofficial/unnotified, hence is devoid of any legal effect. As such, the same does not attract judicial intervention requiring it to be set aside….

Conclusion: **…**Needless to say, if any recruitment were actually made in contravention of the eligibility criteria, whether that may be, the action would be open to challenge through appropriate proceedings at that stage. However, under the given circumstances, no cause for issuance of a writ presently stands made out and the Petition, being misconceived, stands dismissed accordingly.

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4. **Sindh High Court, Karachi**
Shafiq ur Rehman Khanbati *Vs.* The Returning Officer & Ors
Const. P. 4361/2022 (D.B.)
Mr. Justice Ahmed Ali M. Shaikh (Chief Justice)
Mr. Justice Yousuf Ali Sayeed
https://caselaw.shc.gov.pk/caselaw/view-file/MTY5ODg1Y2Ztcy1kYzgz

Facts: The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution so as to impugn a Letter dated 15.07.2022 issued by the District Returning Officer/Regional Election Commissioner, Thatta, to the Returning Officer, MC Thatta & UC No.06 to UC 10 (the "Impugned Letter") on the ground that it denies

his right to contest the forthcoming Local Government Election for the seat of Member, Municipal Committee Thatta, from Ward No.2.

Issue: Whether a registered voter of Ward No.8 is ineligible to contest the election as a candidate from either Wards Nos.2 or 4 as per Section 35 (1) (c) of the Sindh Local Government Act 2013?

Analysis: **…**Having gone through those Orders as well as the Memos of both the Appeals after having verified the same directly from the Appellate forum via the office of the Member Inspection Team-II of this Court, we have satisfied ourselves that the former matter was in respect of Ward No. 2 and the latter in respect of Ward No.4, with the acceptance of the Petitioner's nomination from both Wards being challenged on the same ground - that he was not a registered voter of either of the Wards but was instead a registered voter of Ward No.8, therefore did not fulfill the qualification criterion in terms of Section 35(1)(c) of the SLGA. As both the Appeals were allowed on that very ground with the nomination paper in question being rejected in each case, it is manifest that the reference to Ward No.4 in the relevant introductory paragraph of the respective Orders made in both the Appeals was obviously a typographical error and did not afford any valid basis for the Petitioner or the Returning Officer to contend or portray that the nomination from Ward No.2 continued to subsist. Needless to say, such an interpretation beggars belief, and when the Appellate Orders are viewed in their true light it is evident that the very substratum of the Petitioner's case stands completely shorn away. The Petitioner's failure to mention the appellate proceedings in the memo of Petition or file the documents relating thereto is also a matter of concern as it reflects and indicates that the approach to this Court has been made with unclean hands…

Conclusion. **…**In view of the foregoing and keeping in view the conduct of the Petitioner, as noted in paragraph 8 above, the Petition stands dismissed with costs of Rs.25,000/- to be deposited by the Petitioner towards the High Court Clinic within seven (7) days of announcement of this Order, with receipt to be submitted in the office.

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5. **High Court of Sindh, Karachi.**
Commissioner IR, Zone-IV *Vs.* M/s. Hamdam Paper Corporation (Pvt) Ltd.
Spl. STRA No.2500 of 2015
Mr. Justice Irfan Saadat Khan (Author)
Mrs. Justice Rashida Asad

https://caselaw.shc.gov.pk/caselaw/view-file/MTY5Nzc2Y2Ztcy1kYzgz

Facts: Briefly stated the facts of the case are that the Respondent was served with the show cause notice to pay a sum of Rs.11,035,206/- out of total output tax of Rs.110,352,061/- under section 8B of the Sales Tax Act, 1990 (hereinafter referred to as the Act) as according to the Department the Respondent was not excluded from the purview of the said Section, as provided under SRO 647(1)2007 dated 27.06.2007. In

response to the said notice, the Respondent filed a reply to the concerned Deputy Commissioner (hereinafter referred to as the DC) agitating that though they have claimed input tax to the extent of 90% of the output tax, however, the same is permissible under Section 8B of the Act, and the balance amount, if any, was available to them by way of adjustment or refund as the case may be, hence they have not committed any default and the action is illegal, which needs to be vacated. The concerned DC considered the said reply of the Respondent however, did not agree with the same and vide order dated 08.03.2012, bearing assessment order No.3/92/2012, directed the Respondent to pay sales tax amounting to Rs.11,586,966/-, alongwith default surcharge under Section 11(2), 34 and 36(1) of the Act. The Department also imposed penalty upon the Respondent under the provision of Section 33 of the Act.

Issues: i) Whether, on facts and circumstances of the case learned, Appellate Tribunal Inland Revenue (ATIR) was justified to allow adjustment of more than 90% of input against output in all twelve months despite noncompliance to Section 8B(2)(i) of Sales Tax Act, 1990, which requires furnishing of statutory auditor's certificate.

ii) Whether, on the facts and circumstances of the case, subsection (2) & (3) of section 8B Sales Tax Act, 1990 gives the manner and time frame for adjustment or refund of the amount not allowed for adjustment under subsection (1) of section 8. Whether the tribunal, as well as the Commissioner Inland Revenue (Appeals) CIR (A), is, empowered to ignore the systems and procedures designed under the law in any circumstances?

Analysis: …On examination of Section 8B of the Act, though the above proposition of law categorically restricts adjustment to the extent of 90% only, on the other hand grants certain exclusions also. The CIR (A) and the ATIR while dealing with the matter have categorically observed that the action of the Respondent in making adjustment has not caused any loss to the exchequer and moreover the Department has failed to point out that otherwise the registered person was not entitled for adjustment of the input tax of the remaining 10% amount in case of 90% adjustment as the Respondent, being a registered taxpayer, was legally entitled in case of non-adjustment of the excess amount to adjust the same at the end of the financial year, which demonstrates that even in the case of 100% adjustment by the respondent at the end of the financial year the position would have remained the same as in such situation there would not have been a refund arisen in favour of the Respondent.

...We agree with the contention raised by Mr. Aqeel Ahmed Khan that such lapse on the part of the Respondent could be termed as technical / procedural mistake as by doing such act no gain was obtained by them as had there been adjustment of 90%

only a right of refund of the Respondent would arise at the end of the financial year, which clearly denotes that the exchequer has got its due share by way of adjustment either in case of 90% adjustment in that very tax period or in case of 100% tax adjustment resulting a refund at the end of the financial year in favour of the taxpayer in case of carry forward of the tax adjustment for the relevant tax periods. In a somewhat similar situation Lahore High Court in the decisions referred supra and in the decision given in the case of Commissioner Inland Revenue ..Vs.. M/s. Malik Enterprise (2021 PTD 945) has observed that by way of 90% adjustment no loss of revenue has been caused and therefore decided the matter in favour of the Respondent. In the instant matter also the CIR (A) and the ATIR both have reached to the conclusion that no loss of revenue since have been caused therefore, have rejected the stance of the Department…

Conclusion: …We therefore, keeping in view what has been discussed above and the decisions of the Lahore High Court have come to the conclusion that the ATIR has passed the order which does not require any interference on our part. We therefore, uphold the same by reframing the question and answering the same in affirmative i.e. in favour of the Respondent and against the Department.

> "Whether under the facts and circumstances of the case the ATIR was justified in observing that adjustment of more than 90% of the input tax against output tax as provided under Section 8B of the Act has not caused any revenue loss to the exchequer and was a mere procedural lapse on the part of the Respondent".

…The instant STRA stands disposed of in the above terms.

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6. **High Court of Sindh, Karachi.**
Bursshane LPG (Pakistan) Ltd., & others *Vs* Federation of Pakistan through Secretary / Chairman Revenue Division/ Federal Board of Revenue & others
Constitutional Petition No.D-5162 of 2020
Mr. Justice Irfan Saadat Khan (Author)
Mr. Justice Mahmood A. Khan

https://caselaw.shc.gov.pk/caselaw/view-file/MTY4ODI2Y2Ztcy1kYzgz

Facts: Briefly stated the facts of the case are that the petitioner No.1 is a listed public limited company, duly registered with the Stock Exchange. The petitioners No.2, 3 and 4 are its directors. That a complaint bearing No.945/2020 dated 31.08.2020 (hereinafter referred to as Complaint) was filed under Sections 192, 192A and 203 of the Income Tax Ordinance, 2001 (hereinafter referred to as Ordinance 2001) read with Sections 3, 4, 8 20, 21, 22 of the Anti-Money Laundering Act, 2010 (hereinafter referred to as AMLA). Thereafter the respondent No.2 took cognizance of the said complaint in Case No.192/2020 against the petitioners, under the above referred provisions of law.

In the instant petition, the petitioners have not only challenged the said complaint and its proceedings but also the jurisdiction of the respondent No.2 in proceeding with the matter.

Issues: Whether the Court of Special Judge, Customs, Taxation, Anit-Smuggling and Money-Laundering, Karachi has the jurisdiction to proceed with matters falling under Sections 192, 192A, and 203 of the Income Tax Ordinance, 2001 read with Sections 3, 4, 8, 20, 21, 22 of the Anti-Money Laundering Act, 2010 (AMLA)

Analysis: …The AMLA provides prevention of money laundering. The Court which deals with the money laundering has been defined under Section 20 of AMLA, reproduced supra, which defines that the Court of Session established under the Code of Criminal Procedure, within its territorial jurisdiction, shall adjudicate upon the offences punishable under the Act with the exceptions that where the predicate offence is triable by any Court other than the Court of Session, the offence of money laundering and all matters connected therewith shall be tried by the Court trying the predicate offence. The term predicate offence has been defined under Section 2(xxvi) of AMLA, as per which predicate offence means an offence specified in Schedule-I of the Act (AMLA). If Schedule-I of AMLA is examined, it would become evident that the matters falling under Sections 192, 192(a), 194 and 199 of the Ordinance 2001 are considered to be the predicate offences, meaning thereby that Anti-Money Laundering Court has the jurisdiction to deal with the matters concerning predicate offences and the above referred Sections of the Ordinance 2001 also fall within the ambit of predicate offences. If the term proceeds of crime, as defined under Section 2(xxviii) of AMLA, is examined it would be seen that the properties derived or obtained directly or indirectly by any person from the commission of predicate offence would be considered as proceeds of crime. The offences of money laundering have been defined under Section 3 supra, which categorically provides that a person shall be guilty of offence of money laundering, if the person acquires etc. a property by way of proceeds of crime. This shows that Section 3 of AMLA has a direct nexus with acquiring etc. of the property by way of proceeds of crime and in such type of situation the said offence is triable under Section 20 of AMLA by the Court defined under the said Section.

...The above discussion would reveal that in the cases where a predicate offence has been committed or any property has been acquired etc. by way of proceeds of crime, the same is triable by the Court as defined under Section 20 of AMLA. Now if the facts of the present matter are examined, it would reveal that a complaint dated 20.05.2020 was received by the Directorate of Intelligence and Investigation Karachi against the petitioners with regard to tax evasion and money laundering and embezzlement of funds and fraudulent transfer of company's funds to personal accounts by the management of the company. Needless to explain that under

Schedule-I of AMLA, where predicate offence has been defined, it has been mentioned that the matters of tax evasion as enumerated under Sections 192, 192A, 194 and 199 of the Ordinance 2001 squarely fall under the definition of predicate offences triable by the competent Court as defined under Section 20 of AMLA. We will not make any comment with regard to the fact that whether the properties acquired etc. or other allegations with regard to embezzlement of funds or fraudulent transfer could be considered as proceeds of crime or not as the said matter is subjudice before the Court of Special Judge, Customs, Taxation, Anti-Smuggling and Money-Laundering, Karachi…

…The record further shows that vide Notification dated 14.05.2016 an amendment was made in the Schedule of AMLA and after Section-XII, Section XIIA was added whereby the provisions of Sections 192, 192A, 194 and 199 were added in the definition of predicate offence. The record also reveals that before proceeding against the petitioners all the formalities were completed by the concerned Directorate with regard to appointment of Investigating Officers, referring the matter to the concerned Court, appointment of District & Sessions Judge as Judge of Special Court Customs, Taxations, Anti-Smuggling and Money-Laundering for the province of Sindh. The record further reveals that the SROs and the Notifications, as pointed out by Mr. Qazi, do not show any lack of jurisdiction or wrongful assumption of jurisdiction by the concerned Directorate or non-fulfillment of any legal obligation with regard to assumption of jurisdiction either by the concerned Collectorate or by the concerned Judge. In our view AMLA is quite clear in this behalf dealing with the matters with regard to anti-money laundering, proceeds of crime and other matters with regard predicate offence as provided under the said law.

Conclusion: …The upshot of the above discussion is that we do not find any jurisdictional defect or wrongful assumption of jurisdiction by the concerned Court so as to whittle down the proceedings emanating from the complaint. The instant petition thus is found to be not maintainable, which stands dismissed along with the listed application(s), if any, with no order as to costs. Needless to state that all the averments made in the instant petition with regard to jurisdiction of the Trial Court etc. and other grounds agitated in the instant petition, either with regard to tax evasion, proceeds of crime or that of predicate offence, would remain available to the petitioners to be agitated before the Trial Court, who would conclude the trial through a speaking and well reasoned order, strictly in accordance with law, after providing ample opportunity of hearing to the petitioners…

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7. **High Court of Sindh, Karachi.**
M/s. Zakwan Steel & others *Vs* the Federation of Pakistan & others
C.P. No.D-7101 of 2021
Mohsin Raza *Vs* Federation of Pakistan & others
C.P. No.D-1641 of 2022

Mr. Justice Irfan Saadat Khan
Mr. Justice Zulfiqar Ahmad Khan

https://caselaw.shc.gov.pk/caselaw/view-file/MTY4Njc2Y2Ztcy1kYzgz

Facts: Briefly stated, petitioners imported Prime Quality Steel Products and Hot Rolled Steel Strips in Coil form. It manifests from the pleadings of the petitioners that the respondent Collectorates applied London Metal Bulletin (LMB) prices as existed on the date of Bill of Lading instead of the date of Registered Bank Contracts, owing to which, the petitioners had to pay duties and taxes at an exorbitant rate, hence the petitioners have impugned such methodology here.

Issues: Whether the Respondents rightly applied values of the imported goods as existing on the date of the Bill of Lading versus the date of Registered Bank Contracts to impose customs duties and allied taxes.

Analysis: …Firstly and foremost, the primary method of determining the customs value under Section 25A is the "transaction value", i.e., the price actually paid or payable for the imported goods. The words "actually paid or payable" are important to keep in mind and the fact that only if the transaction value cannot be determined, then any subsequent methods are to be applied sequentially, in the order set forth in the Act…
…Verba cum effectu accipienda sunt is a judicial maxim that means that words must be interpreted so as to have effect.[12] Every word and every provision is to be given effect and none should be ignored so as to needlessly be given another interpretation that causes it to duplicate another provision or to have no consequence.[13] Redundancy could not be attributed to legislation[14] and words cannot be considered meaningless, else they would not have been used[15]...
…Residual effect of the above discussion is that in our humble view LMB (on the date of LC) was not the right way to determine the valuation of the goods thus interpretation of Section 25 of Customs Act, 1969 vis-à-vis reliance on the London Metal Bulletin was not compliance of Section 25 of Customs Act, 1969 hence Custom Collectorates/Respondents have coercively applied LMB prices from the date of Bill of Lading instead of the date of Registered Bank Contracts which is also a mode of payment recognized by the State Bank of Pakistan…

Conclusion: …In view of the foregoing, these petitions are allowed. The assessment made by the Custom Collectorates/respondents from the Bill of Lading through LMB instead of date of Bank Registered Contract is set aside as being ultra virus to Section 25A and is declared to be without legal effect. The petitioners' consignment are therefore to be valued on the declared value via the Bank Registered Contract and an importer is only liable to pay duty, taxes et cetera on such basis. Excessive pricing is anti-productive as it fuels inflation as well as depletion of foreign reserves. If the petitioners availed the interim relief to ex-bond the goods/consignments, then the security furnished by

them stands discharged. The amount deposited with the Nazir are to be returned forthwith subject to proper verification and confirmation.

8. **High Court of Sindh, Karachi**
Syed Abdul Rehman Vs.Mst. Naheed Hussain and others.
C. P. No.D-6359/2018 & C.P. No.D-8593/2017
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Arshad Hussain Khan

https://caselaw.shc.gov.pk/caselaw/view-file/MTcxODM1Y2Ztcy1kYzgz

Facts: Briefly, the facts giving rise to the above petitions are that the petitioner [in both the petitions] has purchased a property bearing Flat No.604, 6th Floor, measuring 1168 Sq. Ft. in the building known as AMBER PLAZA, constructed on Plot No.110, Survey No.213, BlockA, Sindhi Muslim Cooperative Housing Society, Jamshed Town, Karachi, East [subject property] from respondent No.2 [Mst. Zaibun Nisa] through sale deed dated 27.08.2015 against payment of Rs.29,00,000/- [Rupees Twenty Nine Lacs Only] and physical possession of the property was also handed over to the petitioner on the very same date.

It is stated that respondent No.2 had acquired the subject property through sale deed dated 30.04.2015, executed by Nazir of District & Sessions Court, Karachi, in Execution No.19 of 2013 in compliance of order dated 26.09.2014, decree dated 18.09.2013, passed in Civil Suit No.1444 of 2012.

It has been stated that the petitioner was enjoying lawful physical possession of the property, however, without issuing any notice to the petitioner, learned Senior Civil Judge-IV, Karachi-East [Trial Court] passed an order dated 08.12.2017 [impugned herein] allowing the application under Section 12(2) CPC filed by respondent No.1 [Mst. Naheed Hussain] and on the same date i.e. 08.12.2017, issued the writ of possession with the police aid and on the very date the bailiff and the police with the collusion of respondent No.1 forcibly dispossessed the petitioner from the subject property.

It is further stated that the petitioner also filed an application under section 12(2) Civil Proceedure Code before learned Trial Court for recalling of order dated 08.12.2017, which was obtained by respondent No.1 by playing fraud and misrepresentation but learned Trial Court by its order dated 13.01.2018 [impugned herein], dismissed the said application against which the petitioner filed Civil Revision Application No.14/2018, which was also dismissed by learned VIth Additional District & Sessions Judge, Karachi-East in a mechanical manner by its order dated 14.05.2018. The petitioner has impugned all three above orders in these petitions.

Issues: Whether any change that takes place pursuant to a decree stands nullified, when an application under section 12(2) of the Civil Procedure Code is allowed?

Analysis: …It is also well settled that nobody can transfer a better title, then that he himself possesses. In the present case Zaibun Nisa herself had no right and title in the suit property, she could have not alienated the same to the present petitioner. In this respect reliance is placed on the case of Abdul Hameed through L.Rs. and others v. Shamsuddin and Others [PLD 2008 SC 140]…

…Insofar as the claim of the petitioner that he is a bonafide purchaser, is concerned, suffice to state that when an application under section 12(2) of the Civil Procedure Code is granted and decree is set aside then every change that had taken place pursuant to such decree also stand nullified. On the basis of such decree if title in favour of any person was created, then it also falls to the ground, the moment the decree is set aside. Therefore, while allowing the application filed under section 12(2) of the Civil Procedure Code court could not only be setting aside an order, judgment or decree but at the same time would also be nullifying every change that has taken place on account of such order, judgment or decree. A party may have got the order, judgment or decree executed in his favour from the court which order, judgment or decree is subsequently set aside under the provisions of section 12(2) of the Civil Procedure Code. In such eventuality, the parties have to be relegated to the position where they were before such order, judgment or decree was passed. This is logical consequence of grant of application under section 12(2) of the Civil Procedure Code…

…Insofar as the possession of the property is concerned, from the record it appears that admittedly the physical possession of the subject property was taken over from respondent No.1 pursuant to the judgment and decree obtained through fraud and misrepresentation, who was residing in the subject property since long as such upon nullifying the decree the parties have to be relegated to the position where they were before such judgment and decree was passed. In other words, it is nothing but the fall out effect of nullifying the order, judgment or decree under the provisions of section 12 (2) CPC. Reliance in this regard can be placed on the case of Al-Meezan Investment Management Company Ltd. and 2 others v. WAPDA First Sukuk Company Limited , Lahore and others [2017 PLD SC 1]…

Conclusion: …The upshot of the above discussion is that the judgments impugned in the present proceedings passed by learned courts below are well reasoned and speaking orders, as such, does not warrant any interference by this Court. Consequently, the writ petitions being devoid of merit are dismissed.

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9. **High Court of Sindh, Karachi.**
Aijaz Hussain Jakhrani *Vs* National Accountability Bureau and Director General (Sukkur) NAB, through Mr. Mujeeb-ur-Rehman Soomro, Special Prosecutor NAB a/w I.O. Mujtaba Khan, Deputy Director NAB.
Constitutional Petition No. D – 1528 of 2020
Mr. Justice Nazar Akbar
Mr. Justice Muhammad Faisal Kamal Alam
Mr. Justice Nadeem Akhtar, (Referee Judge)

https://caselaw.shc.gov.pk/caselaw/view-file/MTY5NjIzY2Ztcy1kYzgz

Facts: …This constitutional petition filed by the petitioner Aijaz Hussain Jakhrani seeking pre-arrest bail in Reference No.23/2020 filed against him by the respondents / National Accountability Bureau (NAB) was heard by a learned Division Bench of this Court composed of Mr. Justice Nazar Akbar (as he then was) and my learned brother Mr. Justice Muhammad Faisal Kamal Alam. Vide order dated 22.03.2021, Nazar Akbar, J. confirmed the interim pre-arrest bail granted to the petitioner on 15.12.2020 subject to his depositing the entire amount of the liability alleged against him in the aforesaid Reference; however, Muhammad Faisal Kamal Alam, J. dismissed the petition and recalled the interim pre-arrest bail granted to the petitioner. In view of the difference in the opinion of the learned Judges, the matter was placed before the Hon'ble Chief Justice of this Court who was pleased to nominate me as the Referee Judge to resolve the difference.

…The facts of the case have been meticulously stated in the order passed by Nazar Akbar, J., therefore, they need not be repeated here. However, it is necessary to state the facts that are relevant for resolving the difference in the opinion of the learned members of the Division Bench. On 24.09.2019, the present petitioner filed C.P. No. D-6040/2019 against NAB at the Principal Seat of this Court at Karachi praying, inter alia, that NAB be restrained from arresting him in any hidden inquiry or investigation including the investigation pertaining to the Provincial Highways Jacobabad and Education Works Department, and in Reference No.10/2019 wherein he was not arrayed as an accused, or in the alternate, prearrest bail be granted to him. An ad-interim order was passed in the said petition on 24.09.2019 by a learned Division Bench of this Court that he shall not be arrested till the next date of hearing. Vide short order dated 17.12.2020 followed by reasons dated 19.12.2020, C. P. No. D-6040/2019 filed by the petitioner was dismissed by a learned Division Bench of this Court. The said dismissal of his above petition was not challenged by the petitioner before the Hon'ble Supreme Court. He, however, filed a review application on 02.01.2021 before the learned Division Bench seeking review of the said order of dismissal, which application was dismissed on 15.01.2021. Against the dismissal of his review

application, he filed C.P.L.A. No.176/2021 before the Hon'ble Supreme Court on 23.01.2021, but withdrew the same on 10.03.2021.

…Meanwhile, Interim Reference No.23/2020 was filed by NAB on 13.11.2020, and on 09.12.2020 a notice for appearance in the said Reference was issued to the petitioner by the Accountability Court at Sukkur. The petitioner filed the instant petition on 15.12.2020 before the Sukkur Bench of this Court seeking pre-arrest bail in Reference No.23/2020. Interim pre-arrest bail was granted to him on the same day. However, at the time of final hearing of the petition, the conclusion drawn by each of the learned members of the Division Bench hearing this petition was at variance as noted above, that is, Nazar Akbar, J. confirmed the interim pre-arrest bail granted to the petitioner subject to his depositing the entire amount of the liability alleged against him in Reference No.23/2020, whereas, Muhammad Faisal Kamal Alam, J. dismissed the petition and recalled the interim pre-arrest bail granted to the petitioner.

Issues:

1. Whether the question of grant of pre-arrest bail to the petitioner in Reference No.23/2020 was considered and decided conclusively by a learned Division Bench of this Court in C.P. No.D-6040/2019?

2. What is the effect of the order of dismissal of C.P. No.D-6040/2019 on the present petition?

Analysis:

…It is well-settled that the Referee Judge does not have the jurisdiction to hear or decide the whole case as the whole case is not before him, and his jurisdiction is limited to the extent of resolving the difference between the learned members of the Division Bench who continue to retain the jurisdiction over the matter ; and, it is the duty of the Referee Judge to remit his opinion to the learned Division Bench for disposal of the case by announcing the final order / judgment based on the majority opinion, including the divided opinions of the original members of the Division Bench and the opinion of the third / Referee Judge. The above view is fortified by the authoritative pronouncement of the Hon'ble Supreme Court in Muhammad Sayyar V/S Vice-Chancellor, University of Peshawar and others, PLD 1974 SC 257---

…It is an admitted position that in his C.P. No.D-6040/2019 the petitioner had prayed that NAB be restrained from arresting him in any hidden inquiry or investigation, or in the alternate, pre-arrest bail be granted to him. It is a matter of record that Reference No.23/2020 was placed on record in the proceedings of C.P. No.D-6040/2019, but the petitioner did not raise any objection that the said Reference was not the subject matter of C.P. No.D-6040/2019 or was the subject matter of another petition (the instant petition) wherein he was granted ad-interim pre-arrest bail. A perusal of the order of dismissal of C.P. No.D-6040/2019 shows that in the said petition the petitioner himself had requested the learned Division Bench to grant him the concession of pre-arrest bail in Reference No.23/2020 as an alternate relief. The said order of dismissal further

shows that Reference No.23/2020 was not only discussed and examined in C.P. No.D-6040/2019 by the learned Division Bench, but specific findings in respect thereof were also recorded, that is, the relevant evidence in the shape of documents was available on record that vouched for the accusations and prima facie connected the petitioner with the offence alleged against him, and that the petitioner was not entitled to any of the reliefs sought by him in C.P.No.D-6040/2019 or the extraordinary concession of prearrest bail in Reference No.23/2020 in view of prima facie evidence against him. Such specific findings by the learned Division Bench clearly show that the question of grant of pre-arrest bail to the petitioner in Reference No.23/2020 was decided against him in C.P. No.D-6040/2019. This view finds further support from the fact that the Review Application filed by the petitioner on the ground that the merits of Reference No.23/2020 were not considered while declining him pre-arrest bail in the said Reference and dismissing his C.P. No.D-6040/2019, was also dismissed by the learned Division Bench by holding that the evidence available against the petitioner in Reference No.23/2020 and relevant documents supporting such accusation and connecting the petitioner prima facie with the alleged offence had been tentatively discussed while declining him pre-arrest bail in the said Reference. The point No.1 is, therefore, answered in the above terms…

…It is significant to note that the petitioner did not challenge before the Hon'ble Supreme Court the dismissal of his C.P. No.D-6040/2019 and or rejection of his pre-arrest bail therein, and C.P.L.A. No.176/2021 filed by him before the Hon'ble Supreme Court against the dismissal of his Review Application was withdrawn by him. Thus, the orders of the dismissal of his C.P. No.D-6040/2019, rejection of his pre-arrest bail in Reference No.23/2020 and dismissal of his Review Application attained finality long ago for all legal intent and purposes. Accordingly, the point No.2 is answered in these terms. It was for the petitioner to challenge the order of the rejection of his pre-arrest bail in Reference No.23/2020 passed in C.P. No.D6040/2019 before the Hon'ble Supreme Court, which he admittedly did not. The questions whether the pre-arrest bail in Reference No.23/2020 could be declined to him in C.P. No.D-6040/2019 and or whether the order of rejection of his pre-arrest bail in the said Reference passed in C.P. No.D-6040/2019 was sustainable or not, could be decided only by the Hon'ble Supreme Court. Needless to say, such questions could not be agitated before or decided by the learned Division Bench of this Court hearing the instant petition as the said learned Division Bench could not sit in appeal against the order passed by another learned Division Bench of this Court…

Conclusion: …In the light of the discussion in the preceding paragraph, I respectfully disagree with the conclusion drawn by Nazar Akbar, J. that the observations given by the learned Division Bench of this Court in relation to Reference No.23/2020 while dismissing C.P. No.D-6040/2019 could not have any bearing on the instant petition or that the dismissal of C.P. No.D-6040/2019 was not an impediment in the relief of pre-arrest bail sought by the petitioner in the instant petition. In view of my opinion on the points

in difference, I agree with the view taken by Muhammad Faisal Kamal Alam, J. that the instant petition is liable to be dismissed.

…The matter shall now have to be placed before the learned Division Bench for announcing the final order based on the majority opinion. Since one of the learned members of the Division Bench viz. Nazar Akbar, J. is not available due to his retirement, let the matter be placed before the Hon'ble Chief Justice for constituting a Division Bench for announcement of the final order.

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10. **High Court of Sindh, Karachi.**
Abdul Kader & Others *Vs.* The Court of Xth Additional District Judge South Karachi and others.
Misc. Appeal Nos. S – 27 to 36 of 2021
Mr. Justice Nadeem Akhtar

https://caselaw.shc.gov.pk/caselaw/view-file/MTY4OTM0Y2Ztcy1kYzgz

Facts: ...The relevant facts of the case are that the predecessors-in-interest of the appellants were the co-owners of the immovable property bearing Survey No. 4-H, Survey Sheet No. K-16, measuring 1025 sq. yds., situated in Layari Quarters, Karachi (the subject property). The applications were filed by the appellants for the grant of the Letters of Administration in their favour in respect of the following shares left in the subject property by their late predecessors-in-interest (the deceased)…

…It was the case of the appellants before the learned Trial Court that the deceased were the co-owners of the subject property to the extent of their above mentioned shares. All the legal heirs of the deceased, except the present respondents 2 and 3, had no objection to the grant of the applications filed by the appellants. However, the present respondents 2 and 3, who are also co-owners of the subject property, filed objections. The learned Trial Court called a report from the Incharge of the Central Record that revealed that there are thirteen (13) coowners of the subject property. The learned Trial Court also called a report from the Mukhtiarkar concerned regarding the valuation of the subject property that revealed that the lease thereof had expired in the year 1995, and due to this reason the same had been forfeited by the Government of Sindh. The said report further revealed that the market value of the subject property was Rs.17,000,000.00 to Rs.17,500,000.00. In view of the report submitted by the Mukhtiarkar, the applications were returned by the learned Trial Court to the appellants under Order VII Rule 10 CPC for presentation before the Court having the pecuniary jurisdiction in the matter...

Issues: Whether the court was justified in returning the applications under the Succession Act, 1925 under Order VII Rule 10 CPC of predecessors-in-interest of the co-owners?

Analysis: …Perusal of the impugned orders shows that the applications were not returned on the grounds that there was a dispute between the co-owners of the subject property with regard to their ownership / share therein, or that a litigation is pending between some of the parties, or that the subject property is owned by a partnership firm. In fact, none of these grounds was considered or discussed in the impugned orders. The sole ground on which the applications have been returned under Order VII Rule 10 CPC is that the learned Trial Court did not have the pecuniary jurisdiction as the valuation of the entire subject property was found to be more than the maximum limit of its pecuniary jurisdiction. It is not the case of any of the respondents, nor was it held in the impugned orders by the learned Trial Court, that the valuation of even the individual share of the deceased was more than the upper limit of the pecuniary jurisdiction of the learned Trial Court…

…It is an admitted position that the appellants had filed separate applications and not a joint application, and the entire subject property was not the subject matter of any of the applications as the appellants had sought the Letters of Administration only in respect of the share left by each of the deceased. As every deceased had a separate and distinct share in the subject property falling within the pecuniary jurisdiction of the learned Trial Court, each of their respective legal representatives was entitled to file a separate application, particularly when there is no bar in law that separate applications in respect of separate and distinct shares or portions in the same property cannot be filed. Accordingly, separate applications could be filed before the Court having the pecuniary jurisdiction to the extent of the said share of each of the deceased. The case of Zafeer Gul (supra) cited and relied upon by learned counsel for the appellants supports this view. The relevant portion of the cited authority is reproduced below for ease of convenience and ready reference :

> "3. To expound the legal position in relation to the valuation of a suit for partition and separate possession for the purpose of jurisdiction, it will be pertinent to mention here that every co-sharer in the immovable property is legally deemed to be in its joint possession to the extent of his undivided share. Therefore, in a suit of such nature, law permits him tentative valuation of his share in the immovable property as specified in the plaint for the purpose of pecuniary jurisdiction, which is subject to final determination by the Court; till then the valuation shown in the plaint is to be deemed as proper value of the suit property for the purpose of availing the remedy of appeal qua determining the forum of appeal. For further guidance see: Ajiruddin Moudal and another v. Rahman Fakir and others (PLD 1961 SC 349)." (emphasis added)

…In view of the above-cited authority, the learned Trial Court ought not to have returned the applications. Accordingly, the impugned orders, being not sustainable in law, cannot be allowed to remain in the field. Regarding the contention of respondents 2 and 3 that the shares of some of the co-owners in the subject property are disputed,

needless to say, in such situations, the applications filed in the testamentary and intestate jurisdiction are converted into Suits whereafter the dispute is decided on merits after recording of evidence. The questions whether the subject property belongs to a partnership firm or whether the appellants had any locus standi to file the applications, were not agitated at the time of passing of the impugned order nor are they the subject matter of the present appeals…

Conclusion: …In the above circumstances, the impugned orders are hereby set aside and the applications are remanded to the learned Trial Court with the direction to decide the objections filed therein by all the objectors, including the present respondents 2 and 3, within a period of sixty (60) days on merits and after providing opportunity of hearing to all the parties ; and, if after hearing the parties the learned Trial Court comes to the conclusion that the dispute between the parties is of such a nature that the same cannot be decided summarily or without evidence, the applications may be converted into Suits. In such an event, as they will be Suits of Administration and the entire subject property will have to be administered, the learned Trial Court will be at liberty to consider the question of the pecuniary jurisdiction afresh. Let this order be communicated forthwith to the learned Trial Court for compliance…

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11. **High Court of Sindh, Karachi.**
Jamal Shaikh son of Bilal Shaikh *Vs*. IIIrd Adj Khi Central & Others
Cr. Misc. Appln No.446 of 2022.
Mr. Justice Salahuddin Panhwar

https://caselaw.shc.gov.pk/caselaw/view-file/MTcxMTk5Y2Ztcy1kYzgz

Facts: Through instant Criminal Misc. Application, the applicant has impugned the order dated 16.08.2022 passed by the Additional Sessions Judge-II Karachi East, whereby; the order dated 18-06-2022, passed by the Civil Judge & Judicial Magistrate-XX Karachi East directing the Secretary Health to constitute a Medical Board and fix the date of exhumation of the dead body of deceased Dr. Aamir Liaquat Hussain was set aside…

Issues: Where an order was passed by a magistrate in the capacity of link/in charge under section 174 Cr.P.C. which attained finality. Can the Magistrate having jurisdiction pass a fresh order on a second application filed by a stranger for disinterring the dead body?

Analysis: …As mentioned above that; on the application of the legal heirs of Dr. Aamir Liaquat Hussain, the Magistrate concerned vide order dated 10-06- 2022 allowed burial of the dead body. Prior to passing that order the proceedings under section 174 Cr.PC were observed, the dead body was externally examined by the medical officer, such medico-legal certificate was issued and then the dead body was handed over to the legal heirs for burial. Surprisingly the present applicant did not appear to raise objection or shown his apprehension regarding the unnatural death of the deceased. The order dated 10-

06-2022 passed by the Incharge/ Link/ Vacation Magistrate in the capacity of concerned Magistrate under the provisions of 173 Cr.PC, which provides ***Power of Magistrate to agree/disagree with summary police report.*** Thereafter the present applicant filed an application under section 174/176 (2) Cr.PC before the same Court, who passed the earlier order dated 10-06-2022, for disinterment of the body of the deceased which application was allowed vide order dated 18-06-2022, hence the Judicial Magistrate-XX Karachi East while entertaining and adjudicating upon the application of the present applicant travelled beyond his jurisdiction because after passing the order dated 10-06- 2022, which was never challenged by any party, the Judicial Magistrate-XX Karachi East had become ***"functus officio",*** the legal definition is provided that ***"of no further legal authority or legal effect"***. Besides this the application by the present applicant was "***Coram non-judice***" [***before a Judge not competent or without jurisdiction]*** ...

…In case of ***Damsaz v. Assistant Mukhtiarkar Revenue/Special Judicial Magistrate and 2 other (2010 MLD 1681)***, it has been held that "*It is consistent view of the Superior Courts that exhumation of dead body could be ordered on the request or information of even a stranger for the purpose to know the actual cause of death so that criminal machinery be sent into motion"* However, in this case, the Applicant has failed to show *"Reasonable Suspicion"* or a single *"Circumstance"*, which may require the Magistrate to exercise powers under Section 176(2), of the Criminal Procedure Code, 1898. In any event, Islam accords great respect to the dead body of a Muslim, as such exhumation without any justification is a sin in Islam. In the case of ***Zaffar Iqbal alias Kaka v. Additional Sessions Judge and 3 others (2005 PCr.LJ 736)***, it was observed that being Muslim, we have to respect a dead body and its disinterment could only be allowed against serious accusation.

Conclusion: Under these circumstances, the impugned order passed by the learned Additional Sessions Judge-II Karachi is well-reasoned and needs no interference by this Court, which is hereby maintained.

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12. **High Court of Sindh, Karachi.**
Aijaz Ali Pathan *Vs.* Fed. of Pakistan & Ors
Const. P. 2946/2020 (D.B.)
Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal
https://caselaw.shc.gov.pk/caselaw/view-file/MTcxNTcxY2Ztcy1kYzgz

Facts: …All Petitioners are Civil Servants working in different Grades with the Government of Pakistan and had filed these petitions seeking various reliefs including challenge to SRO 1493(I)/2019 dated 05.12.2019, whereby, a procedure was introduced for compulsory retirement of Civil Servants who had been superseded twice; however,

for the present purposes, after rescindment of the said SRO, the only controversy left is in respect of interpretation of Rule 10(5) of the Civil Servants Promotion (BPS-18 to BPS-21) Rules, 2019 ("Rules")…

Issues: Whether An employee who has been superseded once; can be considered for promotion.

Analysis: ...It is a matter of record that the petitioners are Civil Servants and had been considered for promotion earlier and were superseded. It is also not in dispute that before expiry of one year from their last supersession, they were again considered for promotion and were again superseded. It is the second suppression which is under challenge before us on the ground that until expiry of one year from the earlier suppression, the petitioner's case could not have been considered by the CSB; and as a consequence thereof, their second suppression is illegal. It would be advantageous to refer to Rule 10(5) of the said Rules.The above rule clearly provides that a Civil Servant shall be considered for promotion again in various situation; however, sub-rule (5) very clearly states that a Civil Servant once superseded for promotion under Rule 8 ibid (it is also not in dispute that the petitioners were superseded under Rule 8) shall only be eligible for reconsideration after he / she earns one more (PER) of one full year. Now from a bare perusal of the above provision, there appears to be no doubt in our minds, that this Rule is mandatory in nature and has been incorporated to safeguard the interest of an employee who has already been superseded to improve his performance and shortcomings in a year, and thereafter be considered once gain for a promotion. Any other meaning or interpretation would be absurd including any reliance on Rule 4 ibid, and Schedule-I thereof. It is settled law that a Schedule cannot override the basic Rule or Law under which it has been issued or annexed, whereas, if there are two conflicting provisions in law; then it is the duty of the Court to interpret them in such a manner so as to reconcile them and make them consistent with each other in order to ensure that none of them is rendered redundant1. It is nowhere provided in this Rule that as to when a meeting of CSB shall be convened for considering promotion of an officer who has been superseded in the immediate past CSB. That is catered in Rule 10(5) which as noted hereinabove is very clear and explicit having attached with it no rider at all…

Conclusion: …In view of hereinabove facts and circumstances of this case, all these Petitions are allowed to the extent that the Petitioners second supersession within a span of one year is held to be in violation of Rule 10(5) of the Rules in question, and accordingly, the second supersession of the petitioners are hereby set aside. The Petitions are allowed in the above terms, whereas, the Petitioners shall be considered for next promotion in accordance with the above observations and the Rule(s) in question in the next scheduled meeting of CSB.

13. **High Court of Sindh, Karachi**
Muhammad Umair & Others vs. Federation of Pakistan & Others
CP D 5333 of 2018
Mr. Justice Muhammad Junaid Ghaffar,
Mr. Justice Agha Faisal

https://caselaw.shc.gov.pk/caselaw/view-file/MTcxNTg3Y2Ztcy1kYzgz

Facts: …the petitioners were/are employees inter alia of the company's franchisees, vendors, service providers and third-party contractors and are entitled to regularization primarily on account of efflux of time. It was insisted that any contractual employee, even if not directly engaged, was entitled to regularization if more than one year had passed. It was also averred that even though the respondent company was devoid of any statutory rules, however, this Court ought to assume/exercise jurisdiction since the Government owned some of the shareholdings therein…

Issues: Whether writ jurisdiction was the proper forum to seek regularization of third-party employees in an admittedly listed public limited company?

Analysis: …It is a general principle of law that in the absence of statutory rules of service a writ petition, in service matters, ought not to be entertained. In so far as the issue of functions of the state is concerned, the same was explained by the Supreme Court in the PIAC case and reiterated recently in the Pakistan Olympics Association case. While eschewing a voluminous repetition of the law illumined, it would suffice to observe that no case has been set forth before us to suggest that the respondent company was performing functions connected with the affairs of the state involving exercise of sovereign power.

Serious questions of fact have been raised with respect to the status of the petitioners and it was argued that a significant number of them had not been substantiated to even be employees of the relevant third party respondents. The Supreme Court was seized of a similar matter, pertaining to regularization of alleged third party employees, in Sohaib Iftikhar,[7] wherein it was held that such disputed questions of fact going to the root of the matter were not open to determination by the High Court in writ jurisdiction.

The law with respect to regularization is well settled. The august Supreme Court has maintained that no claim for regularization was merited on mere efflux of time. The primary argument of the petitioners, claiming regularization by purported efflux of time, is conclusively dispelled by this edict.

It has also been held that there was no vested right to seek regularization in absence of any pertinent law, rules or policy. The Courts have deprecated the tendency of temporary employees to invoke the writ jurisdiction seeking regularization as it has been illumined that their relationship is governed by the principles of master and

servant. The Supreme Court in Sher Aman has catalogued the contemporary law pertaining to regularization and maintained that regularization requires the backing of law, rules or policy and in the absence thereof no claim in such regard ought to be entertained…

Conclusion: In view hereof, we find these petitions to be misconceived, hence, the same were dismissed, along with pending application/s,…

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14. **High Court of Sindh, Karachi**

M/s Telenor Micro Finance Bank Ltd Vs. Commissioner Inland Revenue

I.T.R. A. No.327 of 2019 I.T.R. A. No.328 of 2019 I.T.R. A. No.28 of 2020
Mr. Justice Muhammad Iqbal Kalhoro

https://caselaw.shc.gov.pk/caselaw/view-file/MTY2NDMyY2Ztcy1kYzgz

Facts: …Applicant, a limited company engaged in the business of banking having branches in different parts of the country, being withholding agent was obligated to deduct tax at source under section 151 of the Income Tax Ordinance, 2001 (the Ordinance, 2001) on payments of profit on debts. It was served with notices under section 176 of the Ordinance, 2001 requiring it to submit details/documents in respect of tax deducted and deposited along-with Challan of payment for the years 2012, 2014 and 2015. As applicant failed to comply with was served with showcause notices under section 161(A)/205 of the Ordinance, 2001 on 20.07.2017 which it duly replied. Notwithstanding, Orders under section 161/205 of the Ordinance, 2001 were passed against the applicant. For the year 2012 total tax and penalty was worked out at Rs.11,255,173/-, for 2014 at Rs.933314, and for 2015 at Rs3039677/- which the applicant was directed to make good of. The applicant however challenged the Orders in appeals before the Commissioner Inland Revenue Karachi, who upheld the same spurring the applicant to file income tax appeals for each tax year separately before the Appellate Tribunal Inland Revenue of Pakistan Karachi Bench Karachi have been dismissed through impugned Orders, hence these references.

Issues: Whether, as per clause 47B of Part IV of the Second Schedule read with section 53 of Income Tax Ordinance 2001 in the absence of a Certificate of exemption under section 159 of Income Tax Ordinance 2001, the applicant/Taxpayer is liable to the recovery of Tax under section 161 of Income Tax Ordinance 2001?

Analysis: In the case of Meezan Islamic Fund and others Vs. D.G (WHT) FBR and others (2016 PTD 1204) what has been observed and decided, reproduced herein under, is equally true and applicable mutatis mutandis in the case in hand.

From the above discussion, it is evident that the concession granted under Clause 47B of Part IV to the Second Schedule of the Income Tax Ordinance, 2001 cannot be out-rightly availed by the withholdee from the withholder on account of the bar contained in Section 159(2) unless the withholdee presents a valid exemption certificate issued to him under Section 159(1) of Income Tax Ordinance, 2001. There appears to be a sound logic behind this procedural requirement as the person who want to seek benefit under Clause 47B may be such person who is not entitled to the benefit or in the past may have been so entitled but for some reason had lost his entitlement. Therefore, it has been made mandatory for him under Section 159(2) to first demonstrate to the withholder that he holds a valid exemption certificate. In Clause 47B of Part IV to the Second Schedule of the Income Tax Ordinance, 2001 mere mention that the provisions of Sections 150,151 and 233 shall not apply to certain category of persons does not mean that to avail such concession the provisions of Section 159 have been made inapplicable. On the contrary requirement of obtaining exemption certificate has been made mandatory under Section 159(2) for all payments that fall within the ambit of Division III of Part V of Chapter X of under chapter XII of the Income Tax Ordinance and Sections 150, 151 and 233 are part of said chapters. In the circumstances, the challenge to the impugned circular dated 12.05.2015 fails. All these 280 petitions are dismissed".

Conclusion: As can be seen, above discussion and reasons articulated in support of findings comprehensively cover and reply adequately the question of law framed here. The question is therefore replied and decided in favour of the department and against the applicant. It is held that the concession envisaged under clause 47B of Part IV of the Second Schedule of the Ordinance, 2001 cannot be availed by withholdee out-rightly and directly from the withholder on account of bar contained in section 159(2) unless the withholding person has a valid exemption certificate issued to him under section 159(1) of the Ordinance, 2001. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal Inland Revenue, as required per section 133(5) of the Income Tax Act, 2001. Office is directed to place a copy hereof in each connected references.

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15. **High Court of Sindh, Karachi.**
Gul Bano *Vs.* Shahnaz Bano & Others
Suit 318/2016 (S.B.)
Mr. Justice Zulfiqar Ahmad Khan

https://caselaw.shc.gov.pk/caselaw/view-file/MTcxMzc4Y2Ztcy1kYzgz

Facts: …the plaintiff Gul Bano grieves that she is one of the daughters of late Abdul Shakoor Khan who died in the year 1991 leaving five sons and three daughters (including her), as well as an immovable property bearing house No.A-323, Block-I, North

Nazimabad, Karachi ("said property"). It is alleged in the plaint that soon after the death of her father, the defendant No. 1 to 3 occupied the said property, while the original documents of the said property remained in the possession of the defendant No.1. It is asserted by the plaintiff that the defendants were not paying her share and they were bent upon selling the said property depriving the plaintiff from her valuable inheritance rights, hence the plaintiff reached this Court with the prayers that the defendants be directed to give away her share, she also has prayed that mesne profit also be paid to her for the period the said house was enjoyed by the defendants after the death of her father…

Issues: Whether a co-owner is not entitled to mesne profit, where neither the defendants dispossessed the plaintiff nor enjoyed illegal possession of the father's property rather, they are the owner of the said property, being legal heirs of the deceased?

Analysis: …It gleans from appraisal of the foregoing that the tenancy agreements introduced on record by the plaintiff's attorney does not germane to the said property. But this is not the claim of the plaintiff. The moot plea of the defendants is that they are not enjoying any benefits from the said property rather they are residing in it being legal heirs of late Abdul Shakoor Khan. Contention of learned counsel for the defendant that the plaintiff being co-owner cannot claim mesne profit is not substantiated by any law. As stated earlier, a person who claims mesne profit, he has to show that he is owner of the property and that the defendants are in wrongful possession, thereof, therefore in my humble view for all intent and purposes, even a co-owner (who may be related to the claimant) may be in wrongful possession of a property if he occupies the subject property to the exclusion of the other rightful co-owner(s). In such a case the co-owner in possession to the exclusion of other co-owner will however be held liable to the extent of his unauthorized or hostile occupation possession or enjoyment thereof to the extent of the share of the claimant. Once a person establishes and court comes to the conclusion that the person was entitled to any right or share in the property and he is being deprived of such right or share in the property by the other person, then even the partial owner who is out of possession or enjoyment becomes entitled to claim those profits actually received by the person in unlawful possession or enjoyment of such part thereof as the case may be…

Conclusion: …In view of the rationale and deliberation contained hereinabove, the forgoing discussion justifies that the decree should be apportioned under order XX Rule 12 CPC in the manner that the Defendants are liable to pay a sum of Rs. 411,682.98/- (rupees four hundred, eleven thousand, six hundred eighty two and ninety eight paisa) to the Plaintiff as mesne profit as of the date of the judgment, however, parties are left to bear their own costs.

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16. **High Court of Sindh, Karachi.**
Muhammad Shafi son of Faizullah *Vs.* The State
Criminal Jail Appeal No. 506 of 2021
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

https://caselaw.shc.gov.pk/caselaw/view-file/MTcxMjQ5Y2Ztcy1kYzgz

Facts: …The facts of the prosecution case as per FIR are that on 15.12.2020 at about 0930 hours at service road Super Highway near 5-Star CNG Scheme No.33 a police party headed by SIP Sikander Ali Soomro of PS SSHIA apprehended the accused namely Muhammad Shafi and recovered from his possession one plastic sack from the Rickshaw he was driving and found 25 packets of Cannabis (Chars) of different size wrapped with yellow colored solution tape total weight 2.30 kilo and 900 grams in the presence of mashirs, hence the instant FIR was registered.

Issues: Whether non-examination of the witness who brought the property/contraband for chemical examination and non-production of *malkhana* entry cut the chain of evidence to prove the case against the appellant in terms of safe custody?

Analysis: …It is observed that mere heinousness of the charge and recovery of huge quantity of the alleged contraband is no ground to convict accused. The prosecution is under a bounden responsibility to drive home the charge by proving each limb of its case that essentially included the production of the witness, tasked with the responsibility of transmitting the samples to the office of Chemical Examiner. Failure is devastatingly appalling, with unredeemable consequences that cast away the entire case. In the case, in hand, the property was sent to the Chemical Analyzer through a letter dated: Nil by PW-3 Inspector Manzoor Ali the investigation officer who took the property from police station to chemical examiner which is silent and even the report of chemical examiner is silent in this regard. Only it is mentioned that the property was received through the letter of Inspector Manzoor Ali, a presumption can be drawn that the prosecution failed to produce that witness who brought the property/contraband for chemical examination, and its failure cut the chain of evidence to prove the case against the appellant in terms of safe custody especially as no malkhana entry was produced or head of the malkhana examined. In other words the prosecution has not proved the safe transmission of the property to the chemical examiner, which creates serious doubt in its case. The complainant handed over the contraband to the investigation officer on 15-12-2020 and the same was sent for chemical examination on 16-12-2020 but where it was for such a period the prosecution has failed to explain. Thus the prosecution has also failed to prove safe custody of the contraband…

Conclusion: …We are of the view that the prosecution has failed to prove the case against the appellant beyond a reasonable doubt by producing reliable, trustworthy and confidence, inspiring evidence. Therefore, we allow the instant appeal, set-aside the impugned judgment dated 07-08-2021, passed by the learned Model Criminal Trial Court/ 1st Additional District and Session Judge, Malir, Karachi in Session Case No. 172 of 2021 arising out of FIR No.970 of 2020, P.S Site Supper Highway for offence under section 6/9 (c) CNS Act, 1997, and acquit the appellant Muhammad Shafi s/o Faizullah from the charges by extending him the benefit of the doubt. He shall be released forthwith if not required in any other custody case…

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17. **High Court of Sindh, Karachi.**
Nadir Ali @ Bahar & others *Vs.* The State
Criminal Appeal No. 50 of 2021 and confirmation Case No. 10/2021
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi
https://caselaw.shc.gov.pk/caselaw/view-file/MTcxMTU2Y2Ztcy1kYzgz

Facts: The brief facts of the prosecution case appearing in the FIR are that on 09.01.2020 at 2300 hours complainant Dost Ali reported at P.S. that he resides at Dunba Goth when on 09.01.2020 at about 1630 hours he was at his home when his nephew Sohail disclosed him that his son Zohaib who was working in Pakola Company was returning after closing hours when at Katcha Road near Naddi Dunba Goth, accused persons Babar, Zaman and Wali Muhammad who were armed with hatchets and knives inflicted injuries upon Zohaib, who has been taken to Baqai Hospital on the motorcycle by Sohail and Munawar and while going there, one person in the car gave them lift till Baqai Hospital where his son died on account of injuries and his post mortem was conducted in Jinnah Hospital and now he has reported the matter against the above named accused persons.

Issues: Is there any particular format for recording a dying declaration, and what are the main requirements?

Analysis: …There seems to be no particular format for a dying declaration and the main requirement appears to be that it is made without influence which we find to be in this case as it was made before two independent persons by the deceased when he was alive and was in full senses. The dying declaration thus, in our view, fulfills all the requirements of law and we find that it is admissible and can be relied upon. In this respect reliance is placed on Majeed v. State (2010 SCMR 55)…

Conclusion: …Considering the above facts and the circumstances of this case, we are of the view that this is not a case which warrants the death sentence but is a case which warrants the alternate sentence for Cr. Appeal No.50/2021 & Conf. Case No.10/2021 14 murder. We therefore dismiss this appeal, uphold the conviction of the appellants and

alter their sentence from death to life imprisonment under section 302 (b) PPC and they are also liable to pay the compensation of Rs.10,000,00/ each to the legal heirs of the deceased under section 544-A Cr. P.C and in case of default they shall further undergo S.I for 06 months more. The benefit of section 382-B Cr.P.C is also extended to the appellants and any remission applicable under the law. The confirmation reference made by the Trial Court is answered in the negative…

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18. **High Court of Sindh, Karachi.**
Zafar Ahmed versus Associates Press of Pakistan and others
Suit No. 614 of 2003
Mr. Justice Muhammad Faisal Kamal Alam

https://caselaw.shc.gov.pk/caselaw/view-file/MTcwNDk1Y2Ztcy1kYzgz

Facts: …Plaintiff joined Defendant No.1 in the year 1967 and in due course rose to the position of Bureau Chief Sindh, but under the conspiracy (*purportedly*) Defendant No.1 issued a Letter of Retirement to Plaintiff, retiring him from 05.03.1998, which was challenged by the Plaintiff in this Court in Suit No.150 of 1998 and initially was granted interim relief, which was challenged by Defendant No.1 in the High Court Appeal No.60 of 1998 and the case was remanded with the directions to pass fresh order. However, in the intervening period after insertion of Section 2-A in the Service Tribunal Act, 1973, *inter alia*, empowering the Federal Service Tribunal to hear matters of employees of statutory bodies, the suit was dismissed with the observation that Plaintiff would be at liberty to invoke the jurisdiction of Federal Service Tribunal for redressal of his grievances. Being unsuccessful before the Federal Service Tribunal ("**FST**"), the Service Appeal No.1981 of K-1998 was dismissed with the directions that Defendant No.1 should complete the retirement papers of the Plaintiff enabling him to get his pensionary benefits including provident fund within a period of two months. Although, this decision was challenged before the Honourable Supreme Court, but without any success. Further contended that since Federal Service Tribunal did not have any power to execute the judgment, therefore, present ***Lis*** is filed; acknowledged that while filing the present proceeding, Plaintiff only received a cheque of about one third of the provident fund and not the full and final service / retirement dues…

Issues: Whether the claims of Plaintiff with regard to his service/retirement benefits and dues can be adjudicated upon in suit?

Analysis: …Decision given by the learned FST in the above Appeal filed by present Plaintiff has been perused. The said Appeal was preferred against the Order dated 03.12.1997, whereby, the Plaintiff was ordered to retire from service with effect from 06.03.1998;

thus, as far as the present claim of Plaintiff with regard to his service / retirement benefits and dues is concerned, the same was not adjudicated upon in the said Service Appeal, hence, Section 11 of CPC [principle of res judicata] is not attracted to the facts of present case. Even otherwise, the present suit is not barred by any of the provisions of law and is maintainable. Issues No.1 and 2 with regard to the maintainability are answered accordingly and in favour of Plaintiff…

…The Defendants have illegally deprived the Plaintiff from the benefits of enhanced pension since 01.07.2000. Defendants should have considered the service rendered by Plaintiff to the Organization; he has given his prime years of life to Defendants No.1 and in all fairness deserves a fair treatment from Defendant No1…

…undisputedly, terms of service of Plaintiff is governed by The Newspaper Employees (Conditions of Service) Act, 1973; which is a beneficial piece of legislation and is to be liberally construed. Once the Wage Board has given a Decision [supra] as envisaged in the above Statute, then the benefit of enhanced rate of Pension should have been extended to Plaintiff, unless, it was expressly mentioned in the above Decison that determination about the enhancement of Pension is to be applied to those employees of APP who retired after 1-07-2000; but, no such observation is mentioned.

Consequently, Plaintiff is entitled for this enhanced pension of 70 percent from 01.07.2000; since, Defendant No.1 has been paying a lesser amount of pension, that is, @ 42.5% to Plaintiff, instead of 70%, therefore, this shortfall being arrears of pensionable amount of past years is to be paid to the Plaintiff by Defendant No.1. Therefore, Issue No.4 is answered in negative with regard to the entitlement of provident fund and gratuity, but, in the affirmative for the claim of pension…

…Plaintiff has claimed special damages, which cannot be awarded in the absence of tangible evidence and positive evidence, which the Plainitff is unable to bring on record. However, in this regard the settled rule is that it is discretion of the Court to grant general damages, taking into the account the facts of a Case. As discussed in the foregoing paragraphs, since Defendants have illegally deprived the Plaintiff from the payment of enhanced rate of pension, thus caused him continuous monetary loss, besides mental anguish; consequently, in the circumstances, the Plaintiff is also entitled for a sum of Rs.500,000/- towards general damages…

Conclusion: …Suit is partly decreed in the above terms, that is, that Defendant No.1 being the Employer of Plaintiff is liable to pay arrears of pension from 01.07.2000 till date; Plaintiff is entitled for pension at the rate of 70 percent as determined herein-above [in the 7th Wage Board Decision] and a sum of Rs.500,000/- towards general damages, payable by Defendant No.1…

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19. High Court of Sindh, Karachi.

Muhammad Murad Bhutto versus Lal Bux and others
Criminal Revision S-57 of 2021
Mr. Justice Muhammad Saleem Jessar

https://caselaw.shc.gov.pk/caselaw/view-file/MTcxMjkzY2Ztcy1kYzgz

Facts: …the applicant filed Direct complaint No.81/2021 under section 3 & 5 of Illegal Dispossession Act, 2005, as the land of the complainant is in illegal possession of the accused. It was further stated that accused Lal Bux and others asked the applicant to sell the above said 03-00 acres land to them but the applicant/complainant refused to do so, whereupon they became annoyed. On 26.11.2017 the applicant with his brothers namely Abdul Hameed and Muhammad Ayoub went on their land when at about 1200 hours noon, they saw and identified that accused Lal Bux armed with lathi, Aslam armed with pistol, Abdul Kareem armed with hatchet, Sikandar armed with lathi, Abdul Sami Armed with lathi and Muhammad Younis armed with lathi had occupied the land and were in process of ploughing/cultivating with their Al-Ghazi Tractor which was driven by accused Muhammad Younis, whereupon, the complainant party restrained them upon which the accused Lal Bux instigated to accused Aslam not to spare and kill them. On his instigation, accused Aslam made straight fire from his pistol upon the complainant party but complainant party saved themselves by falling on ground, thereafter the complainant party ran away from there due to fear and save their lives. On the same day i.e. 26.11.2017,complainant along with PW went to PS for registration of case and got registered FIR No.67/2017 at PS Wasti Jewan Shah at about 1500 hours under section 324/114/447/148/149/147 PPC. After usual investigation the IO submitted challan before competent Court of law but learned Trial Court acquitted the accused, thereafter the applicant filed acquittal appeal before this Court.

Issues: Is there a bar in taking cognizance under the Illegal Dispossession Act, 2005 when the offences committed by the accused persons fall under two different enactments i.e. one under the Pakistan Penal Code and another under the Illegal Dispossession Act, 2005?

Analysis: In this connection, it may be observed that the proceedings under the Pakistan Penal Code and that under Illegal Dispossession Act, 2005 are totally different from each other. It may be observed that Illegal Dispossession Act, 2005 is a special legislation, having been enacted in order to protect the lawful owners and occupiers of immovable properties from their Illgal or forcible Dispossession therefrom by the land grabbers. The object and spirit of the said legislation was to curb the Activities of land grabbers. It may also be observed that an ordinary criminal Court trying the cases against the accused persons for the offences under the Pakistan Penal Code have no authority/jurisdiction to restore the possession of a person who has been illegally dispossessed by the culprits. Such Courts can merely award sentence for committing an offence of trespass into the property of any person. Contrary to this, under the provisions of Illegal Dispossession Act, 2005 the Court taking cognizance under the

said Act is fully competent and authorized to put a person into possession of the land in dispute if it comes to the conclusion that such person had been illegally dispossessed from the property in his occupation/possession…

Conclusion: …The upshot of above discussion is that instant Revision Application is hereby allowed. Consequently the impugned order dated 12.06.2021 passed by learned Additional Sessions Judge/MCTC Ubauro in Direct Complaint No. 81 of 2020 is hereby set aside. Resultantly, the complaint filed by applicant before Trial Court shall be deemed to be pending. Accordingly, the matter is remanded to the Trial Court with direction to take cognizance in the matter and proceed with the trial and afford opportunity to both the parties to lead their evidence and after appreciation of such evidence decide the case strictly in accordance with the law…

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20. **High Court of Sindh, Karachi**
Mst. Kiran Yazdani Daughter of Syed Ather Yazdani
through M/s. Hassaan Sabir, Salman Sabir and Sana Abid, Advocates.
Constitution Petition No. S – 550 of 2022
Mr. Justice Adnan Iqbal Chaudhry

https://caselaw.shc.gov.pk/caselaw/view-file/MTY4NjQwY2Ztcy1kYzgz

Facts: …The order impugned by way of this petition has allowed temporary custody of the minor to the father from 01.07.2022 to 25.07.2022 during the summer vacation of the minor…

Issues: Whether the impugned order dated 26.05.2022, which is for temporary custody of the minor under section 12 of the Guardians and Wards Act, 1890, is appealable under section 14(1) of the Family Courts Act, 1964?

Analysis: …The appeal provided under section 14(1) of the Family Courts Act, 1964 is against "a decision given or a decree passed by a Family Court". The question is whether an order for temporary custody passed under section 12 of the Guardians and Wards Act, 1890 can be equated with "a decision given" within the meaning of section 14(1) of the Family Courts Act, or whether such an order is "an interim order" within the meaning of section 14(3) of the Family Courts Act…

In my view, the words "temporary custody" in section 12 of the Guardians and Wards Act do not ipso facto translate to "an interim order". The terms of the order itself will determine whether that is "an interim order" within the meaning of section 14(3) of the Family Courts Act, or "a decision" within the meaning of section 14(1) thereof. In my view, where the order granting temporary custody is final in itself and there remains nothing else to be ordered for the purposes of that temporary custody, such an order will be "a decision" within the meaning of section 14(1) of the Family Courts Act, and hence appealable thereunder. A similar view was taken in the cases of *Eram Raza versus Mutaqi Muhammad Ali* (2018 MLD 727), *Tassadaq Nawaz versus Masood Iqbal Usmani* (PLD 2018 Lahore 830), and *Yasmin Zafar versus Muhammad Anwar Khan* (PLD 1989 Lahore 38)…

Conclusion: …The order is final in itself as nothing remains to be ordered for the purposes of affirming that temporary custody. Therefore, the impugned order is not an interim order but "a decision" within the meaning of section 14(1) of the Family Courts Act, 1964 and appealable thereunder. Since the remedy of an appeal is available, a writ petition is not maintainable. Same is dismissed…

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21. **High Court of Sindh, Circuit Court, Larkana**
Leela Kalpna Devi Hindu versus Secretary Minority, Government of Sindh and others
Const. Petition No. D- 712 of 2022
Mr. Justice Abdul Mobeen Lakho
https://caselaw.shc.gov.pk/caselaw/view-file/MTY5NDk5Y2Ztcy1kYzgz

Facts: …Petitioner…has filed this petition with the following prayers:-

a) To declare that, the election schedule 2023-2025 issued by respondent No.3 and list of members without including the name of petitioner and other female members of community is illegal, without legal justification, therefore, liable to be set-aside.
b) direct the respondent No.3 to revive the list while including the name of petitioner and other female members of community as per order dated 24.12.2020 and to conduct the fresh election on revised list.
c) direct the respondent No.3 to issue nomination to petitioner to contest the election of Hindu Community / Punchayat Larkana…

Issues: Whether a writ petition is maintainable against Private Hindu Panchayat?

Analysis: …Hindu Panchayat, Larkana is not a 'person' in terms of Article 199(5) supra, therefore no writ of Certiorari or Mandamus can be issued against its office holders, in terms of Article 199(1) (a) supra. Hindu Panchayat, Larkana has no status of a public body; therefore, Hindu Panchayat is not a person exercising functions in connection with the affairs of Federation / Province and Local Authority in terms of Article 199(1)(a)(i) and (ii) of the Constitution…

Conclusion: …In the light of the above facts and circumstances of the case, this petition is not maintainable and is hereby dismissed along with the pending application(s) with no order as to costs. However, the petitioner, if yet subsists grievance against the respondents, may avail her remedy under law.

LIST OF ARTICLES

1. ADOPTION AMONGST HINDU AND MUSLIM: A COMPARATIVE STUDY IN PAKISTAN PERSPECTIVE.

By: Asghar Ali Mahar, Civil Judge, Research officer at Legal Research Cell Sindh High Court Karachi.

Published by:
Federal Law Journal (Federal Judicial Academy)
https://www.researchgate.net/publication/363468906_Child_Adoption_amongst_Hindu_and_Muslim-_A_comparative_study

The adoption differs with guardianship. The Guardians and Wards Act, 1890 of 1890 allows for adoption to be done in the guise of guardianship. The guardian of a person/custodian (e.g., mother or friend) has no financial duty to support the child/ward out of his or her own pocket in guardianship. The true or natural father will be responsible for the child's upkeep. Nonetheless, under section 22 of the aforementioned Act, the guardian of the individual might be charged with the child's/ward's care.

According to Pakistani law, prospective adoptive parents may not be appointed guardians of Muslim children, and Non-Christen may not be assigned guardians of Christen children, however, a Non-Muslim could not be given custody of a deserted or parentless child or a child whose parentage was not known from an orphanage, or otherwise, Child born in non-Muslim family, could be adopted by a Muslim and his custody was to be regulated according to Pakistani law. Unless there is evidence to the contrary, a child abandoned at an orphanage is assumed to be a Muslim. Adoption is, in general, a communal concern because it lacks official legislation. But outside of the family courts, people frequently choose informal adoptions based on their beliefs. However, in Western nations, such informal adoptions do not meet the standards for giving an adopted kid an immigration visa. As a result, prospective adoptive parents must follow their own country's immigration laws as well as the restrictions of Pakistan's colonial Guardians and Wards Act of 1890.

The purpose of this research is to respond to the following questions: What if a Hindu family wants to adopt a parentless child abandoned somewhere or a Muslim new-born baby? Is guardianship a viable alternative to adoption? What are the differences between Islamic and secure law in terms of the adoption concept? With the objective of highlighting the pressing need for the appropriate statute to identify the adoption which has been invoked informally, which could prejudice the not only rights but life at stake of infants.

For this comparative study under the qualitative methodology, the legal rulings, jurists', and religious scholars' opinions have been sought for this purpose; now, surveys or interviews are being conducted.

2. A COMPREHENSIVE STUDY OF POWER OF ATTORNEY

By: Mr. Imtiaz Ali Shah, ***Ex*-**Civil Judge & Judicial Magistrate/Research Officer (Legal Research Cell) High Court of Sindh Karachi

Published by:

S B L R 2022 Article 53

https://academia.edu/resource/work/83243993

A power of attorney (known in Urdu as "Mukhtar Nama") is a legally binding document authorizing someone to manage a person's property, medical, or financial affairs. It is commonly used when a person cannot manage his affairs due to his absence, disability, incapacity, or infirmity; it allows an agent to make decisions on behalf of the principal. It empowers the agent to decide the principal's affairs. Power of attorney can be revoked/canceled by the principal, exclusive of the situation, when it creates an interest in the favour of an agent. However, it becomes null and void when its purpose is accomplished, or else the person who executes it or the agent dies. Nonetheless, instructions for managing assets and affairs after death are listed in the last will or living trust.

In the case of Syed Adnan Ashraf, the High Court of Sindh has defined the 'power of attorney' comprehensively and coherently; it was asserted that "A power of attorney is a written authorization by virtue of which the principal assigns to a person as his agent and confers upon him the authority to perform specified acts on his behalf; thus, the primary purpose of the instrument of this nature is to assign the authority of the principal to another person as his agent".

3. COURTS AND ARTIFICIAL INTELLIGENCE

Author: A.D. (Dory) Reiling

https://www.iacajournal.org/articles/10.36745/ijca.343/

This article explores the use of artificial intelligence (AI) in courts of law. AI raises any number of questions for courts and judges. Importantly, what can AI do for the administration of justice, and what does that require? Complexity reduction is at the heart of court processes, irrespective of subject matter. Not all court work is complex custom work and routine processes have different requirements from complex customised work of the courts. It follows, that forms of information technology, including artificial intelligence, are also not the same for all cases. Which form of AI has already proven itself for these different processes? The work of courts and judges is governed by the standards of proper procedure, including Article 6 of the European

Convention on Human Rights, so what does this mean for those working with AI? The Council of Europe has developed the Ethical Principles for the use of AI in the administration of justice. Can legal information be made more usable for AI?

4. E-JUSTICE IN SWITZERLAND AND BRAZIL: PATHS AND EXPERIENCES

Authors: Marcos Sousa, Daniel Kettiger, and Andreas Lienhard

https://www.iacajournal.org/articles/10.36745/ijca.368/

The main aim of this contribution is to explore the experiences and strategies used to adopt e-justice innovations and compare the similarities and differences between Swiss and Brazilian courts of justice. In Switzerland, the object was the project entitled Justitia 4.0, a one-stop-shop portal of justice in the country. In Brazil, the object was the electronic judicial process – PJE, considered the main e-justice system in the country. The research is qualitative and descriptive. Forty-seven in-depth interviews with semi-structured scripts were conducted with judges, information technology managers and judicial managers in Switzerland and Brazil. In Switzerland the data were collected in courts of first and second instances in seven cantons and in the Swiss Federal Supreme Court. In Brazil, interviews were conducted in first and second instances courts of justice in seven states and in the Federal Regional Court of the First Region. The results highlight the main drivers, hinders, impacts and outcomes of the adoption of e-justice in both countries as well as the similarities and differences found.