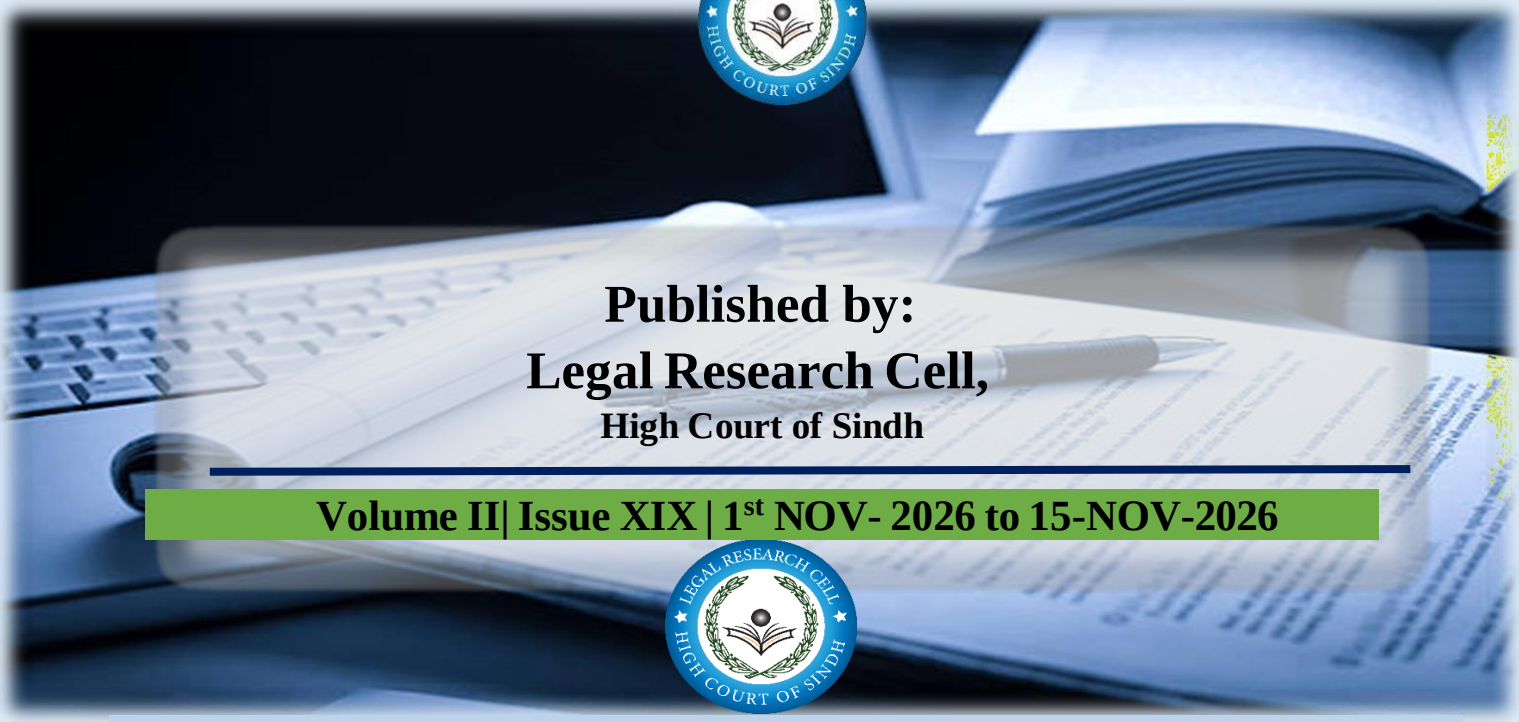
HIGH COURT OF SINDH

Case Law Review



Fortnightly Bench Update



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An Overview of Recent Judgments of the Supreme Court of Pakistan, Sindh High Court, and Lahore High Court, Compiled and Published by the Legal Research Cell, High Court of Sindh, Karachi

NOTABLE JUDGMENTS

Sr. No.	Court	Subject	Area of Law	Page
01.	Federal Constitutional Court of Pakistan	**1.** Whether out-of-turn promotions granted under unconstitutional statutory provisions could create vested rights or receive protection under the doctrine of past and closed transactions**.** **2.** Whether promotions previously recognized through judgments of competent Courts or Service Tribunals could nevertheless be withdrawn. **3**. Whether contempt proceedings could be employed to challenge departmental withdrawal of promotions, and whether the dismissal of the related Intra-Court Appeals warranted review. **4**. Whether the Supreme Court could exercise suo motu review jurisdiction, whether a Bench of equal strength could review an earlier judgment, and whether the alleged absence of separate notice invalidated the exercise. **5**. Whether the Criminal Review Petitions were maintainable in view of the prohibition against a second review under Order XXVI, Rule 9 of the Supreme Court Rules, 1980. **6.** Whether retrospective seniority could be granted solely on the basis of equality with other officers, and whether the High Court could entertain service matters covered by Article 212 of the Constitution.	Constitutional Law	6
02.	Supreme Court of Pakistan	Whether inheritance claims are governed by limitation; when limitation begins against an excluded heir; whether silence or delay amounts to relinquishment; whether successors may claim their predecessors' unasserted shares; and what protection is available to bona fide purchasers of inherited property.	Inheritance Law	8

03.	Supreme Court of Pakistan	Whether decanting and desalting crude oil for suppliers, against payment, constitute a taxable supply or taxable activity attracting sales tax under Section 3 of the Sales Tax Act, 1990.	Tax Law	9
04.	Supreme Court of Pakistan	Whether a life convict can be released before completing 15 years of actual imprisonment through administrative and presidential remissions, and whether subordinate prison rules can override Section 59(5) of the Prisons Act, 1894.	Criminal Law	10
05.	High Court of Sindh	Whether discrepancies in the truck's registration, engine, and chassis numbers, the 10-hour search duration, and the non-association of private witnesses (*mashirs*) vitiate the recovery. Whether the prosecution successfully proved the safe custody of the narcotic samples at the police station and their safe transmission to the Chemical Examiner.	Criminal Law	11
06.	High Court of Sindh	Whether contradictions between the prosecution witnesses regarding the weighing, custody, and sequence of sealing the narcotics undermine the credibility of the recovery. Whether the prosecution proved the safe custody and safe transmission of the recovered narcotics to the Chemical Examiner.	Criminal Law	12
07.	High Court of Sindh	Whether the promulgation of the Financial Institutions (Recovery of Finances) Ordinance, 2001, could revive or extend the period of limitation for execution of a decree already passed under the repealed Act of 1997; and whether the first execution application was governed by Article 181 of the Limitation Act, 1908, or Section 48 of the Code of Civil Procedure, 1908.	Banking Law	13
08.		Whether an amenity plot specifically reserved as a public park under an approved layout plan could lawfully be allotted or utilized for establishing a school, notwithstanding that a school may itself fall within the general category of public amenities; whether the correspondence, purported terms and conditions and payment of the revalidated challan created enforceable contractual rights in favour of the respondent; whether promissory estoppel and legitimate expectation could operate against statutory restrictions; and whether the respondent was entitled to specific performance, declaration and permanent injunction.	Civil Law	14

09.	High Court of Sindh	Whether the appellant's application under Order XXI Rule 90 CPC, filed after confirmation of the auction sale and beyond the prescribed period of limitation, was maintainable; whether the alleged non-service of sale proclamation, undervaluation and presence of a solitary bidder constituted material irregularity or fraud resulting in substantial injury; whether subsequent payments towards satisfaction of the decree, including payments made during pendency of the appeal, could invalidate the confirmed auction sale or restore the mortgaged property to the appellant; and whether Section 151 CPC could be invoked to circumvent the statutory requirements and limitation governing applications under Order XXI Rules 89, 90 and 92 CPC.	Banking Law	15
10.	High Court of Sindh	Whether the petitioner, who allegedly received his admit cards/roll number slips after the scheduled written examination due to the respondents' failure to communicate them in time, was legally entitled to a fresh examination, and whether the High Court could issue such a direction in the exercise of its constitutional jurisdiction under Article 199 of the Constitution?	Constitutional Law	17
11.		Whether the Hyderabad Development Authority, being a statutory body corporate established under provincial law and performing governmental functions, was exempt from federal income tax under section 49 of the Income Tax Ordinance, 2001, and whether the exemption enjoyed by the Provincial Government under Article 165 of the Constitution could extend to HDA.	Tax Law	19
12.		Whether the references were maintainable when the Appellate Tribunal had annulled the orders of the lower authorities and no adverse order or finding against the taxpayer remained in existence. The related questions concerned the Tribunal's jurisdiction to remand the matter, the Federation's competence to levy FED on services after the Eighteenth Amendment, and whether the services obtained by the taxpayer constituted a franchise under section 2(12a) of the Federal Excise Act, 2005	Tax Law	20
13.	High Court of Sindh	Whether the Customs Appellate Tribunal was legally competent to allow redemption of goods already confiscated as smuggled goods upon payment of duty, taxes and a redemption fine, despite the prohibition contained in S.R.O. 499(I)/2009 issued under section 181 of the Customs Act, 1969. The second issue was whether Respondent No.1 had established lawful ownership and locus standi to maintain the appeal.	Tax Law	21

14.	High Court of Sindh	Whether public service messages telecast by a television channel against consideration constituted taxable advertisement services provided in the course of an economic activity under section 3(1) read with section 4 of the Sindh Sales Tax on Services Act, 2011. The second issue was whether, under section 9(3) of the Act and the Sindh Sales Tax Special Procedure (Withholding) Rules, 2011, the liability to pay sales tax shifted from the television channel as service provider to the recipients of advertisement services.	Tax Law	22

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

Criminal Review Petition No. 46 of 2018 in I.C.A. No. 4 of 2017, along with Criminal Review Petitions Nos. 47, 48, 130, 131 and 132 of 2018, Nos. 89 and 90 of 2019, connected Civil Review Petitions and C.P.L.A. Nos. 1607-L, 1614-L and 1615-L of 2014, among other matters.
Akhter Umar Hayat Lalayka v. Mushtaq Ahmed Sukhaira and others, along with connected Criminal Review Petitions, Civil Review Petitions and Civil Petitions for Leave to Appeal.

Present: **MR. JUSTICE SYED HASAN AZHAR RIZVI.**
MR. JUSTICE MUHAMMAD KARIM KHAN AGHA.
https://fccp.gov.pk/api/public/site/files/ff67b9fbe67ae0e1c1f966f0497b7166630928ac15e4639e043f96b0021de5df

Facts: The controversy arose from out-of-turn promotions granted to several Punjab Police officers on account of gallantry or exceptional performance under section 8-A of the Punjab Civil Servants Act, 1974, read with Rule 14-A of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. Following earlier Supreme Court judgments declaring similar promotions unconstitutional, the Punjab Police authorities withdrew such promotions and refixed the seniority of affected officers alongside their batchmates. Some officers claimed that their promotions were protected by earlier judgments of competent Courts and Service Tribunals. In *Shahid Pervaiz v. Ejaz Ahmed* (2017 SCMR 206), the Supreme Court had conditionally protected promotions granted pursuant to judicial orders, unless reviewed. However, in *Akhter Umar Hayat Lalayka v. Mushtaq Ahmed Sukhera* (2018 SCMR 1218), the Supreme Court withdrew that exception through suo motu review jurisdiction. The affected officers challenged the withdrawal of their promotions and the dismissal of their contempt-related appeals, asserting vested rights, finality of earlier judicial orders and denial of fair hearing. Connected civil review petitions challenged the withdrawal of promotions and a change of cadre, while the Punjab Government and Inspector General of Police challenged three Lahore High Court judgments granting retrospective seniority to Tariq Maqsood, Alla-Ud-Din and Attique Ur Rehman. The matters were eventually heard together by the Federal Constitutional Court.

Issues: **1.** Whether out-of-turn promotions granted under unconstitutional statutory provisions could create vested rights or receive protection under the doctrine of past and closed transactions**.** **2.** Whether promotions previously recognised through judgments of competent Courts or Service Tribunals could nevertheless be withdrawn. **3**. Whether contempt proceedings could be employed to challenge departmental withdrawal of promotions, and whether the dismissal of the related Intra-Court Appeals warranted review. **4**. Whether the Supreme Court could exercise suo motu review jurisdiction, whether a Bench of equal strength could review an earlier judgment, and whether the alleged absence of separate notice invalidated the exercise. **5**. Whether the Criminal Review Petitions were maintainable in view of the prohibition against a second review under Order XXVI, Rule 9 of the Supreme Court Rules, 1980. **6.** Whether retrospective seniority could be granted solely on the basis of equality with other officers, and whether the High Court could entertain service matters covered by Article 212 of the Constitution.

Rules: 1. Section 8-A of the Punjab Civil Servants Act, 1974 and Rule 14-A of the Rules of 1974: These provisions governed accelerated promotions for exceptional performance. The Supreme Court had already applied the constitutional principles concerning invalidity of such promotions to the Punjab Police. 2. Article 188 of the Constitution and Order XXVI, Rule 9 of the Supreme Court Rules, 1980: Review jurisdiction is limited to legally recognised grounds. A second review of a determination already made in review jurisdiction is prohibited. The Supreme Court's power of review may also be exercised suo motu. 3. Article 204 of the Constitution and section 2(a) of the Contempt of Court Ordinance, 2003: Contempt requires deliberate and wilful disobedience of a clear, subsisting and binding judicial direction. Contempt jurisdiction cannot substitute for appeal or review. 4. Articles 10-A and 25 of the Constitution: The principles of fair hearing and equality apply, but equality cannot independently justify the continued enjoyment of an unlawful service benefit. 5. Article 212 of the Constitution: Disputes concerning terms and conditions of service, including seniority, fall within the jurisdiction of the appropriate Service Tribunal, subject to the constitutional limitations upon High Court jurisdiction. 6. Doctrine of vested rights and past and closed transactions: A statutory provision declared unconstitutional and void ab initio cannot ordinarily confer enforceable rights merely because benefits under it were previously granted or enjoyed.

Application: The Court examined the earlier decisions concerning out-of-turn promotions and found that the constitutional invalidity of such promotions had already been conclusively determined. In *Contempt Proceedings against Chief Secretary, Government of Sindh* (2013 SCMR 1752) and *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456), the Supreme Court had invalidated the corresponding Sindh provisions. Those constitutional principles were subsequently applied to Punjab in *Regional Police Officer, Gujranwala v. Ejaz Ahmad* (2017 PLC (C.S.) 725) and *Shahid Pervaiz v. Ejaz Ahmed* (2017 SCMR 206). The Court observed that *Shahid Pervaiz* had conditionally protected promotions granted pursuant to judicial orders, but that exception had subsequently been withdrawn in the judgment reported as 2018 SCMR 1218. Moreover, in *Khalid Mahmood Afzal v. Mushtaq Sukhera* (2017 SCMR 868), the Supreme Court had already examined and approved the reconsideration undertaken by the Inspector General of Police after providing individual opportunities of hearing to affected officers. Consequently, withdrawal of promotions pursuant to that judicially approved exercise could not, without proof of wilful disobedience, constitute contempt of Court. The Court further held that the dismissal of the petitioners' contempt-related Intra-Court Appeals disclosed no reviewable error. Although those dismissals could be examined within the ordinary limits of review jurisdiction, the petitioners could not indirectly seek restoration of the exception already withdrawn in review jurisdiction. Such an attempt would amount to a prohibited subsequent review. Relying upon *Abdul Ghaffar-Abdul Rehman v. Asghar Ali* (PLD 1998 SC 363), the Court recognised the Supreme Court's competence to exercise suo motu review jurisdiction and rejected the objection based solely upon the equal numerical strength of the Benches. It also found that the affected officers had received a sufficient opportunity to address the question concerning continuation of the exception. Regarding the connected Civil Review Petitions, the Court held that the affected officers had failed to establish any error justifying review. In Abdul Rehman's matter, it separately held that a change from one service cadre to another must be authorised by applicable service law or policy and cannot be claimed merely because the posts carry an equivalent pay scale.

Concerning retrospective seniority, the Court found that the Lahore High Court had granted relief substantially upon earlier decisions and the principle of parity, without sufficient independent examination of statutory entitlement. Since the comparable benefits relied upon by the officers had been withdrawn, equality could not justify perpetuating those benefits. Retrospective seniority also threatened the lawful inter se seniority of other officers. The Court accordingly found the three High Court judgments unsustainable.

Conclusion: The Federal Constitutional Court dismissed all Criminal Review Petitions insofar as they challenged the dismissal of the Intra-Court Appeals for want of any legally recognized ground of review, and dismissed them as not maintainable insofar as they sought a subsequent review of the suo motu review determination. All connected Civil Review Petitions were also dismissed. However, the Court granted leave to appeal in C.P.L.A. Nos. 1607-L, 1614-L and 1615-L of 2014, converted them into appeals and allowed them, setting aside the Lahore High Court judgments dated 26 June 2014. It directed the competent departmental authority to refix the seniority of the concerned officers with reference to their respective batchmates, strictly according to applicable service rules and without granting unlawful advantages or prejudicing the lawful seniority of other officers. All remaining connected matters were disposed of, with no order as to costs. (Paragraph 52).

THE SUPREME COURT OF PAKISTAN

Civil Appeal No. 909 of 2013, along with connected civil appeals and petitions

Mst. Meraj Bibi and Another v. Mst. Zar Gula (Deceased) Through Legal Representatives and Others

Present: **MR. JUSTICE SHAHID WAHEED,**
MR. JUSTICE NAEEM AKHTER AFGHAN,
MR. JUSTICE AQEEL AHMED ABBASI,
MR. JUSTICE SHAKEEL AHMAD
MR. JUSTICE MIANGUL HASSAN AURANGZEB

Source: **https://www.supremecourt.gov.pk/downloads_judgements/c.a._909_2013.pdf**

Facts: Several appeals and petitions arose from inheritance disputes in which legal heirs sought declaration, joint possession and partition of inherited properties after considerable delay. The defendants resisted these claims on the grounds of limitation, acquiescence, relinquishment and subsequent transfers to third parties. Conflicting judicial precedents had created uncertainty regarding whether inheritance claims were subject to limitation and whether successors could enforce shares left unclaimed by their predecessors. The matters were referred to a five-member Larger Bench for authoritative determination.

Issues: Whether inheritance claims are governed by limitation; when limitation begins against an excluded heir; whether silence or delay amounts to relinquishment; whether successors may claim their predecessors' unasserted shares; and what protection is available to bona fide purchasers of inherited property.

Rules: Article 120 and other applicable provisions of the Limitation Act, 1908; Sections 41 and 44 of the Transfer of Property Act, 1882; Section 42 of the Specific Relief Act, 1877; Article

114 of the Qanun-e-Shahadat Order, 1984; Muslim inheritance law and relevant provincial Shariat Application laws.

Application: The Supreme Court held that an heir's ownership vests immediately upon the death of the predecessor and is not extinguished merely by passage of time. However, the remedy for declaration and recovery of an inherited share is generally governed by Article 120 of the Limitation Act, 1908, prescribing six years from the accrual of the right to sue. Between co-heirs, limitation begins only when an actual and unequivocal denial of title is brought to the excluded heir's knowledge. Mere mutation entries, silence, delay or continued possession by another co-heir do not automatically commence limitation or establish relinquishment. Successors inherit their predecessor's claim subject to any limitation already accrued. A bona fide purchaser for value may obtain protection under Section 41 of the Transfer of Property Act, estoppel or limitation, provided the necessary legal requirements are established. The Court also prescribed a structured judicial test for determining limitation in inheritance suits.

Conclusion: The Supreme Court declared that inheritance rights remain vested notwithstanding lapse of time, but judicial remedies may become time-barred after six years from knowledge of an actual denial of title. Mere silence does not constitute relinquishment, and successors may enforce subsisting inheritance claims. Good-faith purchasers remain entitled to statutory protection. The Larger Bench settled the governing legal principles but did not decide the merits of the individual appeals and petitions, which were directed to be placed before appropriate Benches. The judgment applies to pending and future proceedings without reopening cases already finally decided.

THE SUPREME COURT OF PAKISTAN.

Civil Petition for Leave to Appeal No. 2972 of 2022 (converted into Civil Appeal)
Attock Refinery Limited v. Appellate Tribunal Inland Revenue, Islamabad and Others

Present: **MR. JUSTICE MUNIB AKHTAR.**
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN.
MR. JUSTICE SALAHUDDIN PANHWAR.

Source: https://www.supremecourt.gov.pk/downloads_judgements/c.p._2972_2022.pdf

Facts: Attock Refinery Limited purchased crude oil from various suppliers and carried out decanting and desalting at its refinery, although these processes were contractually the suppliers' responsibility. The suppliers paid the refinery for undertaking them. The tax department treated these payments as consideration for taxable services under the Sales Tax Act, 1990. The Appellate Tribunal and Islamabad High Court upheld the assessment, which the refinery challenged before the Supreme Court.

Issues: Whether decanting and desalting crude oil for suppliers, against payment, constitute a taxable supply or taxable activity attracting sales tax under Section 3 of the Sales Tax Act, 1990.

Rules: Sections 2(33), 2(35), 2(39), 2(41) and 3 of the Sales Tax Act, 1990, particularly as applicable to the tax periods from 1 July 2008 to 30 June 2009. The Court examined

Sheikhoo Sugar Mills Ltd. v. Government of Pakistan (2001 SCMR 1376) and *Collector of Customs v. Sanghar Sugar Mills Ltd.* (PLD 2007 SC 517).

Application: The Supreme Court explained that Section 3 requires the existence of a taxable supply by a registered person in the course or furtherance of a taxable activity. These elements must be established separately and connected. The decanting and desalting processes neither created a separate supply of goods nor transferred ownership of any goods. The payments were essentially commercial adjustments to the crude oil purchase price because the refinery performed obligations originally belonging to the suppliers. Even assuming that services had been provided, a taxable activity alone could not attract sales tax without a corresponding taxable supply. The earlier sugar mills judgments were distinguishable.

Conclusion: The Supreme Court allowed the appeal, set aside the Islamabad High Court judgment and the Appellate Tribunal's decision, and held that the decanting and desalting transactions did not attract sales tax under Section 3 of the Sales Tax Act, 1990.

THE SUPREME COURT OF PAKISTAN.

Criminal Appeal No. 281 of 2023
Gul Nawab v. The State and Another

Present: **MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR,**
MR. JUSTICE SALAHUDDIN PANHWAR.
MR. JUSTICE ISHTIAQ IBRAHIM

Source: **https://www.supremecourt.gov.pk/downloads_judgements/crl.a._281_2023.pdf**

Facts: The appellant, Gul Nawab, was convicted under Section 302(b) PPC for murdering Master and sentenced to life imprisonment. His conviction was maintained by the Peshawar High Court. During the appeal, the Supreme Court discovered that he had been released on 10 May 2025 after serving only 9 years, 11 months and 16 days of actual imprisonment, on account of remissions exceeding 15 years. The prison authorities relied upon the Khyber Pakhtunkhwa Prisons Rules, 2018, which had omitted the express 15-year restriction previously contained in Rule 217(ii).

Issues: Whether a life convict can be released before completing 15 years of actual imprisonment through administrative and presidential remissions, and whether subordinate prison rules can override Section 59(5) of the Prisons Act, 1894.

Rules: Section 59(5) of the Prisons Act, 1894; Sections 382-B, 400 and 401 Cr.P.C.; Article 45 of the Constitution; Rules 140, 217 and 220 of the Prison Rules. The Court relied upon *Nazar Hussain v. State* (PLD 2010 SC 1021), *Government of Khyber Pakhtunkhwa v. Wali Khan* (PLD 2022 SC 253), and *Shaukat Mahmood v. Election Commission of Pakistan* (PLD 2024 SC 653).

Application: The Supreme Court held that Section 59(5) imposes a mandatory minimum of 15 years of substantive imprisonment for life convicts, which cannot be reduced by ordinary administrative remissions. The omission of Rule 217(ii) from the KP Prisons Rules, 2018,

could not override the parent statute. However, presidential remission granted under Article 45 stands on a distinct constitutional footing and cannot be withdrawn merely through subordinate prison rules. The Court therefore preserved the five-year presidential remission but directed adjustment of the ordinary remissions to enforce the statutory minimum. It further emphasized that Section 400 Cr.P.C. requires prison authorities to return the executed warrant to the trial court with a complete account of imprisonment and remissions.

Conclusion: The Supreme Court declared the appellant's premature release unlawful and directed his immediate re-arrest to complete the remaining sentence. The period spent at liberty would not count towards imprisonment. Prison authorities were directed to ensure compliance with Section 59(5) of the Prisons Act and Section 400 Cr.P.C. The appeal remained pending for hearing on merits**.**

HIGH COURT OF SINDH

Case No: Special Criminal Jail Appeal No. D-140 of 2016 (arising out of Special CNSA Case No. 21 of 2014 / Crime No. 01 of 2014, Police Station Excise, Ubauro)
Siraj Khan son of Khalil Khan Arain versus The State

Present: **MR. JUSTICE MUHAMMAD FAISAL KAMAL ALAM.**
MS. JUSTICE TASNEEM SULTANA.

Source: MzMxNDUzY2Ztcy1kYzgz

Facts: On March 31, 2014, at approximately 10:00 p.m., Excise Inspector Hassan Ali Dashti and his team intercepted a speeding truck driven by the appellant (accompanied by co-accused Ameer Hussain) near the Excise Check Post at the Sindh-Punjab border, Ubauro. Upon searching the vehicle, 480 packets of *charas* weighing 480 kilograms were recovered from secret cavities. Samples of 100 grams were separated from each packet for chemical analysis, and the Chemical Examiner's report dated April 7, 2014, returned positive. On August 3, 2016, the trial court (Sessions Judge/Special Judge CNSA, Ghotki) convicted the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997, sentencing him to life imprisonment and a fine of Rs. 100,000/-.

Issues: Whether discrepancies in the truck's registration, engine, and chassis numbers, the 10-hour search duration, and the non-association of private witnesses (*mashirs*) vitiate the recovery. Whether the prosecution successfully proved the safe custody of the narcotic samples at the police station and their safe transmission to the Chemical Examiner.

Rules: Section 9(c) of the Control of Narcotic Substances Act, 1997: Governs punishment for trafficking/possessing commercial quantities of narcotics. Rule 22.70 of the Police Rules, 1934: Mandates that all articles placed in the *Malkhana* (storeroom) and their subsequent removal must be formally entered into Register No. XIX. Article 129(g) of the Qanun-e-Shahadat Order, 1984: Allows the court to draw an adverse inference when relevant evidence (such as Register No. XIX) is withheld. Precedent — *Jeehand v. The State* (2025 SCMR 923): Establishes that the prosecution bears the strict burden of proving an unbroken chain of safe custody and safe transmission of narcotics. Even a single circumstance creating reasonable doubt entitles the accused to acquittal as a matter of right

Application: The Court held that the 10-hour search duration was consistent with the recorded timeline given the large quantity hidden in secret cavities, and the initial misreading of the engine/chassis numbers due to dust and rust was adequately explained by a subsequent verification report Break in Chain of Custody: The Court found a fatal defect in how the samples were handled after returning to the police station. Neither the complainant (PW-1) nor the *mashir* (PW-2) stated where the samples were kept prior to dispatch. The prosecution failed to produce Register No. XIX, failed to examine the Malkhana Incharge, and failed to examine Excise Constable Imtiaz Ahmed, who allegedly transported the samples to the laboratory at Rohri. Although the Chemical Examiner's report noted that the seals were intact upon arrival, it could not cure the lack of evidence accounting for the samples' custody at the police station or during transit.

Conclusion: The appeal was allowed. The conviction and sentence dated August 3, 2016, were set aside, and the appellant, Siraj Khan Arain, was acquitted by extending him the benefit of the doubt and ordered to be released forthwith.

HIGH COURT OF SINDH
Special Criminal Jail Appeal No. D-214 of 2016 (arising out of Special Case No. 21 of 2016 / Crime No. 01 of 2016, Excise Police Station, Gambat)

Islam Khan Shinwari Pathan v. The State

Present: **MR. JUSTICE MUHAMMAD FAISAL KAMAL ALAM.**
MS. JUSTICE TASNEEM SULTANA.

Source: MzMxNDUxY2Ztcy1kYzgz

Facts: On February 10, 2016, at about 1:30 p.m., an Excise party at the Rasoolabad Check Post on the National Highway (District Khairpur) intercepted a truck/trailer (Registration No. TLM-893) driven by the appellant after he attempted to speed away. A search yielded two plastic jerry cans behind the driver's seat containing 40 packets of *charas* weighing 40 kilograms. The entire quantity was sealed and sent to the Chemical Examiner on February 11, 2016, yielding a positive report. On October 24, 2016, the trial court (Sessions Judge/Special Judge CNSA, Khairpur) convicted the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997, sentencing him to life imprisonment and a fine of Rs. 100,000/-.

Issues: Whether contradictions between the prosecution witnesses regarding the weighing, custody, and sequence of sealing the narcotics undermine the credibility of the recovery. Whether the prosecution proved the safe custody and safe transmission of the recovered narcotics to the Chemical Examiner.

Rules: Section 9(c) of the Control of Narcotic Substances Act, 1997: Governs the offence and punishment. Precedent — *Ikramullah and others v. The State* (2015 SCMR 1002): Holds that failure to produce the official who transmitted the samples or to establish safe custody means the prosecution has failed to prove the substance was not tampered with or replaced. Precedent — *Qaiser and another v. The State* (2022 SCMR 1641): Establishes that any break in the chain of custody—such as failing to examine the *Malkhana* custodian or the carrier mentioned in the chemical report—renders the Chemical Examiner's report worthless

and unreliable for sustaining a conviction.

Application: The Court noted clear inconsistencies between PW-1 (Complainant/IO) and PW-2 (*mashir*). PW-1 testified that Excise Constable Munawar Ali weighed the *charas*, Constable Nawab sealed it, and the *mashirnama* was prepared *before* sealing. Conversely, PW-2 testified that PW-1 weighed the *charas*, both *mashirs* sealed it, and the *charas* was sealed *before* preparing the *mashirnama*. Break in Chain of Custody: Although the appellant and case property arrived at the police station at 5:45 p.m. on February 10, 2016, neither witness explained where the property was stored overnight. The prosecution did not produce Register No. XIX, did not examine the Malkhana Incharge, and failed to examine Excise Constable Munawar Ali, who allegedly transported the parcel to the laboratory on February 11, 2016. Consistent with Supreme Court precedent, the positive Chemical Examiner's report noting intact seals could not substitute for proof of safe custody prior to dispatch.

Conclusion: The appeal was allowed. The conviction and sentence dated October 24, 2016, were set aside, and the appellant, Islam Khan, was acquitted by extending him the benefit of the doubt and ordered to be released forthwith.

HIGH COURT OF SINDH
M/s. National Bank of Pakistan v. M/s. Polycot Textile Industries and others
Special High Court Appeal No. 53 of 2014

Present: **MR. JUSTICE ARSHAD HUSSAIN KHAN**
MR. JUSTICE AMJAD ALI SAHITO

Source: https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzMxOTI1Y2Ztcy1kYzgz&citation

Facts: The appellant, National Bank of Pakistan, instituted Suit No. B-229 of 2000 under section 9 of the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997, for recovery of Rs.12,31,80,127/-. The suit was decreed ex parte on 01.03.2001. Subsequently, the Financial Institutions (Recovery of Finances) Ordinance, 2001, was promulgated on 30.08.2001, repealing the earlier Act. In April 2013, the appellant submitted particulars of the mortgaged, pledged and hypothecated properties of the judgment debtors, seeking execution of the decree under the Ordinance of 2001. The respondents objected that the execution proceedings were barred by limitation. The learned Single Judge accepted the objection and dismissed the execution application vide order dated 05.12.2013. Hence, the present appeal.

Issues: Whether the promulgation of the Financial Institutions (Recovery of Finances) Ordinance, 2001, could revive or extend the period of limitation for execution of a ecree already passed under the repealed Act of 1997; and whether the first execution application was governed by Article 181 of the Limitation Act, 1908, or Section 48 of the Code of Civil Procedure, 1908.

Rules: Section 7(6) of the Ordinance of 2001 provides for transfer of proceedings pending before Banking Courts upon its promulgation, whereas section 19 provides for automatic conversion of suits into execution proceedings upon pronouncement of judgment and decree. Section 24 makes the Limitation Act, 1908, applicable to proceedings under the Ordinance, while section 29 repeals the Act of 1997. Article 181 of the Limitation Act prescribes a period of three years for an application where no specific limitation period is provided. Section 48, C.P.C. prescribes an outer limit for subsequent or fresh execution applications and does not govern the first application for execution. In *Mahboob Khan v. Hassan Khan Durrani* (PLD 1990 SC 778) and *National Bank of Pakistan v. Mian Aziz-ud-Din* (1996 SCMR 759), the Honorable Supreme Court affirmed that the first execution application is governed by Article 181 of the Limitation Act.

Application: The Court observed that when the Ordinance of 2001 came into force on 30.08.2001, the appellant's suit had already culminated in a decree dated 01.03.2001; therefore, no pending proceedings existed to attract the transitional provisions of section 7(6). The mere fact that the decree remained unsatisfied did not convert the concluded proceedings into pending proceedings. Similarly, section 19 could not be applied retrospectively to revive an execution remedy already barred by limitation or to confer an unlimited right of execution. Section 24(2), which permits extension in the institution of a suit upon sufficient cause, did not provide a corresponding power to condone delay in filing an execution application. The Court further held that the first execution application was governed by Article 181, prescribing three years from the date the right to apply accrued, and that Section 48, C.P.C. could not be invoked to claim an additional six-year period. Since the decree was passed on 01.03.2001 and execution proceedings were initiated only in April 2013, the prescribed limitation period had long expired. The subsequent Ordinance neither suspended the running of limitation nor provided a fresh starting point or expressly revived the barred remedy.

Conclusion: The High Court held that the execution application was barred by limitation and that the Ordinance of 2001 did not revive or extend the period for execution of a decree passed before its promulgation. Finding no illegality or misreading of law in the impugned order, the Court dismissed the appeal and maintained the order dated 05.12.2013, with no order.

HIGH COURT OF SINDH

Karachi Metropolitan Corporation and others v. Zafar Memorial Education Society, Karachi
High Court Appeal No. 219 of 2017

Present: ***MR. JUSTICE ARSHAD HUSSAIN KHAN***
MR. JUSTICE AMJAD ALI SAHITO

Source: **https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzMxOTIzY2Ztcy1kYzgz&citation**

Source: 2026 SHC KHI 2196

Facts: The respondent Society instituted Civil Suit No.1555 of 2005 seeking declaration and permanent injunction in respect of Plot No. ST-12, Block-4, Kehkashan, Clifton, Karachi. It claimed that, pursuant to its application dated 02.03.1994, KMC had agreed through letter dated 06.06.1994 to allow 6,266.66 square yards out of a larger amenity plot for establishing a school, subject to payment of occupancy value and approval of the competent authority. Although the original challan of Rs.1,26,587/- was not deposited within the stipulated period, a revalidated challan dated 15.10.2005 was subsequently issued for Rs.43,92,928.66, which the Society deposited. However, the challan was cancelled on 18.11.2005 on the ground that it had been issued without approval of the competent authority and contrary to section 124 of the Sindh Local Government Ordinance, 2001. The Society challenged the cancellation, claiming enforceable contractual rights and violation of natural justice. The learned Single Judge decreed the suit on 08.02.2017 and passed the decree on 04.03.2017, directing the appellants to proceed in pursuance of the purported allotment and agreement. The KMC and others challenged the judgment and decree through the present appeal.

Issues: Whether an amenity plot specifically reserved as a public park under an approved layout plan could lawfully be allotted or utilized for establishing a school, notwithstanding that a school may itself fall within the general category of public amenities; whether the correspondence, purported terms and conditions and payment of the revalidated challan created enforceable contractual rights in favour of the respondent; whether promissory estoppel and legitimate expectation could operate against statutory restrictions; and whether the respondent was entitled to specific performance, declaration and permanent injunction.

Rules: Regulation 18-4.1 of the Karachi Building and Town Planning Regulations, 2002 expressly prohibits

conversion or utilization of an amenity plot for any purpose other than the specific purpose for which it was reserved. In *Ardeshir Cowasjee and 10 others v. Karachi Building Control Authority* (1999 SCMR 2883) and *Abdul Razzak v. Karachi Building Control Authority and others* (2002 MLD 1247), the superior Courts emphasized that amenity plots cannot be converted contrary to the prescribed statutory procedure. In *Moulvi Iqbal Haider v. Capital Development Authority and others* (PLD 2006 SC 394) and *Mall Development (Pvt.) Ltd. v. Waleed Khanzada and others* (2022 SCMR 2080), the Honourable Supreme Court recognized the public's constitutionally protected right under Article 9 of the Constitution to enjoy public parks and open spaces. The doctrines of promissory estoppel and legitimate expectation cannot compel a public authority to act contrary to an express statutory prohibition. Further, specific performance, being an equitable relief, cannot be granted in respect of an unlawful or unenforceable arrangement.

Application: The Court observed that the subject property was admittedly earmarked as a public park under the approved layout plan. It distinguished between the general classification of a school as a public amenity and the specific purpose for which the particular plot had been reserved. Regulation 18-4.1 prohibited even conversion of an amenity plot into another category of amenity, and therefore the proposed educational use could not justify its diversion from the designated purpose. The original offer dated 06.06.1994 was conditional upon approval of the KMC Council/Government, and the respondent failed to establish that the requisite statutory approvals and prescribed procedure had been obtained. The correspondence and acceptance of terms and conditions, as well as payment of the revalidated challan, could neither validate an unlawful transaction nor confer title or proprietary rights upon the respondent. No 99-year lease or agreement to lease had been executed, nor had possession been delivered. The Court further held that promissory estoppel and legitimate expectation could not override statutory restrictions or compel public authorities to implement an unlawful allotment. The admission by the respondent's counsel that the Society had not operated any school during approximately forty years further weakened its claim to equitable relief. The Court also clarified that even if the cancellation of the challan had been effected without providing an opportunity of hearing, such procedural irregularity could not confer substantive rights in respect of public property which was legally incapable of being allotted for the proposed purpose. The public's right to preserve and enjoy the park prevailed over the respondent's private contractual claim.

Conclusion: The High Court held that an amenity plot specifically reserved for a public park could not lawfully be converted or utilized for establishing a school, even if the proposed alternative use also constituted a public amenity. The correspondence, administrative representations and payment of the challan did not create any enforceable right contrary to statutory restrictions, nor could promissory estoppel or legitimate expectation validate the purported allotment. Accordingly, the appeal was allowed, the impugned judgment and decree were set aside, and the respondent Society's suit for declaration and permanent injunction was dismissed. The Court clarified that the respondent could independently seek refund of the deposited amount before the competent authority in accordance with law, without expressing any opinion on its entitlement. The appellants were directed to preserve and maintain the subject property for its designated purpose as a public park, there is no order with cost.

HIGH COURT OF SINDH

Laeeq Ahmed v. M/s. Standard Chartered Bank Pakistan Ltd. & Others

First Appeal No. 53 of 2019

Present: **MR. JUSTICE ARSHAD HUSSAIN KHAN**
MR. JUSTICE AMJAD ALI SAHITO

Source: **https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzMxOTI5Y2Ztcy1kYzgz&citation**

Citation: *2026 SHC KHI 2198*.

Facts: Respondent No.1-Bank Instituted Suit No.347 of 2012 for recovery of Rs.15,31,051.93, along with

profit and other ancillary reliefs, against the appellant in respect of a running finance facility of Rs.14,40,000/-, secured through mortgage of his property bearing Plot No. AS-4, Row No. IX, Block-A, National Cement Employees Housing Society, Karachi, measuring 180 square yards. As the appellant neither appeared nor filed an application for leave to defend, the Banking Court proceeded ex parte and passed judgment dated 07.02.2013, followed by decree dated 20.02.2013. During execution proceedings, the appellant and his wife deposited various amounts towards the decretal liability. Nevertheless, the mortgaged property was auctioned on 05.04.2018, and the sale was confirmed on 07.08.2018, followed by issuance of a sale certificate in favour of respondent No.2. The appellant challenged the auction through an application under Order XXI Rule 90 read with Section 151 CPC, alleging non-service of sale proclamation, undervaluation of the property, and irregularity in conducting the auction in the presence of a solitary bidder. The Banking Court dismissed the application on 01.08.2019, giving rise to the present appeal under Section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001.

Issues: Whether the appellant's application under Order XXI Rule 90 CPC, filed after confirmation of the auction sale and beyond the prescribed period of limitation, was maintainable; whether the alleged non-service of sale proclamation, undervaluation and presence of a solitary bidder constituted material irregularity or fraud resulting in substantial injury; whether subsequent payments towards satisfaction of the decree, including payments made during pendency of the appeal, could invalidate the confirmed auction sale or restore the mortgaged property to the appellant; and whether Section 151 CPC could be invoked to circumvent the statutory requirements and limitation governing applications under Order XXI Rules 89, 90 and 92 CPC.

Rules: Order XXI Rule 90 CPC provides a remedy for setting aside an execution sale on the ground of material irregularity or fraud in publishing or conducting the sale. However, the applicant must establish not only such irregularity or fraud but also consequential substantial injury. The second proviso to Rule 90 further requires deposit of the amount or furnishing of security as directed by the Court. Under Article 166 of the Limitation Act, 1908, an application to set aside an execution sale must be filed within thirty days from the date of sale, which, for this purpose, is the date on which the Court accepts the bid and not the subsequent date of confirmation. Order XXI Rule 92 CPC provides that where no application under Rules 89, 90 or 91 is made, or such application is disallowed, the Court shall confirm the sale, whereupon it becomes absolute. Rules 89 and 90 provide distinct remedies: Rule 89 permits setting aside the sale upon fulfilment of its prescribed deposit requirements, whereas Rule 90 requires proof of material irregularity or fraud and substantial injury. Under Rules 84 to 86, the auction purchaser is required to deposit the prescribed portion and the entire purchase money within the stipulated period. Upon confirmation under Rule 92, the sale becomes absolute and the sale certificate follows under Rule 94 CPC. The Supreme Court in *Mst. Samrana Nawaz and others v. MCB Bank Ltd. and others* (PLD 2024 SC 873) explained the requirement of deposit or security under Rule 90; in *Muhammad Jawed v. First Women Bank Limited and others* (2020 SCMR 2134; 2021 CLD 39), it explained the crystallization of the auction purchaser's rights and the effect of confirmation; while *Mst. Anwar Sultana through L.Rs. v. Bank Al-Falah Limited and others* (2014 SCMR 1222) and *Muhammad Attique v. Jami Limited and others* (PLD 2010 SC 993) addressed the limitation applicable to challenges against execution sales.

Application: The Court observed that the auction was conducted on 05.04.2018, whereas the application under Order XXI Rule 90 CPC was filed on 13.10.2018, beyond the thirty-day limitation prescribed by Article 166 of the Limitation Act, 1908, and after confirmation of the sale on 07.08.2018. The appellant failed to establish any legally sustainable ground for condonation of delay. The record further demonstrated that the appellant was aware of the execution proceedings, as his wife had appeared before the executing Court on several occasions and sought time to make payments. The allegation of non-service of the sale proclamation was not supported by material establishing consequential substantial injury. Similarly, the alleged undervaluation, despite the appellant's assertion that the property was worth Rs.4 to 5 crore, was not substantiated through any independent

valuation report or reliable evidence. The presence of a solitary bidder, by itself, did not establish collusion, fraud or manipulation of the auction. The Court further held that subsequent deposits made towards the decretal liability were required to be accounted for by the Bank but could not, by themselves, invalidate the auction sale after it had become absolute. During pendency of the appeal, the appellant was afforded opportunities to comply with the requirements of Order XXI Rule 89 CPC, including deposit of five per cent compensation and the outstanding decretal amount. The Bank ultimately acknowledged receipt of the remaining amount of Rs.14,28,798/-. Nevertheless, the Bank's willingness to accept the outstanding amount in full and final satisfaction of the decree could not prejudice the independent proprietary rights acquired by respondent No.2 through the confirmed judicial sale. The subsequent deposits could neither be treated as a timely application under Rule 89 nor retrospectively revive an extinguished right of redemption. The Court also held that Section 151 CPC could not be invoked to circumvent the express provisions of Order XXI Rules 89, 90 and 92 CPC or to extend the statutory period of limitation.

Conclusion: The High Court dismissed the First Appeal and maintained the Banking Court's order dated 01.08.2019. It held that the appellant had failed to establish material irregularity or fraud resulting in substantial injury, and that his application under Order XXI Rule 90 CPC was barred by limitation and filed after confirmation of the auction sale. The subsequent payments made by the appellant towards satisfaction of the decree were directed to be duly reflected and accounted for by respondent No.1-Bank in the execution record; however, such payments did not entitle the appellant to restoration of the mortgaged property or defeat the rights acquired by respondent No.2 under the confirmed action sale. There was no order as to costs.

HIGH COURT OF SINDH

Constitutional Petition No.D-5526 of 2026

Muhammad Abdul Manna Ul Haq v. District and Sessions Judge Karachi Central and others

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Present: **MR. JUSTICE MUHAMMAD SALEEM JESSAR**
MR. JUSTICE ABDUL HAMID BHURGRI.

Source: **https://caselaw.shc.gov.pk/caselaw/view-file/MzMyMzEzY2Ztcy1kYzgz**
2026 SHC KHI 2213

Facts: The petitioner applied for the posts of Junior Clerk and Stenographer in the District Judiciary on 10.12.2025 and 11.12.2025, respectively, pursuant to the recruitment advertisement. He contended that despite submitting his applications within the prescribed period and regularly checking the official portal of Sindh Testing Service (STS), he was not provided admit cards/roll number slips before the written examination scheduled for 01.03.2026. According to him, the admit cards were communicated to him on 04.03.2026, after the examination had already been conducted, thereby depriving him of the opportunity to participate in the recruitment process. His subsequent representation dated 05.03.2026 was rejected by respondent No.1 through order dated 15.05.2026. Consequently, he approached the High Court under Article 199 of the Constitution, challenging the said order and seeking directions for conducting a fresh examination.

Issue: Whether the petitioner, who allegedly received his admit cards/roll number slips after the

scheduled written examination due to the respondents' failure to communicate them in time, was legally entitled to a fresh examination, and whether the High Court could issue such a direction in the exercise of its constitutional jurisdiction under Article 199 of the Constitution?

Rule: Judicial review of recruitment proceedings is confined to examining their legality, fairness and compliance with the applicable recruitment rules. Courts cannot substitute their own assessment for that of the competent authority merely because a candidate is dissatisfied with an administrative decision, unless illegality, arbitrariness, discrimination, violation of mandatory legal provisions or infringement of an enforceable legal right is established. In Federal Public Service Commission v. Shiraz Manzoor and others (2023 SCMR 2087), the Supreme Court held that recruitment and selection policies formulated by the competent authority cannot ordinarily be substituted by the Court unless their implementation infringes vested rights or violates the law. Similarly, in Vice Chancellor, Shaheed Mohtarma Benazir Bhutto Medical University and others v. Altaf Hussain Somroo (F.C.P.L.A. No.14 of 2025, decided on 07.01.2026), the Federal Constitutional Court held that the High Courts must exercise their jurisdiction under Article 199 within the limits prescribed by law and cannot direct special or supplementary examinations merely on considerations of equity, compassion or hardship in the absence of lawful authority. Furthermore, Article 25 of the Constitution requires equal treatment of similarly placed candidates and does not permit special concessions to an individual candidate without any legal entitlement.

Application: The High Court observed that respondent No.1 had considered the petitioner's representation and obtained comments from respondent No.2 (STS) before rejecting the same. The competent authority found that the examination had been conducted according to the notified schedule, other candidates had obtained their admit cards and participated in the examination, and the applicable recruitment framework contained no provision for conducting a separate examination for an individual candidate. The Court held that the petitioner's allegation regarding delayed communication of admit cards, by itself, was insufficient to establish that the entire recruitment process was unlawful or that the competent authority had acted without jurisdiction or in violation of any mandatory provision of law. The petitioner also failed to identify any statutory or enforceable legal right entitling him to a fresh examination or any corresponding legal obligation upon the respondents to conduct one. Relying upon the judgments cited above, the Court further observed that constitutional jurisdiction could not be exercised merely on grounds of individual hardship or equitable considerations. Moreover, since the written examination had already been conducted on 01.03.2026 and the recruitment process had substantially progressed, directing a fresh examination for one candidate would unnecessarily disturb the selection process and potentially prejudice other candidates. Such a direction would also be inconsistent with the principle of equality under Article 25 of the Constitution.

Conclusion: The High Court held that the petitioner had failed to establish any infringement of a statutory or enforceable legal right, jurisdictional defect, patent illegality or arbitrariness in the impugned order warranting interference under Article 199 of the Constitution. Mere non-receipt or delayed communication of admit cards, without establishing a corresponding legal entitlement to a fresh examination, could not justify issuance of such a direction. Consequently, the Constitution Petition was dismissed in limine, along with all pending applications.

HIGH COURT SINDH

Income Tax Reference Applications Nos. 449 to 453 of 2022
Commissioner Inland Revenue Zone-I, RTO, Hyderabad vs. M/s. Hyderabad Development Authority, Hyderabad.

Present: **HON'BLE MR. JUSTICE AGHA FAISAL**
DR. SHAH NAWAZ MEMON (AUTHOR),

Source: https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzI5NjM5Y2Ztcy1kYzgz&citation
2026 SHC KHI 2133, 2026 SHC KHI 2189

Facts: The Hyderabad Development Authority (HDA), a statutory body corporate established under the Hyderabad Development Authority Act, 1976, filed income tax returns declaring losses for tax years 2011 to 2015 and claimed exemption from income tax on the basis that it performed the functions of the Provincial Government. The Inland Revenue Department amended its assessments under section 122(5A) of the Income Tax Ordinance, 2001, and raised tax demands, holding that HDA was not exempt under section 49(4). The Commissioner Inland Revenue (Appeals) upheld the assessments. However, the Appellate Tribunal Inland Revenue accepted HDA's appeals, holding that it was effectively a department of the Provincial Government and enjoyed governmental tax immunity by applying the control and function test and relying upon the Supreme Court judgment in SRB v. CAA (2017 SCMR 1344). The Commissioner challenged the Tribunal's decision before the High Court of Sindh.

Issue: Whether the Hyderabad Development Authority, being a statutory body corporate established under provincial law and performing governmental functions, was exempt from federal income tax under section 49 of the Income Tax Ordinance, 2001, and whether the exemption enjoyed by the Provincial Government under Article 165 of the Constitution could extend to HDA.

Rule: Section 49(1) and (2) of the Income Tax Ordinance, 2001 exempt the income of the Federal, Provincial and Local Governments from taxation, whereas section 49(4) expressly excludes corporations, companies, regulatory authorities, development authorities and other statutory bodies established under federal or provincial law, or owned and controlled by the respective governments, from such exemption. Section 3 provides that the Ordinance overrides anything contrary contained in any other law. Article 165 of the Constitution protects governmental property and income from taxation, while Article 165A recognizes Parliament's power to impose tax on the income of government-owned or controlled corporations and statutory bodies. Under section 53, tax exemptions must also be specifically provided in the Second Schedule.

Application: The Court held that HDA, being a body corporate and development authority established under provincial legislation, fell squarely within section 49(4) of the Ordinance and was therefore not entitled to income tax exemption. Its association with the Provincial Government, ministerial

chairmanship, appointment of senior officers by the Government and inclusion in the Government's Rules of Business did not transform it into the Provincial Government itself. The Court distinguished SRB v. CAA (2017 SCMR 1344), observing that the Supreme Court had considered the provincial sales tax liability of a federal authority, whereas the present case concerned federal income tax liability of a development authority established under provincial law. It further endorsed the reasoning in Rawalpindi Development Authority (2019 PTD 1734), holding that a statutory development authority cannot claim governmental tax immunity merely because it performs public functions or remains under governmental control. The Court emphasized that tax exemption must be expressly provided by the applicable tax legislation and cannot be presumed from the nature of an institution's functions or its relationship with the Government.

Conclusion: The High Court of Sindh allowed all five reference applications, set aside the Tribunal's order dated 04.07.2022 to the extent that it declared HDA exempt from income tax, and held that HDA was covered by section 49(4) of the Income Tax Ordinance, 2001. However, instead of restoring the tax demands directly, the Court remanded the appeals to the Appellate Tribunal Inland Revenue to decide the remaining grounds concerning individual assessments, disallowances, additions, default surcharge and penalties after hearing the parties.

HIGH COURT SINDH

Special F.E.R.A Nos. 53 & 54 of 2017
(Paxar Pakistan (Pvt.) Limited Vs. Deputy Commissioner of Inland Revenue Zone-II and another**)**

Present: **HON'BLE MR. JUSTICE AGHA FAISAL**
DR. SHAH NAWAZ MEMON (AUTHOR),

Source: https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzMwMDQ5Y2Ztcy1kYzgz&citation=2026+SHC+KHI+2149%2C+2026+SHC+KHI+2191
2026 SHC KHI 2149, 2026 SHC KHI 219

Facts: M/s. Paxar Pakistan (Pvt.) Limited, a manufacturer of labels and tags, entered into a Corporate Services Agreement dated 29.12.2010 and an Intercompany Technical Services Agreement of January 2012 with two non-resident group companies. The Deputy Commissioner Inland Revenue treated payments made under these agreements between July 2012 and February 2014 as franchise fees or royalties chargeable to Federal Excise Duty (FED) and recovered Rs.11,785,196 through attachment of the company's bank accounts under section 14A of the Federal Excise Act, 2005. The Commissioner Inland Revenue (Appeals) held that section 14A was not the appropriate provision and that the Department should have followed the proper procedure and provided an opportunity of hearing. However, the Commissioner considered the services to be in the nature of royalty or franchise and directed the Department to proceed under the relevant legal provisions. On appeal, the Appellate Tribunal annulled the orders of both lower forums because the correct legal procedure had not been followed and the taxpayer had not been afforded a fair hearing. It nevertheless allowed the Department to initiate fresh proceedings in accordance with law. The taxpayer then filed references before the High Court under section 34A of the Act.

Issue: Whether the references were maintainable when the Appellate Tribunal had annulled the orders of the lower authorities and no adverse order or finding against the taxpayer remained in existence. The related questions concerned the Tribunal's jurisdiction to remand the matter, the Federation's competence to levy FED on services after the Eighteenth Amendment, and whether the services obtained by the taxpayer constituted a franchise under section 2(12a) of the Federal Excise Act, 2005.

Rule: Under section 34A of the Federal Excise Act, 2005, the High Court's reference jurisdiction is confined to questions of law arising from the Tribunal's order. Such a question must involve a tangible and substantial issue affecting the rights and obligations of the parties. Where the Tribunal sets aside the orders of the lower forums and no adverse order or finding remains against the applicant, a reference is generally not maintainable because the applicant cannot be treated as an aggrieved party. The Department, however, remains entitled to initiate fresh proceedings by adopting the procedure prescribed by law and providing the taxpayer an opportunity of hearing.

Application: The High Court observed that the Tribunal had completely annulled the orders of the Deputy Commissioner and the Commissioner (Appeals), including the finding that the payments made under the agreements constituted royalty or franchise fees. Consequently, no determination of FED liability remained against the taxpayer. The Tribunal had decided the appeals exclusively on procedural grounds, namely, failure to follow the correct legal procedure and denial of a fair hearing, without deciding whether the services were actually chargeable to FED. The Court further held that the Department's liberty to initiate fresh proceedings did not create an adverse order against the taxpayer. If fresh proceedings were initiated, the Department would have to follow section 14 of the Act and provide an opportunity of hearing, after which the taxpayer could challenge any adverse determination before the appellate forums and, ultimately, through a reference. Relying on *Siddiq Traders* (2015 PTD 134) and *Philip Morris* (2026 PTD 1147), the Court reaffirmed that a reference against an order setting aside the proceedings and remanding the matter for fresh determination is not maintainable where no adverse finding survives. It also clarified that the question whether the agreements constituted a franchise depended upon their terms and surrounding facts and was not suitable for determination in a reference at this stage. Similarly, the constitutional competence of the Federation to levy FED on services after the Eighteenth Amendment was left undecided because no liability had yet been determined against the taxpayer.

Conclusion: The High Court of Sindh dismissed Special F.E.R.A. Nos. 53 and 54 of 2017 in limine as not maintainable because the Tribunal had annulled the lower authorities' orders and no adverse finding remained against the taxpayer. All proposed questions of law were left open, and the Court expressed no opinion on their merits. The Department remained free to initiate fresh proceedings in accordance with section 14 of the Federal Excise Act, 2005, after providing the taxpayer a fair opportunity of hearing.

HIGH COURT SINDH

Special Customs Reference Application No. 11 of 2026
The Collector of Customs (Enforcement), Karachi Vs. M/s. Muhammad Kamran & another

Present: **HON'BLE MR. JUSTICE AGHA FAISAL**
DR. SHAH NAWAZ MEMON JUSTICE (AUTHOR),

Source: https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzMwMzMzY2Ztcy1kYzgz&citation=2026+SHC+KHI+2155%2C+2026+SHC+KHI+2186
2026 SHC KHI 2155, 2026 SHC KHI 2186

Facts: On 24.02.2025, the Anti-Smuggling Organization of the Collectorate of Customs (Enforcement), Karachi, acting on information, seized a large quantity of foreign-origin goods found in and around a passenger bus at Arbaz Travels bus stand, Saddar, Karachi. No documents establishing lawful import or possession were produced. The goods were confiscated outright by the Collector of Customs (Adjudication-I) through Order-in-Original dated 05.05.2025, and a penalty was also imposed upon the bus stand owner. Subsequently, Respondent No.1 claimed six lots of goods, comprising cream,

bubble gum, soap, chocolates and coffee, asserting that he had purchased them from the local market and producing purchase receipts and copies of goods declarations. The Customs Appellate Tribunal condoned the delay in filing his appeal and permitted redemption of the goods upon payment of a fine equal to 20% of their customs value, in addition to applicable duty and taxes. The Collector of Customs challenged this decision before the High Court under section 196 of the Customs Act, 1969.

Issue: Whether the Customs Appellate Tribunal was legally competent to allow redemption of goods already confiscated as smuggled goods upon payment of duty, taxes and a redemption fine, despite the prohibition contained in S.R.O. 499(I)/2009 issued under section 181 of the Customs Act, 1969. The second issue was whether Respondent No.1 had established lawful ownership and locus standi to maintain the appeal.

Rule: Section 181 of the Customs Act, 1969 empowers the competent authority to offer an option to pay a fine in lieu of confiscation. However, under the first proviso to that section, the Federal Board of Revenue may specify goods or classes of goods in respect of which no such option shall be available. In exercise of this power, S.R.O. 499(I)/2009 expressly excludes smuggled goods falling under section 2(s) of the Customs Act from redemption in lieu of confiscation. Furthermore, clause (89) of section 156(1), read with section 187, places the burden upon the person possessing suspected smuggled goods to establish lawful excuse or authority for their possession.

Application: The High Court observed that the Tribunal had not set aside the original finding that the goods were smuggled, nor had it held that Respondent No.1 had established lawful possession. Rather, the Tribunal permitted their release on payment of duty, taxes and a 20% redemption fine, thereby proceeding on the basis that the goods remained liable to confiscation. The Court held that once the goods stood confiscated as smuggled goods, S.R.O. 499(I)/2009 prohibited the grant of an option for redemption under section 181. The Tribunal consequently had no discretion or jurisdiction to release them against a redemption fine. Relying upon *Bashir Ahmad v. Director, Directorate of Intelligence and Investigation (Customs)* (2025 SCMR 684) and *Director, Intelligence and Investigation (Customs) v. Muhammad Ishaq* (2026 SCMR 885), the Court reiterated that restrictions imposed by the Board under section 181 are binding upon adjudicating authorities and the Tribunal. It further clarified that willingness to pay duty and taxes after seizure does not convert smuggled goods into lawfully imported goods or replace the requirement to establish lawful excuse. The Court did not consider it necessary to decide whether Respondent No.1 was the lawful owner or an aggrieved person because the goods could not legally be released regardless of their ownership.

Conclusion: The High Court of Sindh allowed the Customs Reference Application and set aside the Customs Appellate Tribunal's judgment dated 15.12.2025. It restored the original order of outright confiscation concerning the six lots of goods claimed by Respondent No.1. The Court held that smuggled goods falling within section 2(s) of the Customs Act, 1969 cannot be redeemed on payment of duty, taxes and a redemption fine where such redemption is expressly prohibited by S.R.O. 499(I)/2009. The question of Respondent No.1's ownership and locus standi was left unanswered as academic.

HIGH COURT SINDH

Spl. Sales Tax Reference Application No. 180 of 2018
M/s. Apna TV Channel (Pvt.) Ltd. Versus The Commissioner (Appeals), SRB & others

Present: **HON'BLE MR. JUSTICE AGHA FAISAL**
DR. SHAH NAWAZ MEMON JUSTICE (AUTHOR),

Source: https://caselaw.shc.gov.pk/caselaw/download-file.php?doc=MzMxMzE5Y2Ztcy1kYzgz&citation=2026+SHC+KHI+2173%2C+2026+SHC+KHI+2182

2026 SHC KHI 2173, 2026 SHC KHI 2182

Facts: M/s. Apna TV Channel (Pvt.) Ltd., a registered television broadcaster, provided advertisement services under tariff heading 9802.1000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011. Following a desk audit of its tax returns, the Assistant Commissioner assessed sales tax of Rs.4,248,876, together with default surcharge and a penalty of Rs.212,444. The assessment included amounts relating to public service messages for which the applicant had claimed exemption, amounts shown as withheld by clients who were allegedly not withholding agents, and tax charged but not deposited. The Commissioner (Appeals) dismissed the applicant's appeal, while the Appellate Tribunal substantially maintained the assessment, granting credit for amounts properly reconciled and paid. The applicant challenged the Tribunal's decision before the High Court under section 63 of the Act, 2011, raising two principal questions: whether public service messages telecast for consideration constituted taxable advertisement services and whether the responsibility to pay sales tax rested with the service provider or the recipient.

Issue: Whether public service messages telecast by a television channel against consideration constituted taxable advertisement services provided in the course of an economic activity under section 3(1) read with section 4 of the Sindh Sales Tax on Services Act, 2011. The second issue was whether, under section 9(3) of the Act and the Sindh Sales Tax Special Procedure (Withholding) Rules, 2011, the liability to pay sales tax shifted from the television channel as service provider to the recipients of advertisement services.

Rule: Under section 3(1) of the Sindh Sales Tax on Services Act, 2011, a service is taxable if it is listed in the Second Schedule, provided by a registered person from a place of business in Sindh, and rendered in the course of an economic activity. Tariff heading 9802.1000 specifically covers advertisement on television. Section 4 defines economic activity to include activities carried on continuously or regularly in the form of a business, whether or not undertaken for profit. Section 9(1) places the liability to pay tax on the registered person providing the taxable service, whereas section 9(3) allows the Government to specify, through notification, services for which liability may be placed on the recipient or another person. Under the Withholding Rules, 2011, specified registered recipients of advertisement services were required to deduct and deposit sales tax from payments due to service providers.

Application: The High Court held that the taxable service was the provision of television airtime by the applicant to clients for consideration, irrespective of the nature, purpose or content of the messages broadcast. Since the applicant charged fees for telecasting public service messages, those broadcasts constituted advertisements in the ordinary meaning of the term and fell within tariff heading 9802.1000. The absence of a specific definition of advertisement in the Act during the relevant tax periods did not exclude the service from taxation. The Court further observed that the applicant's activity of operating a commercial television channel and regularly selling airtime constituted an economic activity under section 4, irrespective of whether the messages promoted commercial products or served public and charitable purposes. No general exemption for public service messages existed under the Act, and an exemption could not be inferred merely because the message served a public purpose. The exemption available for advertisements financed through grant-in-aid agreements depended upon the source of funding, and the Tribunal had already decided that claim against the applicant. Regarding the person liable to pay tax, the Court interpreted section 9(1) as placing the primary liability upon the registered service provider. The Withholding Rules merely required specified recipients, including FBR-registered or SRB-registered persons receiving advertisement services, to deduct tax from payments due to the provider and deposit it with the Government. They did not absolve the service provider of liability where the tax had neither been deducted nor deposited. The Court clarified that the provider would receive credit to the extent that tax was actually deducted and deposited against the relevant invoices, preventing double recovery. However, the Tribunal had found that certain clients were declared against a dummy registration number and

did not qualify as withholding agents, while the applicant had failed to produce evidence that the claimed tax had actually been withheld and deposited. Consequently, the liability for the outstanding tax remained with the applicant under section 9(1).

Conclusion: The High Court of Sindh answered both questions against Apna TV Channel and dismissed the reference application. It held that public service messages telecast for consideration constituted taxable advertisement services under section 3(1) read with tariff heading 9802.1000, irrespective of their public or charitable purpose. It further held that the primary liability to pay sales tax rested with the registered service provider, and the withholding mechanism did not transfer that liability to recipients where tax had not actually been deducted and deposited. However, any amount proved to have been withheld and deposited against the relevant invoices had to be credited against the tax demand.

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