

**Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

**(Special Bench for Hearing of Service Appeals of the
Members of Establishment of Lahore High Court)**

Service Appeal No.01/Litig//HR-I/2021

Ammar Aziz

Versus

Lahore High Court, Lahore & others

JUDGMENT

Date of hearing:	21.03.2025.
Appellants by:	M/s. Mian Bilal Bashir, Hafiz Syed Fahad Iftikhar, Hafiz Tariq Nasim and Muhammad Salman Ullah Khan, Advocates.
	Mr. Muhammad Akmal Khan, appellant in person in Service Appeal No.16 of 2025
Respondent-authority by:	M/s. Ehtisham-ud-Din Khan, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J./- Through this single judgment, we intend to also decide Service Appeal Nos.2 & 3/Litig/HR-I/2021 and Service Appeal No.16 of 2025, as common questions of law and facts are involved in them.

2. Through this appeal and connected Service Appeal Nos.2 & 3/Litig/HR-I/2021, the appellants have assailed orders regarding withdrawal of their appointments as Assistant Registrar (BS-18) and Admin Office Coordinator (BS-17) and seek their reinstatement into service. Whereas, through the Service Appeal No.16 of 2025, the appellant has challenged the appointments / promotions / award of increments granted by the respondent-authority to the officers / officials of the Lahore High Court, Lahore, in violation of applicable law / rules and pronouncements of the superior Courts. He has also sought his

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regular / time scale promotion and upgradation having become due since 2009.

3. Learned counsel for the appellants in the instant and connected Service Appeals No. 2 & 3/Litig/HR-I/2021 submits that the appellants, being eligible and having the requisite qualifications, were validly appointed and they accordingly joined the service. He adds that decisive steps have been taken; therefore, the appellants' appointments could not have been withdrawn, as the principle of *locus poenitentiae* applies. He further submits that the impugned orders were passed without providing an opportunity of hearing or issuing a show cause notice, in violation of the principles of natural justice and due process enshrined in Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 ("the Constitution"). He has placed reliance upon Shahid Masood Nadeem v. Dy. C.A.A.F., Lahore Cantt. and 3 others [2003 PLC (C.S.) 1262], Province of Punjab through Secretary, Agriculture, Government of Punjab and others v. Zulfiqar Ali (2006 SCMR 678), Peer Mukarram-ul-Haq v. Federation of Pakistan and others (2014 SCMR 1457), Ali Azhar Khan Baloch and others v. Province of Sindh and others (2015 SCMR 456), Government of the Punjab, Education Department through Secretary Higher Education, Punjab Civil Secretariat Lahore and others v. Muhammad Imran and others (2019 SCMR 643), Muhammad Yaseen and others v. Province of Sindh through Secretary Education and Literacy Department, Government of Sindh at Karachi and others (2023 SCMR 1703), Government of Balochistan through Secretary Forest and Wildlife Department, Quetta and another (2024 SCMR 1155), Province of Punjab through Chief Secretary, Lahore and others v. Qasim Mehmood and others (2025 SCMR 14) and The Government of Balochistan, through Secretary Energy Department, Quetta and another v. Muhammad Yasir (2025 SCMR 367).

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4. The appellant, in Service Appeal No.16 of 2025, submits that issue qua illegal appointments/postings/transfers on deputation has been laid to rest by the Hon'ble Apex Court in case reported as Ch. Muhammad Akram v. Registrar, Islamabad High Court and others (PLD 2016 Supreme Court 961), order dated 20.01.2017, passed by Hon'ble Apex Court in Review Petition No.474/2016 and case reported as Gul Tez Khan Marwat v. The Registrar, Peshawar High Court, Peshawar and others (PLD 2021 Supreme Court 391).

In response, the learned counsel for the appellants submits that judgment in the case of Ch. Muhammad Akram supra has been overruled in its entirety in the case of Gul Tez Khan Marwat supra.

5. Learned counsel for the respondent-authority submits that it was expressly stated in the appointment orders of the appellants that their services could be terminated at any time without notice or assigning reasons. He adds that the withdrawal of the appointments was in compliance with the applicable laws/rules governing service matters and did not contravene any settled principles of law. He further submits that since the appellants' appointments were conditional and the probationary period had not elapsed, the withdrawals were valid and lawful.

6. Arguments heard. Available record perused.

7. In this case, the appellants, namely, Ammar Aziz and Hafiz Syed Fahad Iftikhar, were appointed as Assistant Registrars (BS-18), whereas the appellant, namely Saif Ullah, was appointed as Admin Office Coordinator (BS-17) vide appointment letters dated 27.12.2019. Undeniably, these appointments were made bypassing the transparent recruitment process provided under the relevant service rules, particularly the provisions related to the advertisement of posts, eligibility, and competitive examination. However, it appears that the

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authority soon realized its mistake and just four days after the issuance of the appointment orders, it withdrew them on 31.12.2019. The appellants' appeals against those orders were also rejected through orders dated 22.03.2021. Indubitably, merit-based appointments uphold the principles of fairness, transparency, and equal opportunity, ensuring that positions are awarded to the most qualified and competent individuals. Such a system fosters efficiency and professionalism in public service while preventing favoritism and inhibiting nepotism. By adhering to a transparent recruitment process, merit-based selection safeguards the fundamental right of all eligible candidates to compete on an equal footing, as enshrined in Article 27 of the Constitution, which prohibits discrimination in public employment and mandates a fair, competitive process. This not only strengthens institutional integrity and public trust but also upholds the rule of law and the democratic values of equal opportunity for all.

8. In the case reported as Tanveer Ahad Khan v. Registrar, Lahore High Court, Lahore and 3 others (PLD 2013 Lahore 386), this Tribunal examined a challenge to an order dated 10.07.2009, issued by the Hon'ble Chief Justice of the Lahore High Court. The order had promoted nine officers to the post of Deputy Registrar (BS-19) from among Private Secretaries, Readers, and Assistant Registrars without establishing objective criteria and had superseded other officers without justification. The Tribunal observed that the impugned order failed to provide reasons why the appellant was superseded despite having service records and educational qualifications comparable to one of the promotees. The order also did not explain why that particular promotee was selected while four other Readers in the selection pool, possessing superior educational qualifications, were overlooked. It was determined that the power of selection under Rule 7 of the High Court

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(Lahore) Establishment (Appointment and Conditions of Service) Rules could not be used arbitrarily to select preferred officers without considering all eligible officers awaiting promotion. While educational qualification constitutes a valid parameter for selection posts, it is not the sole criterion. The authority vested in the competent authority/Chief Justice under Rule 26 of the aforementioned Rules did not confer unfettered or unguided power to circumvent the regular selection process established under Rule 7 or to disregard the vested rights of officers awaiting consideration for promotion. Rule 26 could not be invoked to selectively choose officers without first considering all officers in the promotion pool. The Tribunal directed that all appointments and promotions to selection posts should proceed in accordance with Rule 7 by evaluating the service record and other antecedents of officers using objective criteria. Additionally, the Registrar of the High Court was instructed to present all orders previously issued by the competent authority under Rule 26 or Rule 7 (without consideration of all eligible officers) for appropriate review and action in accordance with the law.

9. In the case reported as Ch. Muhammad Akram v. Registrar, Islamabad High Court and others (PLD 2016 Supreme Court 961), the Supreme Court examined a challenge to the legality of certain appointments, absorptions, and transfers in the Islamabad High Court that were allegedly made in violation of the applicable Services Rules. The Apex Court, while deliberating on the power of the Chief Justice of the High Court to relax service rules in matters of appointment and absorption of officers, observed that absolute power to relax a certain service Rule had not been conferred on the Chief Justice of the High Court and such power was limited only to be exercised where it did not encroach upon the statutory rights of the other persons or employees. Rule 16 of the Islamabad High

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Court Establishment (Appointment and Conditions of Service) Rules, 2011, and Rule 26 of the Lahore High Court Establishment (Appointment and Conditions of Service) Rules, 1973, could not be interpreted as conferring absolute power upon the Chief Justice to deal with the case of a person / employee in a manner he liked. The Court emphasized that the Chief Justice could exercise powers under these Rules only in a manner that would not cause injustice or prejudice to any individual or employee. Provisions of the Rules that provided for a mandatory competitive test for the appointment of employees in the Islamabad High Court Establishment were not followed, nor was any advertisement made to invite applications of eligible candidates. Number of meritorious and eligible candidates had been deprived of their fundamental right to seek employment through a competitive examination as provided under Article 18 of the Constitution. Consequently, the Hon'ble Court observed as under:

“79. We, therefore, direct in the following manner:

Contract Employment

Any person appointed on contract basis against a permanent vacancy or against a promotion post is violative of the spirit of the Rule and untenable, and should be de-notified.

Deputation

Any appointments made on the basis of deputation without observing the required codal formalities under the Rules and absorption of the deputationist thereafter against a permanent post or promotion post, in complete disregard of the eligibility or qualification required for initial appointment should also be de-notified.

Initial Appointment

Initial appointments made against a permanent post without following the required procedure as provided in the Rules, particularly the provisions

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related to the advertisement of posts, eligibility and competitive examination, are also to be de-notified.

Promotions/up-gradations

Appointments whether by way of initial appointment, deputation, contract or absorption in the grades/scales higher than the grades/scales in which such employees were serving before their induction in the Establishment are to be de-notified, as such up-gradation is not envisaged under the Rules and is contrary to the established principles of service laws.

Absorptions

Except those employees who have been recruited from the Establishments of different High Courts of Pakistan, in the same scale in which they were serving or were given one-step promotion within the same cadre, all other appointments by way of absorptions are without lawful authority and hence to be de-notified.

We may clarify that the aforesaid directives will not be applicable to the low scale employees appointed in BS-1 to BS-07, provided they are otherwise eligible.

80. We direct that the appointments of the Respondents and other such employees of the Islamabad High Court are to be de-notified and they shall be repatriated to their parent departments, including the private sector, within fifteen days from the date of their de-notification in line with the mode given by this Court in the case of Contempt proceedings against Chief Secretary Sindh and others reported in (2013 SCMR 1752) and in the case of Ali Azhar Khan Baloch reported in (2015 SCMR 456)."

10. The contention of the learned counsel for the appellants that the judgment in the case of *Ch. Muhammad Akram* (supra) has been overruled in its entirety in the case of *Gul Tez Khan Marwat* (supra) is misconceived. It is a matter of record that the judgment in *Ch. Muhammad Akram* (supra) was challenged before the Supreme Court of Pakistan through Review Petition

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No.474/2016; however, this petition was dismissed vide judgment dated 20.01.2017. Subsequently, CMA No. 4233 of 2017 under section 12(2) CPC was also filed, which was dismissed on 25.01.2018, though with the stipulation that paragraph 45 of the judgment in *Ch. Muhammad Akram* (supra) would be revisited. Consequently, a Larger Bench of the Hon'ble Supreme Court was constituted, which issued a judgment dated 14.10.2020 in **Civil Appeal No. 355-2020** in the case of *Gul Tez Khan Marwat* (supra). This judgment held that Article 199(5) of the Constitution bars the remedy of a Writ against a High Court in relation to cases involving, inter alia, administrative or executive acts and orders of Judges or the Chief Justice of a High Court. This finding, however, does not affect the determination on the merits of the dispute. Therefore, the decision in the case of *Ch. Muhammad Akram* (supra) has been overruled only to the extent of the question of maintainability of a petition under Article 199 of the Constitution and not on its substantive merits.

It is noteworthy that Writ Petition No.3821-2021, titled *Shahzada Aslam etc. v. The Registrar, Islamabad High Court, Islamabad*, was filed before the Islamabad High Court based on the misconceived plea that the judgment in the case of *Ch. Muhammad Akram* (supra) had been overruled in the case of *Gul Tez Khan Marwat* (supra). The petition sought the withdrawal of the notifications concerning the petitioners' repatriation and termination, along with those of other officers and officials of the Islamabad High Court. However, this petition was dismissed vide order dated 27.10.2021.

11. We are no-doubt conscious of the principle of *locus poenitentiae*, which refers to a stage or opportunity for repentance, allowing a party to withdraw from a proposed course of action before it becomes legally binding. In certain contexts, it has been interpreted to mean that once an act or

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benefit has been granted—particularly where the beneficiary was not at fault—its withdrawal may not be permissible, even if the grant was made under a mistake. Reliance in that regard may be placed on Director, Social Welfare, N.-W.F.P., Peshawar v. Sadullah Khan (1996 SCMR 1350), Mst. Basharat Jehan v. Director-General, Federal Government Education, FGEI (C/Q) Rawalpindi and others (2015 SCMR 1418), Qazi Nazam-Ud-Din v. Secretary Finance and others (2011 PLC (C.S.) 49 Lahore), Muhammad Shahab v. Government Of Khyber Pakhtunkhwa through Secretary Health, Peshawar and 2 others [2013 PLC (C.S.) 712 Pesh]. Nevertheless, the maxim "**Quod ab initio non valet, in tractu temporis non convalescit**" (what is invalid from the beginning cannot be made valid by the passage of time) serves as a fundamental principle in legal jurisprudence that significantly qualifies the application of *locus poenitentiae*. This principle serves as a critical check against the perpetuation of legal errors and unauthorized benefits, ensuring that administrative or judicial mistakes do not create enduring entitlements contrary to established law. The rationale behind this doctrine is to preserve the integrity of legal systems by preventing the validation of unlawful acts through mere persistence, thereby upholding the foundational principle that legitimate rights cannot flow from illegitimate sources.

12. This principle has been consistently upheld across various legal jurisdictions and maintains that fundamental defects in an original action cannot be remedied merely through continued practice or temporal progression. Reliance can be placed upon a catena of decisions by the august Supreme Court of Pakistan including The Engineer-In-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin (PLD 1992 Supreme Court 207), Begum Nusrat Ali Gonda v. Federation of Pakistan and others (PLD 2013 Supreme Court

829), Government of the Punjab, Education Department through Secretary Higher Education, Punjab Civil Secretariat Lahore and others v. Muhammad Imran and others (2019 SCMR 643), Province of Punjab through Secretary, Finance Department, Civil Secretariat, Lahore and others v. Atta Muhammad Zafar and others (2021 SCMR 1195), Syed Azam Shah v. Federation of Pakistan through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another (2022 SCMR 201), Pakistan Railways through Chief Executive Officer/ Senior General Manager, Lahore and another v. Muhammad Aslam (2024 SCMR 97). The incisive legal principle articulated by Lord Denning in Benjamin Leonard MacFoy v. United Africa Co Ltd [1961] 3 All ER 1169 (PC), bears a mention here wherein he elucidated that "*If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so.* And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse." This foundational principle has been similarly recognized across multiple jurisdictions. In Norton v. Shelby County (118 U.S. 425, 1886), the Supreme Court of the United States definitively pronounced that "*an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.*" Similarly, the Supreme Court of India while dealing with the matter related to ad hoc appointments of teachers reinforced this principle in Prabhat Kumar Sharma & Ors v. State of U.P. & Others (AIR 1996 SC 2638), specifically holding that ad hoc appointments must conform strictly to procedures prescribed by relevant laws and regulations, and that

“any appointment made in transgression thereof is illegal, void, and confers no rights upon the appointees”. This discussion leads us to the inescapable conclusion that the appellants are precluded from deriving any benefit from the principle of locus poenitentiae, as this doctrine cannot be invoked to legitimize or perpetuate an act that was void ab initio from its very inception.

13. Public institutions bear the obligation to act fairly, justly, reasonably, and transparently. In the present case, the appointment process was fundamentally flawed: no public advertisement was issued, no written examination was conducted, and interviews were administered without established objective criteria to transparently evaluate the candidates' qualifications. Moreover, no documentation regarding the allocation of marks during these purported interviews has been presented before this Court. We are of the considered opinion that relying on interviews as the sole or predominant component of any recruitment or appointment process inevitably exposes the procedure to error, arbitrariness, favoritism, and potential corruption. It is precisely for this reason that most recruitment protocols allocate a substantial portion of marks to written examinations, reserving only a fraction of the total assessment for interviews. The judiciary has consistently emphasized that when selections must be made exclusively through interviews, such oral assessments must be conducted in a thorough, systematic, and scientific manner to ensure a fair and comprehensive evaluation of each candidate's qualifications and suitability. In light of these considerations, we emphatically direct that future vacancies must be filled strictly in accordance with the spirit of Articles 18, 25, and 27 of the Constitution of Pakistan, which collectively guarantee the right to enter any lawful profession, equality before law, and safeguards against discrimination in services. In this regard guidance can also be sought from some landmark judgments of

the Hon'ble Supreme Court of Pakistan such as Sajjad Ahmad Siddiqui and Others v. Pakistan Through Secretary, Ministry of Defence, Rawalpindi and Others (1975 SCMR 6), Musa Wazir and 2 others v. N.W.F.P. Public Service Commission through its Chairman and others (1993 SCMR 1124), Mushtaq Ahmad Mohal and Others v. Honourable Lahore High Court, Lahore & Others (1997 SCMR 1043), Mubashir Raza Jaffri and Others v. Employees Old-Age Benefits Institutions (2014 SCMR 949), Government of Khyber Pakhtunkhwa through Secretary Forest, Peshawar and others v. Sher Aman and others (2022 SCMR 406), Hadayat Ullah and others v. Federation of Pakistan and others (2022 SCMR 1691), General Post Office, Islamabad and others v. Muhammad Jalal (PLD 2024 Supreme Court 1276) and Imran Hussain v. Water and Power Development Authority through Chairman WAPDA and 4 others (PLD 2010 Lahore 546).

14. In light of the foregoing analysis and considerations, the instant and connected Service Appeals No. 2 & 3/Litig/HR-I/2021 are hereby **dismissed**, while the Service Appeal No. 16/2025 is **disposed of** in accordance with the terms set forth above. Nevertheless, appellant Muhammad Akmal Khan retains the right to approach the competent authority through a fresh representation regarding his regular/time scale promotion and upgradation. Such representation, if submitted, shall be adjudicated strictly in accordance with the applicable law.

(Muhammad Amjad Rafiq) (Muhammad Sajid Mehmood Sethi)
Judge **Judge**

APPROVED FOR REPORTING

Judge

Judge

Sultan