

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

ICA No.1379 of 2023

Punjab Group of Colleges

Versus

Province of the Punjab through Chief Secretary, Lahore & others

JUDGMENT

Date of hearing: 16.12.2024.
Appellant by: Mr. Iftikhar Ahmad Mian, Advocate.
Respondents by: Mr. Imran Khan, Assistant Advocate General along with Mian Zahid, Law Officer, Higher Education Department.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant appeal, appellant has called into question judgment dated 25.11.2022 (announced in open Court on 16.12.2022), passed by learned Single Bench, whereby appellant's constitutional petition challenging vires of notifications dated 14.03.2022 & 31.03.2022 with regard to revised fee for issuance of new / extension in registration certificates to private educational institutions in the Province of Punjab, and seeking direction for respondent No.4 / Director Public Instructions, Lahore for issuance and maintenance of Registration Certificate of appellant's institutions without any specific time period or any specific educational module or enhancement of fee etc., was dismissed.

2. Brief facts of the case are that appellant is an educational institution and claims to have been running 262 campuses throughout the Punjab, providing education up till Masters level for the last about three and a half decade, which was previously registered with respondent No.4 / Director Public Instructions

Colleges, Punjab, Lahore as required under the provisions of the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984 (“**the Ordinance of 1984**”). In the years 2018/2019, respondents No.2 & 3 issued two separate notifications dated 13.07.2018 & 21.08.2019, wherein they fixed time schedule for submission of an application for registration of institution. Said notifications were challenged by appellant by way of filing **W.P. No.5893 of 2019**, which was allowed by this Court vide judgment dated 29.04.2020, reported as Punjab College through Principal v. Government of Punjab through Chief Secretary and others (2020 MLD 1502), whereafter registration certificate was issued. However, later on, impugned notifications dated 14.03.2022 & 31.03.2022 were issued by respondent No.2 / Secretary, Higher Education Department, Government of the Punjab, Lahore, with partial modification with regard to revised fee schedule for issuance of new / extension in registration certificates to private educational institutions in the Province of Punjab. Feeling disgruntled, appellant assailed aforesaid notifications by way of filing constitutional petition, which was dismissed by learned Single Bench vide judgment dated 25.11.2022 (announced in open Court on 16.12.2022). Hence, instant appeal.

3. Learned counsel for appellant submits that the notifications challenged through appellant’s constitutional petition are violative of the Sections 2(4), 3(1)(3) & 6(1) of the Ordinance of 1984 and enhancement of fee at exorbitant rate is not only violation of the principle of reasonability but also contrary to Rule 5 of the Punjab Private Educational Institutions (Promotion and Regulation) Rules, 1984 (“**the Rules of 1984**”). He argues that fixation of time for registration certificate is beyond the scope of law and the applicable Rules. In the end, he submits that impugned notifications are unsustainable in the eye of law. In support, he has relied upon Messrs Mehraj Flour Mills and others v. Provincial Government and others (2001 SCMR 1806), Allah Ditta and others v. Province

of Punjab (PLD 1997 Lahore 499) and Punjab College through Principal v. Government of Punjab through Chief Secretary and others (2020 MLD 1502).

4. Contrarily, learned Law Officer defends the impugned notifications by contending that appellant has failed to pinpoint any illegality or legal infirmity therein, thus, no interference is warranted.

At this stage, learned counsel for appellant states that in case instant appeal is allowed, appellant will not raise any demand for refund of fee, if any received by the respondent-department.

5. Arguments heard. Available record perused.

6. Sections 3 & 6 of the Ordinance of 1984 deal with the procedure for registration of an institution. It would be advantageous to reproduce the aforesaid provisions of law, which are as under:-

“3. All institutions to be registered.– (1) An Incharge shall, before the commencement of business by the institution, register the institution with the Registering Authority under this Ordinance.

(2) The Registering Authority shall, within sixty days from the date of filing of an application for registration, decide the application.

(3) Until the application for registration is decided, the institution may continue to function without registration.”

“6. Application for registration. - (1) The incharge of an institution may make an application for registration of an institution to such officer and in such form as may be prescribed.

(2) The Officer receiving an application shall forthwith forward the same to the District Committee which, after making such inquiry about such matters as may be prescribed, shall submit its report with its recommendations to the Registering Authority within sixty days of the receipt of the application under subsection (1).

(3) The Registering Authority shall, after considering the report of the District Committee and after such further enquiry as may be necessary if satisfied that the conditions prescribed for granting registration are fulfilled, issue a Registration Certificate.

(4) No order for refusing to grant a certificate of registration shall be made without giving the applicant an

opportunity of being heard and without recording reasons therefor.

(5) The Government shall, by notification, constitute one or more Registering Authorities in a district and if more than a Registering Authority is constituted in a district, the Government shall specify the jurisdiction of each Registering Authority."

7. From perusal of above provisions, we observe that no specific duration for the validity of the registration is stipulated therein. Furthermore, the impugned notifications do not cite any governing laws or rules that grant the respondent-authority the power to establish a fixed period for the validity of such registration.

8. Rule 5 of the Rules of 1984 provides a chart of registration fee for institutions, and reads as under:-

5. Fees for Registration of Institution.— The registration fees for institutions shall be as follows:-

a) Degree and Inter Colleges	Rs. 1,000
b) Technical Commercial, Vocational Institutions	Rs. 1,000
c) Educational Institutions for the handicapped High schools	Rs. 100
d) High Schools	Rs. 500
e) Pre-Primary, Primary and Middle Schools	Rs. 100

Through the impugned notifications, Respondent No. 2 has attempted to amend the aforementioned Rule. The Rules of 1984 were framed under the authority of Section 13 of the Ordinance of 1984, which empowers the Government to make rules to carry out the purposes of the Ordinance. However, we have noticed that no provision of applicable law or rules has been cited to show from where Respondent No. 2 derived the authority to issue the impugned notifications. These notifications appear to have been issued in a legal vacuum, beyond the scope of both the provisions of the Ordinance and the Rules of 1984. It is well-established law that no executive authority can take action without the backing of a valid law. Otherwise, such action would be void and liable to be

struck down. It is also settled law that an Act or Statute (in this case, the Ordinance of 1984 and the rules framed under it) cannot be amended through a notification or subordinate enactment. Therefore, the provisions referred to above remain operative and in effect until they are repealed by proper legislation. Reference can be made to *Shaukat Mahmood v. Election Commission of Pakistan (ECP) through Secretary ECP, Islamabad and others (PLD 2024 Supreme Court 653)*, *Roohullah and 6 others v. Government of Khyber Pakhtunkhwa through Secretary Environment, Fisheries Department and 6 others (2016 CLC Note 47)*, *Pakistan Medical Commission v. Province of Sindh and others (2024 CLC 53)*, *Bayazid Khan Kharoti v. Chief Secretary Government of Balochistan Civil Secretariat, Zarghoon Road, Quetta and 2 others [2024 P L C (C.S.) 246]* and *Province of Punjab through Director General Excise, Taxation and Narcotics Control Department Punjab and 2 others (2023 MLD 1245)*.

9. In view of the above, this appeal is **allowed** in the manner that impugned judgment is set aside and impugned Notifications are declared to be illegal and without lawful authority. However, the appellant shall not claim refund of the already paid fee as per undertaking given before us, duly noted in Para 4 supra.

(Rasaal Hasan Syed)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Judge